

# **AGREEMENT BETWEEN THE REPUBLIC OF PANAMA AND THE ORIENTAL REPUBLIC OF URUGUAY, FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS INVESTMENT**

The Government of the Republic of Panama and the Government of the Eastern Republic of Uruguay, 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 Party; involve transfers of capital;

Recognizing the need to promote and protect foreign investment 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 "designates the following subjects who has made investments in the territory of the other Contracting Party in accordance with this Agreement:

a) Natural persons who, according to the law of that Contracting Party, are considered to be nationals of the same;

However, this Agreement shall not apply to investments made by natural persons who are nationals of both contracting parties.

b) Legal entities, including companies, corporations, business associations or any other entity duly constituted or otherwise organised under the law of that Contracting Party.

2. The term investment means every kind of assets or rights related thereto, provided that it is effected a accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, and shall include in particular, though not exclusively:

a) Property rights on movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and usufructs;

b) Actions and social quotas and any other kind of participation in companies;

c) Rights of claim or any other performance having economic value;

d) Intellectual Property Rights, including copyrights and industrial property rights, such as patents, technical processes, trade marks or trade names, trademarks, industrial designs, business names, know-how and right of key;

e) Concessions conferred by law, by an administrative act or under a contract, including concessions to exploit, cultivate, extract or exploit natural resources.

Any change in the form in which assets are invested or reinvested shall not affect their character as investments under this Agreement.

3. The term "territory includes, in addition to the land, sea and air space under the sovereignty of each Contracting Party, marine and submarine areas over which they exercise sovereign rights and jurisdiction in accordance with their respective laws and international law.

## **Article 2:. Scope**

1. This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. However, it shall not apply to any dispute or differences arising prior to its validity or directly related to events before its Entry into Force.

## **Article 3:. Admission , Promotion and Protection of Investments**

1. Each Contracting Party shall, subject to its general policy in the field of investment, encourage investments in its territory of investors of the other Contracting Party and shall admit in accordance with its laws and regulations.

2. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder the management, maintenance, use, enjoyment, extension and sale and liquidation of such investments by unreasonable or discriminatory measures.

## **Article 4:. Treatment of Investments**

1. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of investors of the other Contracting Party and shall ensure that the exercise of the rights recognized shall not be hindered in practice.

2. 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 of investments or investors to investors of any third country, if the latter is more favourable treatment.

3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union, economic union, a Common Market or any other form of regional economic organization or by virtue of any agreement relating wholly or mainly to taxation matters, that Party shall not be obliged to accord such advantages to investors of the other contracting party.

## **Article 5:. Free Transfer**

1. Each Contracting Party shall allow investors to without delay of the other contracting party to make the transfer of funds related to investments in a freely convertible currency, in particular, though not exclusively:

- a) Dividends, interests, income, profits and other returns;
- b) Repayments of loans from abroad in connection with an investment;
- c) The capital or the product of the settlement of a dispute and compensation in accordance with article 6;

2. Transfers shall be made in accordance with the rate of exchange prevailing on the date of transfer.

## **Article 6:. Expropriation and Compensation**

1. Investments made by investors of one Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation) in the territory of the other contracting party except for public purpose or social interest. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. Such compensation shall include the value of the expropriated investment immediately before the measure became public knowledge; include interest from the date of expropriation until the date of payment and shall be made without delay, be effectively realizable and freely transferable in freely convertible currency.

2. The legality of expropriation, nationalization or any other measures having an equivalent effect and the amount of compensation may be claimed in ordinary judicial procedure.

## **Article 7:. Compensation for Losses**

Investors of either Contracting Party whose investments in the territory of the other contracting party suffer losses due to a war or any other armed conflict, a state of national emergency or urgent; civil disturbance or other similar events in the territory of the other Contracting Party, shall be accorded by the latter, as regards restitution, indemnification,

compensation or other settlement, a treatment no less favourable than that which the Contracting Party accords to domestic investors or any third State.

## **Article 8: Subrogation**

1. If a Contracting Party or an agency authorised by it has granted a contract of insurance or with respect to an investment by one of its investors in the territory of the other contracting party, the latter shall recognize the rights of the first contracting party to the rights of subrogation of the investor, when it has made a payment under the contract or guarantee.
2. If a Contracting Party has paid to an investor and it has assumed 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: Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes between a Contracting Party and an investor of the other Contracting Party shall be settled as far as possible through negotiations between the parties to the dispute.

2. If the dispute cannot be settled within six months of the notification of a claim, be submitted, at the request of the investor, to:

- The national jurisdiction of the Contracting Party in whose territory the investment was made; or
- The arbitration as provided in paragraph 3 of this article.

Once the investor has submitted the dispute to the aforementioned national jurisdiction or to international arbitration, the choice of one of these procedures is final, unless the parties to the dispute so agree otherwise.

3. In case of international arbitration, the dispute shall be submitted, at the choice of the investor, to:

- The International Centre for International Settlement Centre for Settlement of Investment Disputes) 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, when both States are party thereto. Until this provision does not apply, the dispute may be submitted to arbitration under the ICSID Additional Facility Rules for the administration of conciliation and arbitration procedures, decision or,
- An arbitral tribunal established for each case, in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Each contracting party hereby consents to the submission of any investment dispute for settlement by binding arbitration with the option provided under paragraph (3) of this article.

5. The arbitration tribunal shall decide in accordance with the provisions of this Agreement and the legislation of the Contracting Party involved in the dispute, including its rules on the Conflict of Laws, the terms of any specific agreement concluded in relation to the investment and the principles of international law.

6. The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party shall execute the In accordance with its legislation.

7. The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes are completed, except in the case that the other party to the dispute has failed to comply with the court decision or the decision of the arbitral tribunal with the terms established in the respective decision decision.

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

1. To suggest differences between the contracting parties concerning the interpretation and application of this Agreement shall be settled as far as possible through amicable negotiations.

2. If no reaches an agreement within six months of the date of the notification within six months of the date of the notification of the dispute, either Contracting Party may submit it to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3. The arbitral tribunal shall consist 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 within thirty days of the appointment of the last one, shall select a third member who shall be a national of a third State, who shall chair the Tribunal. The designation of the Chairman shall be approved by the Contracting Parties within thirty days from the date of his nomination.
4. If within the periods specified in paragraph 2 of this article, the appointment has not been made or required the approval has been granted, either Contracting Party may request the President of the International Court of Justice to make the appointment. If 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 Vice-President shall make the appointment, and if the latter is prevented or is a national of either of the Contracting Parties, the judge of the Court who in seniority who is not a national of one of the Contracting Parties shall make the appointment.
5. The President of the Tribunal shall be a national of a third 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 international law and the general principles of law recognized by the contracting parties. The Tribunal shall decide by a majority of votes shall determine its own rules and proceedings.
7. Each Contracting Party shall bear the costs of the arbitrator, as well as those relating to its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the proceedings shall be removed in equal parts by the contracting parties unless they agree otherwise.
8. The decisions of the Tribunal shall be final and binding on both contracting parties.

### **Article 11: Consultations**

The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

### **Article 12: Final Provisions**

1. The Contracting Parties shall notify each other when their constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the last Ka date of notification.
2. This Agreement shall remain in force for a period of fifteen years and thereafter shall be extended for an indefinite period of time. After ten years, this Agreement may be denounced at any time by either Contracting Party with an intended twelve months notice through diplomatic channels.
3. With respect to investments made prior to the date that was made effective notice of termination of this agreement its provisions shall remain in force for a further period of ten years from the date of denunciation.

Done at the City of Panama, on the eighteenth day of February 1998, in duplicate, Spanish languages, both texts being equally authentic.