

AGREEMENT BETWEEN THE REPUBLIC OF ARGENTINA AND THE REPUBLIC OF AUSTRIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Argentine Republic and the Republic of Austria referred to hereinafter as the "Contracting Parties",

Desiring to create favourable conditions for greater economic co-operation between the contracting parties;

Recognizing that the promotion and protection of investments will strengthen the provision to make such investments and make such an important contribution to the development of economic relations.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every asset invested or reinvested in any sector of the economy, provided that the investment has been made in accordance with the laws and regulations of the Contracting Party in whose territory has been made and, in particular, though not exclusively:

- a) Ownership of movable and immovable property and any property rights such as mortgages, liens, usufructs and similar rights;
- b) The rights of participation and other forms of participation in companies;
- c) The acreencias on funds transferred to create an economic value or the rights to any benefit having an economic value; loans, only when they are directly linked to a specific investment;
- d) Copyrights, industrial property rights, such as patents, trademarks, models and industrial designs and models, registered technical processes, trade names, know-how and goodwill;
- e) Concessions under public law for the exploration and exploitation of natural resources;

The content and scope of rights for the various categories of assets, shall be determined by the laws and regulations of the Contracting Party in whose territory the investment is located.

2. The term "investor "means:

- a) Any natural person having the nationality of a Contracting Party according to its legislation on nationality and making an investment in the territory of the other contracting party. however, the Convention shall not apply to investments of natural persons who are nationals of one Contracting Party and which on the date of the investment in the territory of the other contracting party are domiciled for more than two years in the territory of the other contracting party except if proviniera foreign investment;
- b) Any legal person or persons of commercial law society formed in accordance with the legislation of one Contracting Party, having their seat in the territory of that Contracting Party and making an investment in the territory of the other contracting party;

3. The term "proceeds" means all amounts produced by an investment and in particular, though not exclusively, interests, capital gains, profits, dividends, royalties payments, royalties and other fees.

4. The term "territory" means the Territory as well as the maritime areas, i.e. marine and submarine areas over which one Contracting Party has jurisdiction or sovereignty, sovereign rights in accordance with its legislation and international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall promote in its territory, as far as possible investments by investors of the other Contracting Party shall admit such investments, in accordance with its laws and granted in any case a fair and equitable treatment.

(2) Investments referred to in paragraph 1 and their returns shall enjoy the full protection of this Agreement. without prejudice to the provisions of paragraph 1, in case of reinvestment of profits, the same treatment shall apply to the profits.

The legal extension, modification or conversion of an investment shall be considered as a new investment.

Article 3. Treatment of Investments

(1) Each Contracting Party shall accord to investors of the other contracting party and to their investments, a treatment no less favourable than that accorded to its own and their investors to investments or investors of any third State and their investments.

(2) The provisions of paragraph 1 shall not be construed so as to oblige one contracting party to extend to the investors of the other Contracting Party the benefit of any present or future treatment, preference or privilege resulting from:

- a) A customs union, a common market or a free trade area, or membership in an economic community or other areas of economic integration;
- b) An international agreement, an intergovernmental arrangement or domestic legislation regarding taxation;
- c) Regulations designed to facilitate frontier traffic.

(3) The application of most-favoured-nation treatment shall not extend to the particular privileges which the Republic of Argentina reserved for foreign investors made under an investment in the framework of a concessional financing, as foreseen in the bilateral agreements that Argentina has concluded with the Republic of Italy on 10 December 1987 and the Kingdom of Spain on 3 June 1988.

Article 4. Compensation

(1) The term "expropriation" includes both nationalisation or any other measures having an equivalent effect.

(2) Investments of investors of one Contracting Party shall not be expropriated in the territory of the other Contracting Party for more than a public purpose and under due process and compensation. the amount of compensation shall correspond to the value of the investment immediately before the expropriation or impending tender was issued. the compensation shall be paid without undue delay and shall produce interest until the time of payment, in accordance with the usual banking rate of the State in whose territory the investment has been made; effectively realizable and shall be freely transferable. the determination and the payment of compensation shall be set out in an appropriate manner at the latest at the moment of the expropriation.

(3) When a Contracting Party shall expropriate financial assets of a company which, in accordance with the provisions of article 1 (2) of this Convention, is considered as a company of that Contracting Party and in which an investor of other Contracting Party has the rights of participation, it shall apply the provisions of paragraph 2 of this article so that the appropriate compensation to the investor is ensured.

(4) The investor shall have the right to request that the legality of the expropriation and the amount of compensation be reconsidered by the competent authorities of the Contracting Party which has decided expropriation.

(5) The investor shall have the right to request that the amount of compensation shall be reviewed by the competent authorities of the Contracting Party which has decided, expropriation or by an international arbitral tribunal pursuant to article 8 of this Agreement.

Article 5. Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments relating to an investment, without undue delay and in a freely convertible currency and in particular, though not exclusively:

- a) The capital and additional amounts to maintain or increase the investment;

b) The amounts which have been designed to cover expenses relating to the management of the investment;

c) Profits;

d) The repayment of loans as defined in paragraph 1 (c) of article 1;

e) The proceeds of the total or partial sale or liquidation of the investment;

f) The compensation owed pursuant to paragraph 2 of article 4 of this Agreement.

(2) The free transfer shall take place in accordance with the procedures established by each Contracting Party, provided that they may not refuse, suspend or denature that right.

(3) The transfers referred to in this article shall be made at the rate of exchange in force at the date of transfer.

(4) The exchange rates shall be fixed in the framework of the respective banking system existing in the territory of each Contracting Party. The bank charges shall be fair and equitable.

Article 6. Right of Subrogation

If a Contracting Party or an agency authorised by it to make payment to one of its investors agreed under a guarantee by an investment made in the territory of the other contracting party, the other Contracting Party shall transfer recognize the legal or contractual Contracting Party to the first of all the rights or claims of the investor, without prejudice to the exercise of the Rights of the investor of the first Contracting Party under Article 8 or the rights of the first contracting party under article 9.

Furthermore, the other Contracting Party shall recognize the subrogation of the first contracting party in all these rights or claims that the first contracting party is entitled to exercise to the same extent as its predecessor in law. For the transfer of payments due to the respective Contracting Party in pursuance of the rights spouse shall apply by analogy article 4 and article 5 of this Agreement.

Article 7. Additional Obligations

(1) If the legislation of either Contracting Party or obligations under international law, which exist in addition to the present Agreement between the contracting parties or that are undertaken by them in the future, any regulations of general or particular, to agree to investments of investors of the other contracting party to a more favourable treatment than that accorded under the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

(2) Each Contracting Party shall observe any obligation it has assumed with regard to investments of investors of the other contracting party concerning an investment which has admitted in its territory.

Article 8. Settlement of Disputes Relating to Investments

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party on matters governed by this Agreement shall, as far as possible, be settled amicably through consultations between the parties to the dispute.

(2) If these consultations do not provide a solution within a period of six months, the dispute may be referred to the competent judicial or administrative jurisdiction of the Contracting Party in whose territory the investment was made.

(3) The dispute may be submitted to an arbitral tribunal in the following cases:

a) Where there is a decision on the merits, after the expiry of a period of 18 months from the notification of the initiation of the procedure before the abovementioned jurisdiction.

b) Where such a decision has been issued but the dispute persists. In such a case, the court of arbitration shall be in effect for the corresponding decisions taken earlier at the national level.

c) Where the parties so agree to the dispute

(4) To this end, each contracting party grants under the terms of this Convention, and advance its irrevocable consent to a dispute may be submitted to arbitration. From the beginning of an arbitration, each Party to the dispute shall take the steps required for their discontinuance of the Court.

(5) In the event of recourse to international arbitration, the dispute may be brought before the arbitration bodies designated below, at the choice of the investor:

- International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, on 18 March 1965, when each State Party to this Agreement has acceded to it. as long as this requirement is not fulfilled, each Contracting Party consents that the dispute is submitted to arbitration under the Additional Facility Rules of the ICSID;

- to an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(6) The arbitral tribunal shall decide on the basis of the Law of the Contracting Party which is a party to the dispute including the rules of Private International Law, on the basis of the provisions of this Agreement and the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

(7) The award shall be final and binding and shall be executed according to national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with their respective laws.

(8) At any stage of conciliation or arbitration proceedings or of the execution of an arbitral award, the Contracting Party that is a party to a dispute, exceptions, put by the fact that the investor who is the opposing party in the dispute has received pursuant to an indemnity guarantee, covering all or part of its losses.

Article 9. Disputes between Contracting Parties

(1) Any dispute concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

(2) In the absence of agreement through the diplomatic channel, the dispute shall be submitted to a committee comprising representatives of both parties; it shall meet at the request of a contracting party without undue delay.

(3) If a dispute referred to in paragraph 1 cannot be settled within a period of six months, it shall be submitted upon request of either contracting party to an arbitral tribunal.

(4) The arbitral tribunal shall be constituted for each individual case through the appointment of a member by each Contracting Party and these two members of the Agreement on a third person as Chairman. the members shall be appointed within two months of the notification by a contracting party to the other party of its intention to submit the dispute to an arbitral tribunal; the Chairman shall be appointed within a further period of two months.

(5) If the periods specified in paragraph 3 are not respected and in the absence of any other agreement, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. if the President of the International Court of Justice has the nationality of a Contracting Party or for any other reason unable to perform this function, the Vice-President or, if it is found, prevented the most senior member of the International Court of Justice shall be invited under the same conditions to make the appointments.

(6) The arbitral tribunal shall determine its own procedure.

(7) The arbitral tribunal shall decide by virtue of this Agreement as well as of the generally recognized rules of international law. acting by a majority of votes and that decision shall be final and binding.

(8) Each Contracting Party shall bear the costs of its member and of its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

Article 10. Application of this Agreement

(1) This Agreement shall apply to investments by investors of one Contracting Party effected or have been made in accordance with the legislation of the other Contracting Party on the territory of the latter both before and after the Entry into Force of this Agreement.

(2) This Agreement shall not apply to claims or disputes which have been raised before the national authorities or who have been settled before its Entry into Force.

Article 11. Entry Into Force and Validity

(1) This Agreement shall be ratified and shall enter into force on the first day of the third month following the month during which the instruments of ratification have been exchanged.

(2) This Agreement shall remain in force for a period of ten years; or beyond the expiration of this period shall be extended for an indefinite period and may be denounced in writing through diplomatic channels by either contracting party noting a notice of twelve months.

(3) For investments made before the expiry of this Agreement, articles 1 to 10 shall remain in force for a further period of ten years from the date of termination of this Agreement.

Done at Buenos Aires, on 7 August 1992, in two originals, in the Spanish and German languages, both texts being equally authentic.

FOR THE ARGENTINE REPUBLIC

Guido Di Tella

FOR THE REPUBLIC OF AUSTRIA

Dr. Gerhard Heible