

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE EASTERN REPUBLIC OF URUGUAY AND THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Oriental Republic of Uruguay and the Government of the Republic of El Salvador, hereinafter referred to as "the Parties",

Desiring to intensify economic cooperation for the mutual benefit of both Parties,

With the intention of creating and maintaining favorable conditions for capital investments by investors of one Party in the territory of the other Party,

Recognizing the desirability of promoting and protecting such investments with a view to stimulating private economic initiative and increasing the welfare of both Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means all kinds of property and rights invested in accordance with the laws and regulations of the Party in whose territory the investment is made, including, but not limited to:

a) ownership of movable and immovable property, as well as all other rights in rem, such as easements, mortgages, usufructs and pledges;

b) rights of participation in companies and other types of participation in companies incorporated or organized under the laws of the other Party;

c) credit rights intended to create an economic value or benefits having an economic value;

d) intellectual property rights, in particular copyrights, patents, utility models, processes, technical, trademarks and commercial brands, industrial and commercial designs and models, know-how, corporate name and key rights;

e) concessions granted by law or by virtue of a public law contract, including concessions to explore, cultivate, extract or exploit natural resources.

Modifications in the form of investment of the assets do not affect their character of investment.

2. The term "income" means the amount produced by an investment, including: dividends, profits, sums from the total or partial payment of the liquidation of an investment, interest, capital gains, royalties or fees.

3. The term "investor" means, for each Party, any natural or juridical person that invests in the territory of a Party:

(i) all natural persons who, under its law, are considered nationals and who are not themselves nationals of the other Party;

(ii) legal persons, including partnerships, corporations, business associations or any other legal entity, incorporated or otherwise duly organized under the laws of a Party.

4. The term "territory" includes the land, maritime and air space under the sovereignty and jurisdiction of each Party, in accordance with their respective legislation and international law.

## **Article 2. Promotion and Protection of Investments**

1. Each Party, in accordance with its legislation, shall allow investments in its territory from investors of the other Party, promoting them as far as possible.
2. Each Party shall protect within its territory investments made by investors of the other Party, in accordance with its laws and regulations, and shall not hinder the management, use, enjoyment, extension, sale and liquidation of such investments through unjustified or discriminatory measures. Income derived from an investment, as well as income derived from the reinvestment thereof, shall enjoy the same protection as the investment itself.
3. In any case, each Party shall treat investments fairly and equitably.

## **Article 3. Treatment of Investments**

1. Neither Party shall subject in its territory investments owned or controlled by investors of the other Party to treatment less favorable than that accorded to investments of its own investors or to investments of investors of Third States.
2. Neither Party shall subject in its territory investors of the other Party, in respect of their activities relating to their investments, to treatment less favorable than that accorded to its own investors or to investors of Third States.
3. Such treatment does not relate to privileges granted by a Party to investors of Third States by reason of their membership in a Customs or Economic Union, a Common Market or a Free Trade Area, or by reason of their association with such groupings.
4. The treatment accorded by this Article does not relate to advantages granted by a Party to investors of Third States as a result of an agreement for the avoidance of double taxation or other agreements on tax matters.
5. If a Party's legal provisions or obligations under international law outside this Agreement, present or future, between the Parties result in a general or special regulation under which investments of investors of the other Party are to be accorded treatment more favorable than that provided for in this Agreement, such regulation shall prevail over this Agreement.
6. Nothing in this Article shall be construed to prevent a Party from adopting, maintaining or enforcing any measure it considers appropriate to ensure that investments in its territory comply with that Party's environmental laws.

## **Article 4. Migratory Status of Investors**

Each Party shall permit the entry into and sojourn in its territory of investors of the other Party and persons employed by them, for the purpose of establishing, developing, managing or advising on the operation of the investment, in which such investors have committed or are about to commit capital or other resources, subject to the laws of each Party relating to the entry and sojourn of aliens in their respective territories.

## **Article 5. Protection of Property**

1. Investments of investors of one Party shall enjoy full protection and security in the territory of the other Party.
2. Investments of investors of either Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter "expropriation") in the territory of the other Party, except for reasons of public utility or social interest, in accordance with the laws and regulations of that Party, on a non-discriminatory basis and against adequate and effective compensation.
3. Compensation shall correspond to the market value of the expropriated investment prior to the date of disclosure of the actual or imminent expropriation. The compensation shall be paid without delay and shall bear interest from the date of expropriation until the date of payment at the usual bank interest rate; it shall be effectively realizable and freely transferable. At the latest at the time of expropriation, due arrangements shall have been made to fix and pay the compensation.
4. Each Party shall accord to investors of the other Party, in respect of investments which suffer losses in its territory due to war or other armed conflict, a state of national emergency, civil disturbance and other similar events, non-discriminatory treatment and shall receive, in respect of redress, indemnification, compensation or other settlement, treatment no less favorable than that accorded to its own investors or to investors of a Third State. These amounts shall be freely transferable.

## **Article 6. Transfers**

1. The Party in whose territory investments have been made shall guarantee to investors of the other Party the free transfer of payments related to such investments.

Such transfers include, in particular, but not limited to, the following

- a) capital and additional sums for the maintenance or expansion of the investment,
- b) income
- c) proceeds from the sale or total or partial liquidation of the investment,
- d) amortizations under a loan contract, and
- e) the indemnities provided for in Article 5.

2. Transfers pursuant to Article 5, paragraphs 3 and 4, and Articles 6 and 7, shall be made without delay in freely convertible currency at the market rate of exchange prevailing on the date of transfer. A transfer shall be deemed to have been made without delay when it has been effected within the period normally required for the completion of the transfer formalities. The period shall in no case exceed two months and shall begin to run from the time of delivery of the corresponding request.

Notwithstanding the provisions of this Article, a Party may prevent transfers through the equitable and non-discriminatory application of its legislation in the following cases:

- a) Bankruptcy, insolvency or protection of creditors' rights;
- b) Criminal or administrative offenses;
- c) Guarantee of compliance with judgments in a contentious proceeding;
- d) Non-compliance with tax obligations; or
- e) Non-compliance with labor obligations.

## **Article 7. Subrogation**

1. If a Party makes, in respect of an investment made by an investor in the territory of the other Party, payments under a guarantee against non-commercial risks, the other Party shall recognize the transfer of all rights of this investor to the first Party. In addition, the other Party shall recognize that the first Party shall be entitled to exercise to the same extent as the previous holder all transferred rights, without prejudice to the rights of the first Party, set forth in Article 9 of this Agreement.

2. For the transfer of such payments, Article 5, paragraphs 3 and 4, as well as Article 6 shall apply *mutatis mutandis*.

## **Article 8. Scope of the Agreement**

This Agreement shall also apply to investments made by investors of one Party in the territory of the other Party, in accordance with its laws, prior to the entry into force of this Agreement. However, this Agreement shall not apply to disputes arising prior to its entry into force.

## **Article 9. Settlement of Disputes between the Government of a Party and an Investor of the other Party**

1. Disputes arising between the Government of a Party and an investor of the other Party concerning investments shall, as far as possible, be amicably settled between the disputing parties.
2. If a dispute between an investor of a Party and the Government of the other Party cannot be settled in this manner within six (6) months, the investor shall have the right to submit the case, on its own initiative, for settlement:
  - (a) in a competent court or administrative tribunal of the Party in the territory of which the investment was made; or
  - b) in the 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 D.C.

on March 18, 1965, in the event that both Parties are parties to this Convention; or

c) by an arbitrator or an ad hoc international arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The parties to the dispute may agree in writing to modifications of these Rules.

3. Once the investor has submitted the dispute to a competent or administrative tribunal of the disputing party or to international arbitration, the choice of one or the other of these procedures shall be final.

4. With respect to subparagraphs 2(b) and (c) of this Article, each Party hereby consents to the submission of any investment dispute for settlement to binding arbitration in accordance with the choice exercised by the investor under this Article.

5. The arbitral award shall be final and binding on both parties to the dispute.

## **Article 10. Settlement of Disputes between the Parties**

1. Any differences which may arise between the Governments of the Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled by consultation or amicable negotiation.

2. If an understanding is not reached within six months from the date of notification of the dispute, either Government of the Parties may submit the dispute to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be composed of three members and shall be composed as follows: within two months from the date of notification of the request for arbitration, each Party shall appoint one arbitrator. These two arbitrators shall choose within thirty days of the appointment of the last of them another member as Chairman of the Arbitral Tribunal, who must be a national of a third State.

4. If within the time limits set forth in the preceding paragraph of this Article the designation has not been made, either Party may request the President of the International Court of Justice to make the designation. If the President of the International Court of Justice is a national of one of the Parties or if he is unable to perform that function, the designation shall be made by the Vice-President; if the latter is a national of one of the Parties or is unable to do so, the designation shall be made by the Judge of the Court next in rank to him who is not a national of one of the Parties.

5. The President of the Arbitral Tribunal must be a national of a State with which both Parties maintain diplomatic relations.

6. The Tribunal shall decide by majority vote and its awards shall be final and binding on both Parties.

7. Each Party shall bear the expenses of the respective arbitrator, as well as those related to his representation in the arbitration proceedings. The expenses of the Chairman of the Arbitral Tribunal and the other procedural costs shall be borne in equal shares. The Arbitral Tribunal may adopt different rules regarding expenses.

## **Article 11. Entry Into Force, Duration and Termination**

1. Each Party shall notify the other Party of the completion of the procedures required by its laws for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of its second notification.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall continue indefinitely, unless terminated in writing by either Party twelve months prior to its intention to terminate this Agreement.

3. With respect to investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of its termination.

4. This Agreement shall govern whether or not diplomatic relations exist between the Parties.

Done at Montevideo, Oriental Republic of Uruguay, on the 24th day of the month of August of the year 2000, in two original copies in the Spanish language, all texts being equally authentic.