

# Treaty between the Federal Republic of Germany and the Oriental Republic of Uruguay on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany and the Republic of the East of Uruguay -

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

1. The term "investments" means assets of any kind, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights in companies and other types of participations;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Copyrights, industrial property rights, technical procedures, trade marks, trade names, know-how and good-will;
- e) Public-law concessions, including concession and concession concessions;

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts which are attributable to an investment for a given period as profit shares, dividends, interest, royalties or similar charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) As regards the Eastern Republic of Uruguay:

Uruguayans in the sense of their constitutional norms;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person or any trading company or any other company or association with or without legal personality which is domiciled in the German area of application of this contract and which is lawful according to the law whether or not the liability of its shareholders, members or members is unlimited or unlimited Activity is aimed at profit or not;

b) As regards the Eastern Republic of Uruguay:

Any legal person or any commercial or other company or association, with or without legal personality, having its seat in the Uruguayan area of application of this Treaty and which is lawful under the law, whether or not the liability of its members, members or members is unlimited or unlimited Activity is aimed at profit or not.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws.

(2) The provisions of this Treaty, these activities are excluded that are not permitted for reasons of safety, morality, public health or public order or national reserved.

(3) The contracting parties will treat investments in a fair and fair manner.

## **Article 3.**

(1) Each Contracting Party shall, in its territory, treat capital investments of nationals or companies of the other Contracting Parties or investments in which nationals or companies of the other Contracting Parties are involved not less favorably than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) The treatment accorded in this way does not apply to advantages and privileges granted by a Contracting Party to nationals or companies of third States because of their status as a Member or Associated State of a customs, economic, free-trade or common market.

## **Article 4.**

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the expropriation or nationalization became effective or publicly known. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; It must in fact be usable and freely transferable. At the latest, at the time of expropriation, nationalization or comparable measures, appropriate provision must be made for the setting and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measures and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments are freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article 5.**

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of the investment;
- b) Of income;
- c) To repay loans;

- d) Royalties and similar charges for the rights defined in Article 1 (1) (d);
- e) Of the liquidation proceeds in case of a complete or partial sale of the investment.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by virtue of the rights of the former Contracting Party On the basis of legal transactions to the former contracting parties. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments to the Contracting Party concerned on the basis of the transferred claims.

## **Article 7.**

(1) Transfers pursuant to Article 4 (2) or 3, Article 5 or 6 shall be effected without delay at the rate valid at the time of the transfer.

(2) This rate must correspond to the cross-rate resulting from the conversion rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 8.**

(1) If the legislation of a Contracting Party or obligations under international law existing between the Contracting Parties or constituting a future agreement between them exist a general or special rule which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty , This scheme shall be regarded as an integral part of this contract provided that it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by agreement with nationals or companies of the other Contracting Parties.

## **Article 9.**

This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty.

## **Article 10.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by negotiation between the Governments of the two Contracting Parties.

(2) If a difference of opinion can not be settled in this way within six months after the one party to the agreement has notified the other party that the parties have divergences in the interpretation or application of the contract, it shall, at the request of one of the two contracting parties, be by mutual agreement Selected referees. If no agreement is reached on the appointment of the arbitrator within three months after the other Contracting Party has informed the other Contracting Party of its intention to avail itself of arbitration, the matter shall be referred to an arbitration tribunal at the request of either Contracting Party Shall be formed: Each Contracting Party shall appoint an arbitrator, and these two arbitrators shall appoint, by common accord, a chairman of the arbitral tribunal who shall be a national of a third State. The two arbitrators shall be appointed within a period of two months and the chairman shall be appointed within a period of three months from the expiry of the deadline for the appointment of the individual judge.

(3) If the appointments provided for in the preceding paragraph are not made within the time limits laid down therein, unless otherwise agreed, each Contracting Party may ask 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 either Contracting Party or if he is prevented from doing so for another reason, the Vice-President of the Court shall make the appointments. If the vice-president also has the nationality of one of the two contracting parties or if he is prevented for other reasons, the next member of the International Court of Justice, who is not a national of either Contracting Party, should make the appointments.

(4) The arbitral tribunal shall decide by a majority of votes. The decisions of the individual judge and those of the arbitral tribunal are binding. Each Contracting Party shall bear the costs of the arbitrator designated by it and its representation in the proceedings. The costs of the individual judge and the other costs are borne equally by the two contracting parties. The individual judge or the arbitral tribunal may adopt a different cost arrangement. They also regulate the procedure itself.

(5) If both Contracting Parties are members of the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the provisions of Article 27 (1) of this Convention shall not apply to the arbitration referred to above. The company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a judicial decision of the arbitral tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 11.**

(1) Differences of opinion regarding investment within the meaning of this Treaty between one of the Contracting Parties and a national or a company of the other Contracting Parties shall be settled amicably as far as possible between the parties concerned.

(2) If a disagreement within the meaning of paragraph 1 can not be settled within a period of six months from the date of its assertion, it shall, at the request of one of the two parties, submit to the competent courts of the Contracting Party in whose territory the investment was made. Once a decision has been taken by the competent courts, each of the two parties may call an international arbitral tribunal, so that this court may make a determination as to whether and to what extent this decision is in accordance with the provisions of this Treaty. Any dispute may also appeal to the international arbitral tribunal if, within eighteen months from the commencement of the judicial proceedings, a decision has not been taken by the competent courts; In this case, the international arbitral tribunal has the power to decide the total disagreement. This provision does not affect Article 10.

(3) The international arbitral tribunal referred to in paragraph 2 shall be formed on a case-by-case basis. In so doing, the provisions of paragraphs 2 to 4 of Article 10 shall be applied mutatis mutandis with the proviso that the members of the arbitration tribunal shall be appointed by the parties in accordance with Article 10 (2), and that unless the deadlines laid down therein are not respected, May ask the President of the Arbitration Court of the International Chamber of Commerce in Paris to make the necessary appointments.

## **Article 12.**

This Agreement shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which are permitted under the general rules of international law. Measures of this kind are to be lifted no later than the actual end of the dispute, irrespective of whether diplomatic relations exist.

## **Article 13.**

This Agreement shall apply to the Land of Berlin, except for the provisions of Protocol 8, in so far as it relates to aviation, unless the Government of the Federal Republic of Germany applies to the Government of the Eastern Republic of Uruguay within three months after the entry into force of the Treaty Contrary declaration.

## **Article 14.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in Montevideo.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for fifteen years; After the expiry of which period, it shall be extended for an indefinite period unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before expiry of the contract. After expiry of fifteen years, the contract may be terminated at any time, but remains valid for one year after termination.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 13 shall continue to apply for a further twenty years from the date of expiry of the Treaty.

Done at the city of Bonn, this fourth day of May of the year one thousand nine hundred and eighty-seven, in two copies in the Spanish and German languages, both texts being equally authentic.

For the Federal Republic of Germany

Ruhfus

For the Oriental Republic of Uruguay

Zerbin

## Protocol

At the signing of the Treaty on the Promotion and Reciprocal Protection of Capital Investments between the Federal Republic of Germany and the Oriental Republic of Uruguay, the undersigned plenipotentiaries have adopted the following agreements, which shall be considered as an integral part of the Treaty:

### 1) Ad Article 1

(a) Other participations, as referred to in paragraph 1 (b), shall mean in particular those capital contributions which do not confer voting or control rights on their holder.

(b) The income from a capital investment, and in the case of its reinvestment, also the income therefrom, shall enjoy the same protection as the investment itself.

(c) Without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authority of the respective Contracting Party shall be considered in particular as a national of a Contracting Party. This Treaty shall not apply to investors who are nationals of both Contracting Parties.

(d) In determining the concept of companies, in accordance with the provisions of paragraph (4), regard shall be had to their headquarters, which shall be understood as the place where the company has its principal place of business, or, in the absence thereof, the center of economic interest.

### (2) Ad Article 2

Capital investments which, in accordance with the legal provisions of one of the Contracting Parties, have been made within the scope of the law of that Party by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

### 3) Ad Article 3

(a) "Activities" within the meaning of paragraph 2 of Article 3 shall include, in particular, but not exclusively, the administration, use, utilization and benefit of a capital investment. Restrictions on the acquisition of raw and auxiliary materials, energy and fuels, as well as means of production and exploitation of all kinds, hindrance of the sale of products within the country and abroad, and all measures having similar effects shall be considered as "less favorable" treatment within the meaning of paragraph 2.

(b) Each Contracting Party shall, in accordance with its domestic legal provisions, deal favourably with applications for immigration and residence of persons of the other Contracting Party who, in connection with the start-up and realization of a capital investment, wish to enter the territory of the first Contracting Party; The same rule shall apply to employees of a Contracting Party who, in connection with a capital investment, wish to enter and reside in the territory of the other Contracting Party in order to carry on their activity as employees. Applications for work permits shall also be dealt with sympathetically.

(c) Article 3 shall not apply to advantages granted by one of the Contracting Parties to nationals or companies of third States as a result of an agreement for the avoidance of double taxation or other agreements on tax matters.

(d) The provisions of this Article do not oblige a Contracting Party to extend tax advantages, exemptions and reductions, which under its tax laws are granted only to individuals and corporations resident in its territory, to individuals and corporations resident in the territory of the other Contracting Party.

### 4) Ad Article 4

(a) The term "expropriation" includes the deprivation or equivalent limitation of any right to an asset which alone or with other rights constitutes a capital investment.

b) The right to indemnification arises even in the case of intervention by means of state measures, referred to in paragraph a), in the enterprise which is the object of the intervention and as a result of which considerable damage is caused to the economic substance of the same.

5) Ad Article 7

A transfer within the meaning of Paragraph 1 of Article 7 shall be deemed to have been effected "without delay" if it has been effected within the period of time normally required for the completion of the transfer formalities. The time limit, which may in no case exceed two months, shall commence to run at the time of delivery of the relevant request.

6) Ad Article 9

This Treaty shall in no case apply to differences or disputes arising prior to its entry into force.

(7) Ad Article 11

(a) Decisions of the competent courts within the meaning of paragraph 2 means, for the Oriental Republic of Uruguay, the judicial decision in a single instance.

(b) If both Contracting Parties have acceded to the Convention for the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, differences of opinion relating to investments between one of the Contracting Parties and a national or company of the other Contracting Party shall be submitted to the International Center for the Settlement of Investment Disputes, in accordance with the regulations of the above-mentioned Convention.

(8) (1) With respect to the transport of persons and goods in connection with a capital investment, no Contracting Party shall take measures which exclude or hinder the participation of transport enterprises on an equal footing. Where authorizations are necessary for the performance of the transports referred to, they shall be granted.

2) Included in the preceding clause shall be the transport of:

(a) goods intended directly for the investment of capital within the meaning of this Treaty, or acquired in the territory of a Contracting Party or of a third State by an enterprise, or on behalf of an enterprise, in which there is capital invested within the meaning of this Treaty;

(b) persons traveling in connection with the launching or realization of capital investments.

Done at the city of Bonn, on the fourth day of May in the year one thousand nine hundred and eighty-seven, in two copies in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany

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For the Oriental Republic of Uruguay

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