

# Agreement between the Government of the Eastern Republic of Uruguay and the Government of the Republic of Korea for the promotion and protection of investments

The Government of the Eastern Republic of Uruguay and the Government of the Republic of Korea (hereinafter referred to as the contracting parties), desiring to create favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party, based on the principles of equality and mutual benefit recognising that the promotion and protection of investments based on this agreement will contribute to the stimulation of individual business initiative and increasing prosperity, in both States desiring to achieve these goals in a manner consistent with the protection of health, safety and environment and the promotion of consumer protection and the internationally recognized Labor Rights

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "investments means every kind of asset in the territory of a Contracting Party, owned or controlled directly or indirectly by an investor of the other Contracting Party, on the understanding that the investment has been made in accordance with the laws and regulations of one Contracting Party and in particular, though not exclusively, include the following:

(a) (a company or other legal person constituted or organized under the applicable laws of the contracting party receiving, or with private non-profit government owned or controlled by the Government, including companies, trusts, companies or single-person joint-ventures, branches, associations or organisations,);

(b) Any other tangible or intangible, movable or immovable property and any related property rights such as mortgages, interests, leases or clothing;

(c) Participation shares and other forms of equity participation in a company or business enterprise and any rights or interest derived from the same;

(d) Debt securities, debentures loans and other forms of debt and interest, rights or derived from the same;

(e) Claims to money or to any contractual obligation with economic value;

(f) Rights INCLUDING Intellectual Property Rights concerning authorship, patents, trademarks, names registered, industrial designs, technical processes, trade secrets, Commercial and technical know-how and rights of key;

(g) Any contractual right including contracts of law, of key construction, administration, production or revenue sharing;

(h) Trade concessions with economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

For greater certainty, for the purpose of investment, be considered an asset must have the characteristics of an investment such as the commitment of capital or other resources, the expectation of gain or results, or the assumption of risk. participation in the market, the expected benefits and opportunities for profit, in themselves, are not investments.

2. "proceeds" means the amounts yielded by an investment and in particular, though not exclusively, interests, capital gains, profits, dividends, royalties and all kinds of payment;

3. "investor means any natural or legal person of one Contracting Party who invests in the territory of the other contracting party,

(a) Natural persons "" means natural persons who are nationals of the Contracting Party referred to in the first place, in accordance with its laws, on the understanding that a natural person who is a dual national shall be deemed to be exclusively a national of the state of his or her dominant and effective nationality; and

(b) "legal entity as" means any person, companies, public institutions, foundations, associations, enterprises, institutions, organizations, corporations or associations established or constituted in accordance with the laws and regulations of the Contracting Party referred to in the first place;

4. "territory means the Territory of the Eastern Republic of Uruguay, or the territory of the Republic of Korea, respectively, as well as the maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of the exploration and exploitation of natural resources of such areas; and

5. Free movement of currency "" means the currency that the International Monetary Fund to determine which are in free circulation in accordance with the regulations of that institution, and its subsequent amendments.

## **Article 2. 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 shall accept such investments in accordance with its laws and regulations.

2. Each Contracting Party shall accord to an investor investments of the treatment of other Contracting Party in accordance with international law customary, including fair and equitable treatment and full protection and security.

3. For greater certainty, paragraph 2 stipulates a minimum standard of treatment in accordance with customary international law to be granted to aliens as well as a minimum standard of treatment to be accorded to investments of an investor of the other contracting party. the concepts of Fair and Equitable Treatment and full protection and security do not require additional treatment to that required or above the level and do not create additional substantive rights. the obligation to provide in paragraph 1:

(a) "Fair and Equitable Treatment includes the obligation not to deny justice in criminal, civil or administrative proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security requires each party to provide the level of police protection required under customary international law.

4. A determination that there has been a breach of another provision of this Agreement, or of an international agreement, does not mean that there has been a violation of this article

5. Neither Contracting Party shall take unreasonable or discriminatory measures the management, maintenance, use, enjoyment and disposition of investments by investors of the other contracting party, nor impose unreasonable or discriminatory measures on investments of investors of the other Contracting Party concerning local content, technology transfer or requirements for export.

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

1. Within its territory, each Contracting Party shall accord to investments in accordance with its laws and regulations by investors of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded to investments in like circumstances of its own investors (hereinafter "National Treatment) or to investments made by investors of third countries (hereinafter most favoured nation treatment), whichever is more favourable.

2. Within its territory, each Contracting Party shall accord to investors of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded in like circumstances to its own investors (National Treatment) or to investors of third countries (most-favoured-nation treatment), whichever is more favourable.

3. The National Standard of Treatment provided for in paragraphs 1 and 2 of this article means with respect to a sub-national government treatment no less favourable than the most favourable treatment accorded in equal circumstances by that Government to sub-national to investors and investments of investors of the Party of which it is a member.

4. The national treatment and most-favoured-nation treatment provided for in paragraphs 1 and 2 above shall not apply to:

(a) Government procurement; or

(b) Subsidies or grants provided by a party, including guarantees and insurance and loans to support Government; or

(c) Tax measures

5. The most-favoured-nation treatment provided for in paragraphs 1 and 2 shall not relate to privileges which either of the Contracting Parties to accord to investors of third States by virtue of its participation or association with existing or future economic, a customs union or common market or a free trade area or similar international agreements.

#### **Article 4. Compensation for Losses**

1. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a national state of emergency, revolt, riot, insurrection or other similar situations in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which that Contracting Party accords to its own investors or to investors of third States.

2. Without prejudice to paragraph 1 of this article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) The requisitioning of property by their forces or the authorities of the latter Contracting Party, or

(b) The destruction of their property by the authorities or forces of the latter Contracting Party, not as a result of actions to combat or with the requirements of the situation, shall have the right to restitution or compensation or both, as appropriate, for such loss. such payments shall be prompt, adequate and effective in accordance with article 5, mutatis mutandis.

#### **Article 5. Expropriation**

Footnote 1: Article 5 shall be interpreted in accordance with annex.

1. Investments of investors of one Contracting Party shall not be expropriated, nationalised direct expropriation (hereinafter " ) or otherwise subjected to any other measure having effect equivalent to nationalization or expropriation (hereinafter indirect expropriation) in the territory of the other contracting party except for public purpose and against prompt, effective and adequate compensation. an action or series of actions cannot constitute an expropriation unless it interferes with a property right, tangible or intangible. the expropriation shall be made without discrimination and in accordance with due process of law

2. Such compensation amount to the fair market value of the expropriated investment corresponding to one of the following: the for a time immediately before the expropriation or immediately prior to the impending expropriation becomes public knowledge. such compensation shall include at the applicable commercial interest rate from the date of expropriation until the date of payment, and shall be made without undue delay. it shall be freely transferable and realisable effectively and freely convertible into the currency of free movement of the investors concerned and in the currency of free use as defined under the Articles of Agreement of the International Monetary Fund.

3. Investors of one Contracting Party who has suffered expropriation shall have a right to prompt review of their case by judicial or other independent authorities of the other contracting party and to the valuation of their investments in accordance with the principles set out in this article.

#### **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to investments within and outside its territory. such transfers shall include, inter alia, specifically:

(a) The initial capital and additional amounts to maintain or increase the investment;

(b) Profit;

(c) Payments made under a contract including loan contracts;

(d) The proceeds from the sale or the total or partial liquidation of investments;

(e) Payments made pursuant to articles 4 and 5;

(f) Payments arising out of the settlement of a dispute; and

(g) Other earnings and remuneration of personnel engaged from abroad in connection with an investment.

2. All transfers made under this Agreement shall be made in a currency of free circulation without restrictions or unwarranted delays, at the market exchange rate prevailing on the date of transfer.

3. Without prejudice to paragraphs 6.1 and 6.2 above, a Contracting Party may delay or prevent a transfer through the equitable and non-discriminatory and in good faith to its own laws and measures relating to:

(a) Bankruptcy or insolvency or the protection of the rights of creditors;

(b) Emissions trading or dealing in securities;

(c) Fraudulent and criminal offences;

(d) Financial reports in cases of transfers or accounting when necessary to assist law enforcement or financial regulatory authorities; or

(e) Ensuring compliance with judgments or orders in judicial or administrative proceedings.

4. The Contracting Parties may adopt or maintain measures that are consistent with articles 6.1 and 6.2:

(a) In the event of serious difficulties in the balance of payments and external financial difficulties or threat thereof; or

(b) Where, in special circumstances of capital movements cause or threaten to cause serious difficulties for macroeconomic management in particular monetary and exchange rate.

5. The measures referred to in paragraph 4 of this article:

(a) Must comply with the provisions of the Articles of Agreement of the International Monetary Fund;

(b) Shall be non-discriminatory;

(c) Measures shall not exceed those necessary to meet the requirements set out in paragraph 4 of this article;

(d) They shall be temporary and shall be eliminated as soon as conditions permit; and

(e) Shall be immediately notified to the other contracting party.

## **Article 7. Subrogation**

If a contracting party or their representatives are under an indemnity payments, guarantee or contract of insurance in relation to an investor of investments in the territory of the other contracting party, the other Party shall accept:

(a) The assignment of any such right or claim of the investor to former Contracting Party or its representatives; and

(b) The right of the former contracting party or their representatives to exercise subrogation by virtue of any such right or claim to the same extent as the previous holders.

## **Article 8. Transparency**

1. The Contracting Parties shall promptly publish or otherwise make publicly known its laws, regulations, procedures and administrative regulations and judicial decisions of general application as well as international agreements which may affect the operation of this Agreement. where a contracting party makes a policy not expressly provided for by the laws or regulations or by any other means mentioned in this paragraph but that may affect the operation of this Agreement, the Contracting Party shall publish or otherwise make them known publicly immediately.

2. The Contracting Parties shall respond to specific questions and immediately provide information upon request to the other contracting parties regarding matters covered by article 8.1

3. Nothing in this Agreement shall prevent either contracting parties to seek an investor of the other Contracting Party, or to their investments, to provide routine information concerning that investment or informational solely for statistical purposes. nothing in this Agreement shall require a contracting party to furnish or allow access to:

- a) Information related to the accounts and financial affairs of individual customers of investors or investments; or
- b) Confidential or proprietary information, including information concerning particular investors or investments the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of a private company.

## **Article 9. Temporary Entry and Stay of Personnel**

Subject to its laws and regulations relating to the entry and sojourn of aliens, individuals Contracting Party shall allow investors of the other Contracting Party and personnel employed by companies of the other contracting party to enter and to remain in its territory for the purpose of carrying out activities associated with investments.

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

1. Disputes between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible through consultations through diplomatic channels.
2. If any dispute cannot be settled within six (6) months, at the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal in accordance with the provisions of this article.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two (2) months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. these two members shall select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. the Chairman shall be appointed within two (2) months from the date of appointment of the other two members.
4. If the necessary appointments have not been made within the periods specified in paragraph 3 above, either Contracting Party may request the President of the International Court of Justice to make such appointments. if the President is a national of either Contracting Party or is prevented from exercising such function otherwise, the Vice-President shall be requested to make such appointments. if the Vice-President is also a national of either Contracting Party or is prevented from exercising this function for another reason, it shall request the member of the International Court of Justice to continue in seniority who is not a national of either of the Contracting Parties to make the appointments.
5. The arbitral tribunal shall take its decisions by a majority of votes. such decision shall be binding on both contracting parties.
6. The arbitral tribunal shall determine its own procedure.
7. Each Contracting Party shall bear the costs of its own arbitrator and those arising from its representation in the arbitral proceedings. the costs related to the Chair of the arbitral tribunal and any other resulting expenditure shall be shared equally by the contracting parties. the arbitral tribunal shall determine its own procedure. the Tribunal may however, in its decision that a higher proportion of direct costs be borne by one of the two contracting parties.

## **Article 11. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. This article shall apply to disputes between a Contracting Party and an investor of the other contracting party concerning an alleged breach of an obligation of the former Contracting Party under this Agreement which causes loss or damage to the investor or the investment.
2. This difference should be settled, as far as possible through consultations or negotiations. in the event that cannot be settled within six (6) months following the date on which it was submitted by any of the Parties, the investor may choose to submit it for resolution:
  - (a) Before any competent court or administrative tribunal of the Contracting Party to the dispute;
  - (b) In accordance with any settlement procedure for disputes agreed prior to the emergence of the same;
  - (c) By arbitration in accordance with this article to:
    - i) Convention on Settlement of Investment Disputes between States and Nationals of Other States (ICSID) Convention, if this Convention is available;

ii) The Additional Facility Rules of the International Centre for Settlement of Investment Disputes (ICSID Additional Facility ), if this Convention is available;

iii) Of the UNCITRAL Arbitration Rules (United Nations Commission on International Trade Law (UNCITRAL)); or

(IV) If agreed by both parties to the dispute to arbitration, any other institution or under any other arbitration rules.

3. For this, the Contracting Parties agree to refer a international dispute to arbitration in accordance with the procedures set out in this Agreement. the consent and the submission of a claim to arbitration under this Article shall comply with the requirements set out in the following documents:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the Parties to the dispute; and

(b) Article II of the New York Convention for an agreement in writing ".

4. The consent under paragraph 3 shall apply only if:

(a) The Investor written waiver of any right to initiate action to the settlement of disputes in respect of the same dispute and desist from any such actions already initiated before its conclusion, if the investor submits a claim to arbitration itself.

(b) The Investor investment in writing and shall waive the right to initiate any other action to the settlement of disputes with regard to the same dispute, and desist from any such actions already initiated before its conclusion, if the investor submits a claim to arbitration by a juridical person of the Contracting Party to the dispute owned or controlled directly or indirectly correspond to the investor.

5. The request by one of the Parties to the dispute submitted to arbitration under this section to obtain a temporary compensation which does not involve the payment of damages, part of the judicial or administrative courts, for the purpose of preserving its rights and interests in both the dispute is resolved, does not mean that in the case is referred to in paragraph 4, as regards the limitation of the consent of one Contracting Party and the matter may be referred to arbitration in accordance with the provisions of paragraph 2 (c).

6. Disputes may be submitted to arbitration ninety days after the date on which the notification is received by the contracting party to the dispute, but not after three years after the date on which the investor should first noted or take knowledge of the events which gave rise to the dispute. the notification shall specify:

(a) The name and address of the investor and investment involved in the dispute.

(b) The provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) The basis for the claim; and

(d) The relief sought and the approximate amount of damages claimed.

7. Unless the parties to the dispute otherwise agree, the Tribunal shall be composed of three arbitrators, each party shall appoint an arbitrator and the third, who shall be the chairman shall be appointed by mutual agreement of both parties. if the Tribunal is not constituted within 75 days from the date that the claim is submitted to arbitration under this article, the Secretary-General of ICSID, at the request of a party, designate at its discretion, or the arbitrators who have not been appointed. the Secretary-General of ICSID shall not appoint a national of any of the Parties as Chairman.

8. The parties to the dispute may agree to the place of arbitration in accordance with the arbitration rules applicable under paragraph 2 (c). if not reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules in the understanding that places must be located in the territory of a party to the New York Convention.

9. The Contracting Parties affirm not as a counterclaim, defence, right of set-off or for any other reason, that other indemnification or compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, contract of guarantee or insurance.

10. The award of the arbitral tribunal shall establish the arguments of fact and law together with the reasons for its decision to the Tribunal may, at the request of one of the Parties establish the following forms of relief:

(a) A declaration that the contracting party has failed to fulfil its obligations under this Agreement;

(b) Financial compensation, with interest from the time the loss or damage occurred until payment is made;

(c) Restitution in kind, where appropriate, on the understanding that the Contracting Party may pay pecuniary compensation

in lieu of restitution in kind when it is not possible to conduct; and

(d) Any other form of relief, determined by mutual agreement between the parties.

11. The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party shall in its territory, it shall take the necessary measures to ensure compliance with the award pursuant to this article and shall carry out without delay the provisions of the award resulting from the procedure of which it is a party.

## **Article 12. Implementation of other Rules**

1. If the laws and regulations of either Contracting Party or obligations under international law existing at present or established in the future between the Contracting Parties in addition to this Agreement contain rules) whether general or specific, they accord to investments by 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 prevail over this Agreement.

2. Each Contracting Party shall observe the provisions of this Agreement as well as any other specific agreement of existing investments between a central government authority of a party and investors of the other contracting party.

## **Article 13. Implementation of the Agreement**

1. The Agreement shall apply to all existing investments at the date of Entry into Force Same as well as to investments made or acquired thereafter.

2. The Agreement shall not apply to claims arising out of events which occurred or that have been cleared prior to the Entry into Force of the Agreement.

## **Article 14. Denial of Benefits**

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is a juridical person of the same and to investments of such juridical person if the investor is owned or controlled by third parties and the party denying or adopts measures maintains benefits associated with such person or a third of the same that prohibit transactions with the juridical person or that would be violated or interpreted to its own convenience if the benefits of this agreement were attributed to the juridical person or to its investments.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Agreement to an investor of the other Party that is a juridical person and to investments of the same if the investor of such juridical person has no substantial business activities in the territory of the other party and persons of third parties, or of the denying the benefits have ownership or control of the juridical person.

## **Article 15. Exceptions**

For reasons of security exceptions, it is understood that any of the provisions of this Agreement:

a) Requires a party to supply information the disclosure of which is considered essential by that Party for the purposes of security; or

(b) Prevent a Party from taking any action which it considers necessary to protect its essential security interests; or

(c) Prevents a party acting in accordance with its obligations under the United Nations Charter for the maintenance of international peace and security.

## **Article 16. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty (30) after the date on which either contracting party notifies the other in writing that they have completed their respective legal requirements with the entry into force of this Agreement.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force indefinitely unless thereafter either contracting party notifies the other in writing one year in advance of its intention to terminate it.

3. In respect of investments made prior to the termination of this Agreement, the provisions of articles 1 to 15 shall remain in force for a further period of ten (10) years from such date of termination.

4. This Agreement may be amended by mutual consent of the Contracting Parties. any revision or termination of the Agreement shall be without prejudice to the rights and obligations arising under this Agreement or undertaken prior to the effective date of the amendment or termination.

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

Given in duplicate in Montevideo on the first day of the month of October 2009, in English, Korean and English languages, all texts being equally authentic. in case of divergence of interpretation, the redacted version shall prevail in the English language.

The Government of the Eastern Republic of Uruguay

The Government of the Republic of Korea

## Footnotes

Expropriation

The Parties confirm that share the following criteria:

1. An action or series of actions by a party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.

2. Article 5 addresses two situations. the first is the

Where an expropriation, direct investment is expropriated or nationalized otherwise directly through the transfer of title or total confiscation.

3. The second situation is covered by article 5

Indirect expropriation, where an action or series of actions by a Party has an effect equivalent to expropriation without direct

Formal transfer of title or total confiscation.

(a) The determination of whether an action or by a series of actions

In particular situation constitutes an indirect expropriation requires a case by case analysis based on facts, where they consider all relevant factors relating to the

Investment, including the following:

(i) The economic impact of the Government Action although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment alone does not establish that an indirect expropriation has occurred.

(ii) The extent to which the Government Action interferes with reasonable expectations and private investment; and 2 2

(iii) The character of the government action, including its objectives and context. relevant considerations could include whether the Government Action imposes a special sacrifice on the particular investor or investment that exceeds what should be expected that an investor or bear an investment in the public interest.

(b) Except in special cases, such as when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, environmental, price stabilization of immovable property (for example through measures to improve the conditions of housing for low-income households) do not constitute indirect expropriations 3

For greater certainty, if the expectation of Investment of the investor are reasonable depends on the nature and scope of governmental regulation in the sector concerned. for example, of an investor expectations that regulations shall not be modified would least reasonable in a sector more tightly regulated in a less rigid regulated.



3 for greater certainty, the list of "legitimate objectives of public interest" in subparagraph (b) is not exhaustive.