

# **AGREEMENT BETWEEN THE REPUBLIC OF EL SALVADOR AND THE REPUBLIC OF ARGENTINA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of El Salvador and the Government of the Argentine Republic, hereinafter referred to as the "Contracting Parties";

Desiring to intensify economic cooperation in the mutual benefit of both States;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party; and

Recognizing the need to promote and protect such investments with a view to promoting the economic prosperity of both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) The term "investor" refers to each of the Contracting Parties, the following subjects who has made investments in the territory of the other Contracting Party in accordance with this Agreement:

- a) Natural persons who are nationals of one of the Contracting Parties, in accordance with its legislation;
- b) Legal entities, including companies, corporations, business associations or any other entity duly constituted or otherwise organised under the laws and regulations of that Contracting Party and having its seat in the territory of that Contracting Party;
- c) Legal persons established in accordance with the law of any country, which are directly or indirectly controlled by natural persons of that Contracting Party or by juridical persons having their headquarters and main and real economic activities in the territory of that Contracting Party.

(2) The term "investment" made in accordance with the laws and regulations of the Contracting Party in whose territory the investment means every kind of assets or rights invested by investors of one Contracting Party in the territory of the other contracting party, in accordance with the legislation of the latter. Includes in particular, though not exclusively:

- a) movable and immovable property as well as any other rights in rem, such as mortgages, servitudes, and pledges;
- b) shares, social quotas and any other type of economic participation in companies;
- c) claims and rights to performance having an economic value; loans shall be included only when they are directly linked to a specific investment;
- d) Intellectual Property Rights, such as copyrights and industrial property rights, such as patents, technical processes, trade marks or trade names, trademarks, industrial designs, business names, know-how and goodwill;
- e) Concessions conferred by law or under contract, including concessions to prospecting, exploration, cultivate, extract or exploit natural resources.

(3) The term "proceeds" means all amounts resulting from an investment interests, such as profits, dividends, royalties and other revenue streams.

(4) The term "territory" means, the territory of each Contracting Party, including those maritime areas adjacent to the outer

limit of the territorial sea of the national territory, over which the Contracting Party concerned may, in accordance with its domestic law and international law, sovereign rights or jurisdiction.

## **Article 2. Scope**

(1) This Agreement shall apply to all investments made before or after the date of entry into force, but the provisions of this Agreement shall not apply to any dispute or difference claim, which arose before its entry into force.

(2) The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if such persons from the date of the investment has been established for more than two years in the latter Contracting Party, unless it is proved that the investment was admitted in its territory from abroad.

## **Article 3. Promotion and Protection of Investments**

(1) Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with their respective laws and regulations.

(2) Each Contracting Party shall at all times fair and equitable treatment to investments of investors of the other contracting party in its territory, it shall grant full legal protection and shall not hinder suggestion, maintenance, use, enjoyment or disposal through unjustified or discriminatory measures.

## **Article 4. The Provision of Treatment**

(1) Each Contracting Party shall accord to investments of investors of the other contracting party in its territory treatment no less favourable than that accorded to its own investments or investors to investors of any third country, whichever is more favourable treatment.

(2) If a Contracting Party has accorded special treatment to investments from a third country under provisions of agreements to avoid double taxation or other agreements relating to taxation, free trade area, customs union, common market, economic or monetary unions or similar institutions that Contracting Party shall not be obliged to accord the treatment in question to investors or investments of the other contracting party.

(3) In the case of bilateral agreements covering concessional financing by the Argentine Republic signed with Italy and Spain on 10 December 1987 of 3 June 1988, the provisions of paragraph 1 of this article shall not be construed to extend to the investors of the other contracting party those benefits.

## **Article 5. Migration Situation**

(1) Subject to its laws relating to the Entry and Sojourn of aliens, each Contracting Party shall permit the entry and sojourn in its territory to investors of the other Contracting Party and persons employed by them, with the aim of establishing and administering or developing, advising on the operation of the investment, such investors have committed or are in the process of committing capital or other resources.

(2) Each Contracting Party shall permit in accordance with their respective laws and regulations by investors of the other Contracting Party shall use the senior management wishing to irrespective of the nationality of such personnel.

## **Article 6. Transfers**

(1) Each Contracting Party shall permit all transfers relating to an investment of an investor of a Contracting Party in the territory of the other Contracting Party, be made freely and without delay.

Such transfers include in particular though not exclusively.

- a) The principal and additional amounts necessary for the maintenance or development of the investments;
- b) The benefits, profits, dividends, interests and other current income;
- c) The funds in repayment of loans as defined in article 1, paragraph 2 (c);
- d) Royalties and fees;

- e) The proceeds from a total or partial sale or liquidation of an investment;
  - f) The compensation or compensation provided for in article 7;
  - g) Payments arising out of the implementation of the provisions on dispute settlement contained in this Agreement;
  - h) The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other contracting party.
- (2) Each Contracting Party shall permit transfers to be made in a freely convertible currency at the rate of exchange in force and normal applicable on the date of transfer.
- (3) Without prejudice to the provisions of paragraphs 1 and 2, a Contracting Party may protect the rights of creditors or ensuring compliance of final decisions issued in judicial or arbitral through a fair, non-discriminatory and in good faith to its laws and regulations, including but not limited to:
- a) Bankruptcy or insolvency;
  - b) Criminal or administrative offences;
  - c) Guarantee of compliance with the judgments in adjudicatory proceedings;
  - d) Failure of tax obligations;
  - e) A breach of labour obligations.
- (4) Notwithstanding the provisions of this article, the Contracting Parties shall establish a comprehensive, equitable, not discriminatory and transparent measures to safeguard balance of payments under the rules of the World Trade Organization (WTO).

## **Article 7. Expropriation , Compensation or Damages**

- (1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation or nationalization or any other measures having the same effect against investments in its territory and belonging to investors of the other contracting party unless the following conditions are met:
- a) The measures to be taken for reasons of public interest or social purpose and under due process of law;
  - b) Where the measures are not discriminatory; and
  - c) Where the measures are accompanied by provisions to provide compensation or the payment of prompt, effective and adequate compensation.
- (2) The amount of compensation or such compensation shall correspond to the market value of the expropriated investment was immediately before the expropriation or before the impending expropriation became public, shall include interest from the date of expropriation at a normal commercial rate shall be paid without delay and shall be effectively realizable and freely transferable.
- (3) The legality of the measure of expropriation, nationalization or equivalent and the amount of compensation or compensation shall be reviewable by the appropriate judicial proceedings.
- (4) Investors of one Contracting Party who are losses in their investments in the territory of the other contracting party owing to war or other armed conflict, a national state of emergency, civil disturbance or other similar events shall be accorded, with respect to restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded to its own investors to investors or of any third State.

## **Article 8. Subrogation**

- (1) If a Contracting Party or an agency of a designated agency authorised by a payment to its investor under an insurance or financial guarantee against non-commercial risks, which has engaged in connection with an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of one Contracting Party or its designated agency authorized agency of any right or title of the investor. the Contracting Party or the agency authorised body designated by it shall be authorized within the limits of subrogation to exercise the rights which the investor would have been entitled to exercise.

(2) If a Contracting Party has paid to its investor and has taken by its rights and benefits, the investor shall not claim such rights and benefits to the other Contracting Party, except with the express authorization of the first contracting party.

## **Article 9. Implementation of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Agreement or whether an agreement between an investor of one Contracting Party and the other contracting party contain rules whether general or specific that accorded to the investments made by investors of the other contracting party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

## **Article 10. Settlement of Disputes between an Investor and the Host Contracting Party of the Investment**

(1) Any dispute concerning the provisions of this agreement between an investor of one Contracting Party and the other Contracting Party shall as far as possible, be settled through friendly consultations or negotiations without prejudice to measures that may be made by diplomatic channels.

(2) If the dispute cannot be settled within six months from the date on which it was raised by one or the other Contracting Party, it may be submitted at the request of the investor:

- Either to the competent courts of the Contracting Party in whose territory the investment was made.
- Or to international arbitration under the conditions described in paragraph 3 of this article.

Once the investor has submitted the dispute to the jurisdiction of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

(3) In the event of recourse to international arbitration, the dispute may be brought, at the choice of the investor:

- The International Centre 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 on 18 March 1965.
- An "ad hoc" arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)

(4) The arbitral authority shall decide on the basis of the provisions of this Agreement, the Law of the Contracting Party which is a party to the dispute including its rules on the Conflict of Laws, to the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

(5) The arbitral awards shall be final and binding on the investor and the contracting party to the dispute, which shall be implemented in accordance with its legislation.

(6) The Contracting Parties shall seek, through diplomatic channels, arguments relating to arbitration or judicial proceedings already in place until the relevant procedures have been completed, unless the contracting parties to the dispute have not complied with the award of the arbitral tribunal or the judgment of the Court, according to the terms set out in compliance with the award or judgment.

## **Article 11. Settlement of Disputes between the Contracting Parties**

(1) Any dispute arising between the contracting parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot be settled in this way within six months from the date of notification of the existence of the dispute shall be submitted, at the request of either Contracting Party to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case of three members and shall be constituted in the following manner: within two months from the date of notification of the request for arbitration, each Contracting Party shall appoint an arbitrator. Those two arbitrators shall select within thirty days of the appointment of the last one, a third member who shall be a national of a third State and chair the Tribunal.

(4) If within the periods specified in paragraph 3 of this Article shall not make the necessary appointments, either

Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to proceed with the necessary appointments. If the President is a national of one of the contracting parties or, if for any reason, is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either of the Contracting Parties or if he is also prevented from discharging the function, the said member of the International Court of Justice who is next in order of precedence and is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The President of the Tribunal shall be a national of a State with which both Contracting Parties maintain diplomatic relations.

(6) The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles of law recognized by the contracting parties, as well as the general principles of International Law. It shall take its decision by a majority of votes and shall determine its own procedural rules. such decision shall be binding on both contracting parties. Each Contracting Party shall bear the costs of the member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in principle in equal parts by the contracting parties; unless they agree otherwise. However, the arbitral tribunal shall determine its decision that a higher proportion of costs shall be borne by one of the two contracting parties, and this award shall be binding on both contracting parties.

## **Article 12. Transitional Provision**

The Contracting Parties undertake to communicate through diplomatic channels within a period not exceeding 60 days from the date of signature of this Agreement, in those sectors where reservations on grounds of nationality according to their respective domestic legislation.

## **Article 13. Final Provisions**

(1) This Agreement will enter into force thirty days after the exchange of their respective instruments of ratification. It will remain in force for a period of ten years. After this period, this Agreement shall be extended for an indefinite period unless terminated by one of the Contracting Parties in accordance with paragraph 2.

(2) After ten years, one of the Contracting Parties may terminate this Agreement at any time, subject to six months' notice through diplomatic channels.

(3) In the event of a complaint, the provisions of this Agreement shall continue to apply for a period of ten years for investments made before the notice of termination of this Agreement.

Done at San Salvador, on the ninth day of May 1996 in duplicate in the Spanish language.

Ramón E. González Giner,

BY THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR

Andrés Agustín Cisneros,

BY THE GOVERNMENT OF THE ARGENTINE REPUBLIC