

Agreement between the Government of the Eastern Republic of Uruguay and the Government of the Socialist Republic of Vietnam for the promotion and protection of investments

The Government of the Eastern Republic of Uruguay and the Government of the Socialist Republic of Vietnam (hereinafter referred to as the contracting parties)

Desiring to create favourable conditions for the development of economic cooperation between them and in particular for investments of investors of one Contracting Party in the territory of the other contracting party;

Recognizing that the reciprocal promotion and protection of such investments will stimulate business initiative and will increase prosperity in both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means every kind of asset in the territory of a contracting party invested by an investor of the other Contracting Party in accordance with the laws and regulations of the first Contracting Party and includes assets consisting or taking the form of:

(a) Actions, shares and any other kind of participation in companies; bonds, debentures and other forms of debt instruments of a company, and other debts and loans and securities issued by any investor of a Contracting Party;

(b) Claims and claims to money or assets to any other provision under a contract with economic value;

(c) Intellectual Property Rights, including copyrights, trademarks, patents, industrial processes, designs and technical know-how, trade secrets, trade names and key value;

(d) Any right conferred by law or contract or by virtue of any licenses or permits granted pursuant to law, including the rights of prospecting, exploration, extraction or use of natural resources;

(e) Any other tangible or intangible, movable and immovable property and any property rights related thereto, such as leases, mortgages, liens and pledges;

However, investment does not mean claims to money arising solely from:

(f) Commercial contracts for the sale of goods or services by a national or enterprise in the territory of a party to an enterprise in the territory of the other party; or

(g) The extension of credit in connection with a commercial transaction such as trade financing; or

(h) Any other claim to money, that does not involve the kinds of interests set out in subparagraphs 1 (a) to (3) above.

Any change in the form in which rights or assets are invested or reinvested does not affect their status as investments provided that such change is in conformity with the laws and regulations of the host contracting party.

2. "Investor", with respect to a Contracting Party means:

(a) Natural person who has the nationality of that Contracting Party in accordance with the applicable laws;

(b) Constituted or legal person established under the laws and regulations of that Contracting Party, such as corporations or companies, trusts, or joint ventures.

3. "Proceeds" means all amounts resulting from an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, includes profits, capital gains, dividends, royalties and fees or charges for the administration, technical assistance or other, and payments of any kind whatever kind.

4. "Territory" means:

(a) In the case of the Socialist Republic of Vietnam, the land territory, islands, internal waters, territorial sea and the airspace above them, the maritime area beyond the territorial sea, including the seabed and subsoil thereof over which the Socialist Republic of Viet Nam exercises sovereignty or sovereign rights and jurisdiction in accordance with national legislation and international law.

(b) In the case of the Eastern Republic of Uruguay, in its territory, internal waters and territorial sea and maritime areas beyond the territorial sea over which it exercises its sovereign rights or jurisdiction in accordance with its national law and international law.

5. "Freely convertible currency" means any currency that the International Monetary Fund to free use of currency as determined in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

6. "Public interest" shall have the meaning laid down by the national legislation of each of the Contracting Parties.

Article 2. Scope

1. This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after its Entry into Force and which have been specifically approved in writing by the contracting party receiving, subject to their relevant laws, regulations and policies.

2. This Agreement shall not apply to investment disputes arising out of events, or to investment disputes which had been settled, who were already under judicial or arbitral process before the Entry into Force of the Agreement.

3. This Agreement shall not apply to:

(a) Taxes;

(b) Government procurement;

(c) Subsidies or concessions granted by a contracting party; and

(d) Services supplied in the exercise of governmental authority by the relevant body or authority of a Contracting Party. for the purposes of this agreement a service supplied in the exercise of governmental authority means any service which is supplied neither carried out on a commercial basis nor in competition with one or more service suppliers.

Article 3. Promotion and Protection of Investments

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

2. Investments of 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.

Article 4. Treatment of Investments

1. With respect to the use, administration, conduct, operation and expansion, sale or other disposition of investments in its territory by investors of the other Contracting Party, each Party shall accord treatment no less favourable than that accorded in similar situations to investments of investors of third States (most-favoured-nation treatment).

2. The provisions of this article shall not be construed as to oblige one contracting party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any customs union, economic union, free trade area, monetary union or other form of economic regional or bilateral agreement or other similar international agreement to which either of the contracting parties is or may become a party;

(b) Any regional or bilateral international agreement or arrangement or any other similar domestic legislation relating wholly or partially to taxation.

Article 5. Compensation for Losses

When investments made by an investor of either contracting party suffers a loss owing to war or other armed conflict, a national state of emergency, revolt, civil disturbance, revolution, riot or other similar events in the territory of the other Contracting Party, it shall accord to the injured party as regards treatment, restitution, indemnification, compensation or other settlement, not less favourable than that granted to it by its own investors to investors or of any third country, whichever is more favourable to the investor.

Article 6. Expropriation

1. Investments of investors of one Contracting Party shall not be expropriated, nationalised in the territory of the other contracting party except for a public purpose and against prompt, effective and adequate compensation. the expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures of the Contracting Party which is carried out.

2. Such compensation amount to the market value of the expropriated investments at the time when the expropriation or at the time when the expropriation was announced, whichever occurs first, and effectively be realizable. The compensation shall be made in a freely convertible currency.

3. Investors of one contracting party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other contracting party of its case and of the valuation of its investment in accordance with the principles set out in this article.

4. Where a contracting party expropriates the assets of a company which is incorporated or established under its laws and regulations, and in which investors of the other contracting party own shares, bonds or any other form of participation, the provisions of this article shall apply to its share in the company.

Article 7. Transfer of Payments Related to Investments

1. Each Contracting Party shall, subject to its laws and regulations guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment within and outside its territory, including the transfer of:

- (a) The initial capital and any additional capital for the maintenance and development of the investment;
- (b) Profit;
- (c) Payments under contract payments including repayments of principal and accrued interest payments pursuant to a loan agreement;
- (d) Royalties and fees for the rights referred to in paragraph 1 (c) of article 1;
- (e) The proceeds of sale or liquidation of all or any part of the investment;
- (f) Other earnings and remuneration of personnel engaged from abroad in connection with the investment;
- (g) Payments of compensation under articles 5 and 6;
- (h) Payments arising from the settlement of disputes.

2. Transfers shall be made without delay at the rate of exchange prevailing in the host Contracting Party on the date of transfer for the currency to be transferred.

3. Without prejudice to paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable and non-discriminatory and in good faith to its laws and regulations relating to:

- (a) Bankruptcy or insolvency or the protection of the rights of creditors;
- (b) Emissions trading or dealing in securities or derivatives, futures and options;
- (c) Criminal or penal offences and the recovery of the appropriate of crime;
- (d) Financial reports or records of transfers when necessary to cooperate with or financial regulatory authorities responsible for the enforcement of laws.

- e) Ensuring compliance with judgments or orders in judicial or administrative proceedings; and
- (f) Taxes;
- (g) Programmes of social security and public or compulsory retirement savings; and
- (h) Severance entitlement of employees.

Article 8. Subrogation

1. If a party or an agency of a payment to an investor of that Party under a guarantee or a contract of insurance or other form of indemnity it has engaged in connection with an investment, the other party shall recognise the subrogation or transfer of any right or title in respect of such investment. the subrogation or transferred right or claim shall not be greater than the original right or claim of the investor.
2. Where a Party or an agency has made a payment to an investor of that Party and has acquired rights or claims of the investor, the investor, unless it is authorized to act on behalf of the party or the agency of the party making the payment, shall pursue those rights and claims against the other party.

Article 9. Settlement of Disputes between a Contracting Party and an Investor

1. Any legal dispute arising directly from an investment between one Contracting Party and an investor of the other contracting party concerning an alleged breach of an obligation of the former under this agreement related to the conduct, administration, operation or sale or other disposition of an investment of the investor and causing loss or damage to such investment, as far as possible, be settled amicably through negotiations between the parties to the dispute.
2. If the dispute cannot be settled within six (6) months following the date on which the claim was submitted by the investor through written notification to the contracting party, it may be referred to:
 - (a) The competent court of the Contracting Party in whose territory the investment was made;
 - (b) The International Centre for Settlement of Investment Disputes (the Centre) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided that both parties are Contracting Parties to this Convention; or
 - (c) The additional facility of the Centre, if one of the contracting parties is a signatory to the Washington Convention; or
 - (d) Unless the parties to the dispute otherwise agree, create an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Once the investor has submitted the dispute in accordance with the procedures laid down that election, shall be definitive.

For greater certainty, the provision of most-favoured-nation treatment provided for in this Agreement does not include the requirement to extend to the investors of the other contracting party to dispute resolution procedures other than those set out herein.

3. The submission of the dispute to arbitration as provided for in paragraph 2 shall be conditional upon which it may be submitted to arbitration within two years of the time at which the investor became known or should reasonably have become aware of a breach of the obligations provided for by the present Agreement, as well as the loss or damage to its disputing the investor or investment.
4. The arbitral tribunal shall take its decisions in accordance with the provisions of this Agreement, the laws and regulations of the Contracting Party involved in the dispute in whose territory the investment is made (including its rules on the Conflict of Laws), the terms of any agreement concluded with respect to investment involved and the relevant principles of international law.
5. A Contracting Party shall not be entitled to submit a claim against as a defense, at any stage of the arbitration or for the enforcement of the arbitral award under the investor of the other Contracting Party in the dispute has received or will received pursuant to an insurance or guarantee or other contract indemnification, compensation for all or part of the alleged loss.
6. Any arbitral award rendered pursuant to this article shall be final and binding upon the disputing parties.

Article 10. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall as far as possible, resolve disputes concerning the interpretation or application of this Agreement or other consultations through diplomatic channels.
2. If the dispute has not been settled within a period of six months following the date on which such consultations or other diplomatic channels were requested by either Contracting Party and unless the contracting parties otherwise agree in writing, either party, by written notification addressed to the other contracting party, may submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions set out herein.
3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State who will serve as Chairman of the arbitral tribunal to be appointed by the two contracting parties. such members shall be appointed within two months and the Chairman within four months from the date either Contracting Party has informed the other of its intention to submit the dispute to an arbitral tribunal.
4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from carrying out the said function, invite the Vice-President of the International Court of Justice to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or is otherwise prevented from carrying out the function, the said member of the International Court of Justice in higher who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be made in accordance with this agreement and recognized rules of international law such as may be applicable and shall be final and binding on both contracting parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by the same as well as the costs for its representation in the arbitral proceedings. The cost of the Chairman, as well as any other costs connected with the arbitral proceedings shall be shared equally by the contracting parties. However, the arbitral tribunal may, at its discretion or direct that a higher proportion of all such costs be paid by one of the contracting parties. In all other respects, the tribunal shall determine its own procedure.

Article 11. Implementation of other Rules

If the obligations under existing international conventions at present or established as of the date of this between the Contracting Parties in addition to this Agreement contain) whether general or specific rules, accord to investments of investors of the other contracting party to a more favourable treatment than that accorded by the present Agreement, such rules shall to the extent that they are more favourable to the investor, prevail over the same.

Article 12. Entry Into Force

Each Contracting Party shall notify the other in writing of the date that their constitutional requirements for the Entry into Force of this Agreement have been fulfilled, the Agreement shall enter into force thirty days after receipt of the last notification.

Article 13. Duration and Termination

1. This Agreement shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with paragraph 2 of this article.
2. Each Contracting Party, by written notification addressed one year in advance to the other, this Agreement may be terminated after the end of the initial ten year period or at any time thereafter.
3. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other articles of this Agreement shall remain in force for a period of ten (10) years from such date of termination.

In WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Montevideo on 12 May 2009 in English, Vietnamese and English languages, all texts being equally authentic.

In case of divergence of interpretation, the English text shall prevail.

For THE GOVERNMENT OF the Eastern Republic of Uruguay

For THE GOVERNMENT OF the Socialist Republic of Viet Nam