

Agreement between the Swiss Confederation and the Oriental Republic of Uruguay on the Reciprocal Promotion and Protection of Investments

The Swiss Federal Council and the Government of the Oriental Republic of Uruguay

Desiring to strengthen the economic cooperation between both States on the basis of international law and mutual trust,

Recognizing the important complementary role of foreign investment in the economic development process and the right of either Contracting Party to determine this role and to define the conditions under which foreign investment would participate in this process,

Recognizing that the key to achieving and maintaining an adequate flow of capital lies in the maintenance of an appropriate mutually created investment climate and in the respect by foreign investors of the sovereignty and the laws of the host country having jurisdiction on them and in their acting consistently with the declared policies and the priorities of the host countries and in their endeavouring to substantially contribute to the development of the country,

Intending to create favourable conditions for capital investments in both States,

Desiring to intensify the cooperation between nationals and Companies, private as well as public, of both States in the field of technology, industrialization and productivity,

Recognizing the need to protect investments by nationals and companies of both States with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to

- a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat in the territory of that same Contracting Party;
- c) legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party.

(2) The term "investments" shall include every kind of assets and particularly:

- a) movable and immovable property as well as any other rights in rem, such as charges on real estate, mortgages, liens, pledges;
- b) shares, certificates or other kinds of participation in companies;
- c) money claims and any entitlements of economic value;
- d) copyrights, industrial property rights (such as patents of inventions, utility models, industrial designs or models, trade or service marks, trade names, indications of source or appellation of origin), know-how and goodwill;
- e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other

rights given by law, by contract or by decision of a public entity in accordance with the law.

(3) The term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2. Promotion, Admission

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its law. The Contracting Parties recognize each other's right not to allow economic activities for reasons of public security and order, public health or morality, as well as activities which by law are reserved to their own investors.

(2) When a Contracting Party shall have admitted, according to its law, an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 3. Protection and Treatment of Investments

(1) Each Contracting Party shall protect within its territory investments made in accordance with its legislation by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments. In particular, each Contracting Party shall issue the necessary authorizations mentioned in Article 2, paragraph (2) of this Agreement.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, a customs union or a common market.

(4) The treatment of the most favoured nation shall neither be applicable to advantages which either Contracting Party grants to investors of a third State by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4. Free Transfer

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, namely:

(a) of interests, dividends, benefits and other current returns;

(b) of repayments of loans;

(c) of amounts assigned to cover expenses relating to the management of the investment;

(d) of royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters c), d) and e) of this Agreement;

(e) of additional contributions of capital necessary for the maintenance or development of the investment;

(f) of the proceeds of the sale or of the partial or total liquidation of the investment, increment values.

Article 5. Dispossession, Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or the same effect against investments belonging to investors of the other

Contracting Party, unless the measures are taken for the public benefit as established by law, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation, interest included, shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereto.

(2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place on the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with article 3, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other valuable consideration

Article 6. Pre-Agreement Investments

(1) The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its legislation by investors of the other Contracting Party prior to the entry into force of this Agreement.

(2) The Agreement shall in no event be applicable to divergencies or disputes which have arisen prior to its entry into force.

Article 7. More Favourable Provisions

If provisions which have been or will be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party entitle the investor to a treatment more favourable than is provided for by the present Agreement, those provisions shall prevail over the terms set forth by this Agreement.

Article 8. Principle of Subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by an investor in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party

Article 9. Disputes between Contracting Parties

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

(8) With respect to disputes that have been submitted, in accordance with Article 10 of this Agreement, to the competent courts of the Contracting Party in the territory of which the investment has been made, the arbitral tribunal according to this Article may only render an arbitral award to decide on the matter in all its aspects if it has determined that the national judgment infringes a rule of international law, including the provisions of this Agreement, or is obviously unfair or there is a

denial of justice.

Article 10. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Disputes with respect to investments within the meaning of this Agreement between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties concerned.

(2) If a dispute within the meaning of paragraph (1) cannot be settled within a period of six months after it was raised, the dispute shall, upon request of either party to the dispute, be submitted to the competent courts of the Contracting Party in the territory of which the investment has been made. If within a period of 18 months after the proceedings have been instituted no judgement has been passed, the investor concerned may appeal to an arbitral tribunal which decides on the dispute in all its aspects.

(3) The arbitral tribunal referred to in paragraph (2) shall be constituted for each individual case. The provisions of Article 9, paragraphs (2) to (7) of this Agreement are applicable mutatis mutandis subject to the conditions that the arbitrators according to Article 9 paragraph (2) are appointed by the parties to the dispute and that, should the periods specified in Article 9 paragraphs (3) and (4) have not been observed, either party to the dispute may, in the absence of any other arrangements, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments.

(4) Neither Contracting Party shall pursue through the arbitration procedure of Article 9 of this Agreement a dispute solved by an arbitral tribunal according to this Article, unless the other Contracting Party does not abide by and comply with the award rendered by the arbitral tribunal.

Article 11. Observance of Commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 12. Entering Into Force, Renewal, Termination

(1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official note was given.

Done at Berne, on 7th October 1988, in six originals, two in French, two in Spanish and two in English language, each text being equally authentic.

For the Swiss Federal Council

For the Government of the Oriental Republic of Uruguay

Protocol

On signing the Agreement between the Swiss Confederation and the Oriental Republic of Uruguay on the Reciprocal Promotion and Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

Ad Article 1, paragraph (1)

(a) The Agreement does not apply to investments of natural persons who are nationals of both Contracting Parties unless such persons have at the time of the investment and ever since been domiciled outside the territory of the Contracting Party in which the investment was made.

(b) The term "seat" refers to the place of the principal administration of a company or, if this place cannot be established, to the centre of its economic interests.

(c) The legal entities referred to in Article 1, paragraph (1), letter c) may be required to submit proof of such control in order to benefit from the provisions of this Agreement. Acceptable proof may be, for example, the following:

i) Being an affiliate of a legal entity established under the law of that Contracting Party;

ii) Being economically subordinated to a legal entity established under the law of that Contracting Party;

iii) The fact that the percentage of the capital stock owned by investors of that Contracting Party allows those investors to exercise control.

Ad Articles 9 and 10

Judgment of the competent courts in the sense of Article 9, paragraph (8) and Article 10, paragraph (2) means for the Oriental Republic of Uruguay a judicial decision in a one and only instance.

Ad Article 10

In the event of both Contracting Parties having become members of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, disputes with respect to Investments between a Contracting Party and an investor of the other Contracting Party shall, at the request of the investor, be submitted according to the provisions of the aforementioned Convention to the International Centre for Settlement of Investment Disputes

Done at Bern, on 7th October 1988, in six originals, two in French, two in Spanish and two in English language, each text being equally authentic.

For the Swiss Federal Council

For the Government of the Oriental Republic of Uruguay