

AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF ISRAEL AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the State of Israel and the Government of the Republic of Argentina, hereinafter referred to as the "Contracting Parties,"

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favorable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party, and

RECOGNIZING that the promotion and reciprocal protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement:

(1) The term "investment" shall comprise, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's laws and regulations. It includes in particular, though not exclusively:

- (a) movable and immovable property as well as any other rights in rem, in respect of every kind of asset;
- (b) rights derived from shares, bonds and other kinds of interests in companies;
- (c) claims to money and other assets and to any performance having an economic value;
- (d) rights in the field of intellectual property, technical processes, know-how and goodwill;
- (e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(2) A change in the form in which assets are invested or reinvested, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, shall not affect their character as investments within the meaning of this Agreement.

(3) The term "investor" shall comprise:

- (a) natural persons deriving their status as nationals or permanent residents of the Contracting Party concerned from the law in force in that Contracting Party, who are not also nationals of the other Contracting Party.
- (b) companies including corporations, firms or associations incorporated or constituted in accordance with the law of the Contracting Party concerned and having its seat in the territory of that Contracting Party, which are not directly or indirectly controlled by investors of the other Contracting Party or by investors of a third State.

(4) The term "returns" shall comprise the amount yielded by an investment, including, but not limited to: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees.

(5) The term "territory" shall mean the national territory of either Contracting Party including those maritime areas adjacent to the outer limit of the territorial sea of the national territory, as well as the continental shelf, over which the Contracting Party concerned may, in accordance with international law, exercise sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party, shall, in its territory, encourage and create favorable conditions for investments by investors of the other Contracting Party and, subject to its right to exercise the powers conferred by its laws, shall admit such investments.

(2) Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. Most-favored-nation and National Treatment

(1) Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

(2) Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any third state.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot, other such similar event or resulting from arbitrary action by the authorities in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest from the date of expropriation until payment at a normal commercial rate or at the rate provided by law, as applicable, shall be made without delay, be effectively realizable and be freely transferable. The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company, within the meaning of Article 1(3), which is incorporated or constituted under the law in force in its territory and in which investors of the other Contracting Party own shares, or other ownership rights, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation, in respect of their investment to such investors of the other Contracting Party who are owners of those shares or other ownership rights.

Article 6. Repatriation of Investments and Returns

Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party the unrestricted transfer of their investments and returns, in accordance with the following:

(1) Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned, provided that the investor has complied with all his fiscal obligations and that repatriation is in accordance with the exchange regulations established by the Contracting Party in whose territory the investment was made, which shall not nullify the rights set forth in this article,

relating to investments, as were in force at the time the investment was made and shall be in accordance with the aims and purposes of this Agreement.

(2) In the event the exchange regulations of one Contracting Party are modified, that Contracting Party guarantees that such modifications shall not adversely affect the rights to repatriate investments and returns as were in force at the time the investment was made.

(3) Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favorable than that accorded to the investors of either Contracting Party or to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(b) any existing or future customs union, free trade area or common market agreement or similar international agreement to which either Contracting Party is or may become a party;

(c) the bilateral agreements providing for concessional financing concluded by the Republic of Argentina with Italy, on 10 December 1987, and with Spain, on 3 June 1988.

(d) the definition of "investment" (Article 1, paragraph 1) and the reference to "reinvestment" (Article 1, paragraph 2) and the provisions of Article 6 contained in agreements entered into by the State of Israel prior to January 1, 1992.

Article 8. Settlement of Disputes between an Investor and the Host Contracting Party

(1) Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If the dispute cannot thus be settled within six months following the date on which the dispute has been raised by either party, it may be submitted either to:

(a) the competent court of law of the Contracting Party in whose territory the investment was made; or:

(b) international arbitration according to the provisions of paragraph (4).

Where a dispute has been raised and the parties disagree as to the choice of (a) or (b), the opinion of the investor shall prevail.

(3) Where an investor has submitted a dispute to the aforementioned competent court of law of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.

(4) In case of international arbitration, the dispute shall be submitted either to:

- The International Centre for the Settlement of Investment Disputes (ICSID) created by the "Convention of the Settlement of Investment Disputes between States and Nationals of other States" opened for signature in Washington on 18 March 1965, or

- an arbitration tribunal set up from case to case as may be mutually agreed by the parties to the dispute.

(5) If after a period of three months from written notification of the submission of the dispute to arbitration there is no agreement on the selection of a forum under paragraph (4) of this Article, the parties to the dispute shall be bound to submit it to the International Centre for the Settlement of Investment Disputes (ICSID).

(6) The arbitration tribunal shall render its decision in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.

(7) The arbitral decision shall be final and binding for the parties in the dispute. Each Contracting Party shall execute it in accordance with its laws and regulations.

Article 9. Settlement of Disputes between the Contracting Parties

- (1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.
- (2) If a dispute between the Contracting Parties cannot thus be settled within six months from notification of the dispute, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who, on approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
- (4) If, within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the Secretary General of the Permanent Court of Arbitration of the Hague to make any necessary appointments.
- (5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

- (1) If one Contracting Party or its designated agency (hereinafter referred to as the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (hereinafter referred to as the "Second Contracting Party"), the Second Contracting Party shall recognize:
- (a) the assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and
- (b) that the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.
- (2) The First Contracting Party shall be entitled in all circumstances to:
- (a) the same treatment in respect of the rights and claims acquired by it, by virtue of the assignment; and
- (b) any payments received in pursuance of those rights and claims,
- as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

Article 11. Application of other Rules and Special Commitments

- (1) Where a matter is governed simultaneously both by this - Agreement and by another International agreement to which both Contracting Parties are parties, or by obligations under international law, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favourable to his case.
- (2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions or contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 12. Application of the Agreement

- (1) This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force and is already the subject of a legal procedure.
- (2) The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of one

Contracting Party in the territory of the other Contracting Party if such persons have, at the time of the investment, been domiciled in the latter Contracting Party for more than two years, unless it is proved that the investment was admitted into its territory from abroad

Article 13. Entry Into Force

Each Contracting Party shall notify the other Contracting Party in writing through the diplomatic channel of the completion of its internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter notification.

Article 14. Duration and Termination

This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten (10) years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

Done in Jerusalem this 23rd day of July 1995, which corresponds to the 25th day of Tammuz, 5755, in duplicate, in the Hebrew, Spanish and English languages, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions, the English text shall prevail.

FOR THE GOVERNMENT OF THE STATE OF ISRAEL

FOR THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA

Protocol

On signing the Agreement between the Government of the State of Israel] and the Government of the Republic of Argentina for the Promotion and Reciprocal Protection of Investments, the undersigned have agreed on the following provisions, which constitute an integral part of the said Agreement.

With reference to Article 1, paragraph (3), (b):

The Contracting Party in whose territory the investments are undertaken may require the proof of the control invoked by the investors of the other Contracting Party.

The following facts, inter alia, shall be accepted as evidence of the control:

- I) the status of an affiliate of a legal person of the other Contracting Party;
- II) a direct or indirect participation in the capital of a legal person which allows an effective control as, in particular, a direct or indirect participation higher than 50% of the capital, or the direct or indirect possession of the votes necessary to obtain a dominant position in the company organs or to influence the functioning of the legal person in a decisive way.

With reference to Article 1, paragraph (1), (c) of this Agreement, the Contracting Parties agree that where loans are concerned, this Article shall only be applicable to loans which are legally contracted and directly related to a specific investment.

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