



LEGAL NEWSLETTER

**AGREEMENT FOR THE
PROMOTION AND
PROTECTION OF
INVESTMENTS BETWEEN THE
BOLIVARIAN REPUBLIC OF
VENEZUELA AND THE
REPUBLIC OF COLOMBIA**

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Legal Newsletter | March 27, 2023



On February 3, 2023, the Agreement for the Promotion and Protection of Investments between the Bolivarian Republic of Venezuela and the Republic of Colombia was signed, which seeks economic cooperation between both countries, establishing and reinforcing a legal system that promotes cross-border direct investments. The most relevant aspects of this Agreement are the following:

- ❖ The object of the agreement is to establish, maintain, and reinforce a legal system that promotes cross-border direct investments made by investors of one party in the territory of the other party.
- ❖ Regarding the scope, the Agreement will govern cross-border direct investments made in the territory of a party, according to its the national legal system by the investors of the other Party, before or after its entry into force, therefore it will have retroactive effects. However, the Agreement shall not apply to disputes which have arisen concerning measures, actions, or omissions which have been produced, adopted, or implemented prior to its entry into force, even if its effects persist after it enters into force, neither applies to any taxes. In this sense, it'll be considered as follows:

- Investments: Any asset related to activities aimed at the production of goods and services acquired by an investor of the Issuing Party, with funds that don't have its origins in the Receiving Party, according to the purpose established for it in the Agreement and under certain conditions. Thus, it will include, among others: i) a company incorporated according to the national legal system of the Receiving Party, which meets all the requirements outlined in the Agreement; ii) rights over movable and immovable properties, including ownership and other real rights such as a mortgage, pledge, usufruct, encumbrances, commitments, and any other similar rights in accordance with the legal system of the Receiving Party; iii) return on investments; iv) shares, securities, bonds, and obligations issued by commercial companies, and any other forms of participation in any type of society; v) credits operations, rights over sums of money or other payment right related to the economic value of the investment; vi) intellectual property rights; vii) right of economic nature, such as business concessions, licenses, or authorizations conferred by law or contract, including concessions for activities such as exploration, extraction, and exploitation of natural resources. It also establishes what shall not be considered an Investment for the purpose of the Agreement.
- Investor: i) A natural person who has the nationality of a Party under its the national legal system, which has made an Investment in the territory of the other Party, and who is not national of the Receiving Party; ii) A legal entity incorporated under the national the legal system of the Issuing Party, which have its offices registered together with substantial business activities in the territory of the Issuing Party, provided that they're not controlled by a national of

the Receiving Party. Also, financial entities, funds, or other lenders that grant credits or loans to an investor regulated by the Agreement is excluded from the definition of "Investor."




- ❖ Certain conceptualizations are envisaged.
- ❖ The promotion and protection of cross-border direct investments in their territory with regard to the investors of the other Party is established.
- ❖ It foresees that the extension, alteration, and transformation of the investment shall be governed by the legal system of the Receiving Party in whose territory it is made.
- ❖ A non-discrimination clause is established.
- ❖ The national treatment clause is established. In that sense, the Agreement shall not give rise to unjustifiably more favorable treatment of foreign investors with respect to national investors. However, the Parties shall give favorable consideration to applications for entry and stay submitted by nationals of either of the Parties who wish to enter the territory of the other Party due to the investment.
- ❖ It provides for expropriation and nationalization regime that allows the Receiving Party to expropriate or nationalize investments made by Investors of the Issuing Party due to necessity, public purposes, reasons for public utility or general interest, under the legal system of each Party. It also stipulates that the amount of compensation shall be equivalent to the market value price of the investment established immediately before the expropriation or nationalization becomes public knowledge
- ❖ The compensation for losses suffered by investors due to certain events which constitute force majeure is regulated.
- ❖ The investors of the other Party are allowed to make transfers related to their investment and some of them are listed.
- ❖ A subrogation regime is established for the case in which the Party, a public entity or a private entity duly authorized by it indemnifies an investor under insurance or any other guarantee to cover non-commercial risks related to an investment made in the territory of the other Party.
- ❖ The dispute settlement regime provides that when a dispute arises between a Party and the

investor of the other Party, the investor of the Receiving Party shall give written notice including, among other things, detailed information of its claim. If the dispute between the Parties cannot be amicably settled within six months after the date of receipt of the written notification, the investor may elect to submit the dispute to the competent court in the territory where the investment has been made; or to an ad hoc arbitration tribunal establish under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), the last case, shall only be applicable under certain conditions based on the Agreement. Also, the Parties may submit to arbitration executed by a binational arbitral center.



- ❖ It is provided that the benefits of this Agreement can be denied to an investor from the other Party if it does not comply the requirements set forth it. The benefits may be denied at any moment by the Receiving Party provided that i) A company is controlled, directly or indirectly, with a significant grade of influences by a natural person or a legal entity that is not part of the Agreement, and if this company does not have substantial commercial activities in the territory of the Receiving Party; ii) a company is controlled, directly or indirectly, by or under a significant grade of influence of natural people or a legal entities of the denying Party, and such a company does not have substantial commercial activities in the territory of the other Party; iii) that it had been proved judicially or administratively, in accordance with the legal system of the Party,

that an investor has incurred acts of corruption related to the investments.

-  The regime of labor and environmental measures is established under the laws of each of the Parties.
-  A committee formed made by both representatives' parties. Among its function is to ensure the correct application of the Agreement.
-  The Agreement shall enter into force sixty (60) days after the date of receipt of the last notification made by the Parties, in written and through diplomatic route, of the execution of the respective internal legal procedure necessary for such a purpose. The Agreement shall remain in force for a period of ten (10) years, and so it will stay in force unless the Parties decide otherwise.

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