



**Southern Common Market (MERCOSUR)  
DECISIONS OF THE COUNCIL OF COMMON MARKET**

**MERCOSUR/CMC/DEC. N° 11/94: PROTOCOL ON PROMOTION AND PROTECTION OF INVESTMENTS COMING FROM NON-MERCOSUR STATE PARTIES**

**IN VIEW OF:** Art. 10 of the Treaty of Asuncion, Resolution No 39/94 of the Common Market Group, and Recommendation No 9/94 of SGT No 4, on "Fiscal and Monetary Policies Related to Trade."

**WHEREAS:**

The creation of favorable conditions for (extra-zonal) investments in the territory of the MERCOSUR State Parties will intensify economic cooperation. The promotion and protection of such investments will help to stimulate individual economic initiative and to heighten development in the four State Parties.

For these purposes, it is fitting to establish a common legal framework for the treatment to be accorded third states pertaining to promotion and protection of investments.

**THE COMMON MARKET COUNCIL  
DECIDES:**

**Article 1**

To approve the "PROTOCOL ON PROMOTION AND PROTECTION OF INVESTMENTS COMING FROM NON-MERCOSUR STATE PARTIES," on treatment to be accorded third states pertaining to promotion and protection of investments, included as an [Annex](#) to this Decision.

**ANNEX**

**PROTOCOL ON PROMOTION AND PROTECTION OF INVESTMENTS COMING FROM NON-MERCOSUR STATE PARTIES**

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, and the Oriental Republic of Uruguay, hereinafter designated "State Parties"

Taking into account the Treaty of Asuncion signed on March 26, 1991, whereby the State Parties decide to create the Common Market of the South (MERCOSUR);

Considering the Colonia Protocol on Reciprocal Promotion and Protection of Investments within MERCOSUR, approved by the Common Market Council Decision No 11/93, the purpose of which is to promote investments by investors from the MERCOSUR State Parties, within the scope of territorial application of the Treaty of Asuncion;

Underscoring the need for reconciling the general legal principles to be applied by each of the State Parties to investments coming from non-MERCOSUR states (hereinafter designated "Third States") so as not to create differentiated conditions that would distort the flow of investments;

Acknowledging that the promotion and protection of investments based on agreements with Third States will help to stimulate individual economic initiative and will increase the prosperity of the four States Parties;

Have agreed on the following:

**Article 1**

The State Parties are committed to grant the investments made by investors from Third States a treatment no more favorable than that stipulated in this Protocol.

**Article 2**

For the purpose indicated in the preceding, the general treatment to be agreed upon by each State Party toward Third States shall not recognize for the latter benefits and rights exceeding those recognized for the investor upon the following regulatory bases:

**A) DEFINITIONS**

1) The term "investment", according to the laws and regulations of the State Party in whose territory the investment is made, shall designate all types of assets invested directly or indirectly by investors from a Third State in the territory of the State Party, according to the latter's legislation. It shall include in particular, but not exclusively:

- a) personal and real property, as well as the other rights in rem, such as mortgages, surety, and collateral rights;
- b) stock shares, partnerships shares, and any other type of share in business firms;
- c) credit instruments and rights to benefits having an economic value; loans shall be included only when they are directly linked to a specific investment;
- d) intellectual or intangible property rights, including, especially, copyrights, patents, industrial designs, trademarks, commercial names, technical procedures, know-how, and good will value;
- e) economic concessions conferred by law or by contract, including concessions for prospecting, cultivation, extraction, or exploitation of natural resources.

2) The term "investor" shall designate:

- a) any natural person who is a national of a State Party or Third State, according to their respective legislations. The provisions of the agreements to be entered into shall not apply to investments made in the territory of a State Party by natural persons who are nationals of Third States if such persons, on the date of the investment, reside or are domiciled permanently in said territory, according to the legislation in effect, unless it is proven that the funds relating to these investments come from abroad.
- b) any juridical person established in accordance with the laws and regulations of a State Party or Third State that has its headquarters in the territory where it is established.
- c) any juridical person established in accordance with the legislation of any country that is effectively controlled by natural or juridical persons defined in a) and b) of this number.

3) The term "profits" shall designate all the sums produced by an investment, such as earnings, rents, dividends, interest, royalties, and other current income.

4) The term "territory" shall designate the national territory of each State Party or Third State, including the maritime zones adjacent to the external boundary of the national territorial sea over which the State Party involved or the Third State may, according to international law, exercise sovereign rights or jurisdiction.

**B) PROMOTION OF INVESTMENTS**

1) Each State Party shall promote in its territory the investments of investors from Third States, and shall accept said investments according to its laws and regulations.

2) When one of the State Parties has accepted an investment in its territory, it shall grant the necessary authorization for its best implementation, including the execution of contracts on licenses, commercial or administrative assistance, and entry of the necessary personnel.

**C) PROTECTION OF INVESTMENTS**

1) Each State Party shall ensure a fair and equitable treatment for the investments of investors from Third States, and shall not damage their management, maintenance, use, benefit, or disposition through unjustified or discriminatory measures.

2) Each State Parties shall grant full protection for such investments, and may not accord them a treatment less favorable than that granted to the investments of its own national investors, or the investments made by investors from other states.

3) The State Parties shall not extend to investors from Third States the benefits of any treatment, preference, or privilege resulting from:

- a) their participation or association in a free trade area, customs union, common market, or similar regional agreement;
- b) an international agreement totally or partially related to tax matters.

**D) EXPROPRIATIONS AND COMPENSATIONS**

1) None of the State Parties shall adopt nationalization or expropriation measures, nor any other measure that may have the same effect against investments located in their territory belonging to investors from Third States, unless said measures are adopted for reasons of public utility or social benefit, on a non-discriminatory basis, and subject to due legal process. The measures shall be accompanied by provisions for the payment of a fair, adequate, and prompt or timely compensation.

The amount of said compensation shall correspond to the value of the expropriated investment.

2) Investors from a Third State who suffer losses in their investments in the territory of the State Party, owing to war or other armed conflict, national state of emergency, rebellion, insurrection, or rioting, shall receive, insofar as restitution, indemnification, compensation, or other reparation is concerned, a treatment no less favorable than that accorded its own investors or the investors from other states.

**E) TRANSFERS**

1) Each State Party shall grant the investors from a Third State the free transfer of investments and profits, and particularly, although not exclusively, of:

- a) the capital and additional sums necessary for the maintenance and development of the investments;
- b) the benefits, earnings, rents, interest, dividends, and other current income;
- c) the funds for reimbursement of loans, as defined in Article 2, letter a), paragraph (1), (c);
- d) the royalties and fees, and any other payment relating to the rights specified in Article 2, letter a), paragraph (1), d) and e);
- e) the proceeds from a total or partial sale or liquidation of an investment;
- f) the compensation, indemnification, or other payments specified in Article 2, letter d);
- g) the salaries of the nationals of a Third State who have obtained authorization to work in connection with an investment.

2) The transfers shall be made without delay, in freely convertible currency.

**F) SUBSTITUTION**

1) If a Third State or an agency designated by it makes a payment to an investor by virtue of a guaranty or insurance to cover non-commercial risks that it has contracted in connection with an investment, the State Party in whose territory the investment was made shall recognize the validity of the substitution in favor of the Third State or of one of its agencies, with respect to any right or entitlement of the investor, for purposes of obtaining the pertinent pecuniary compensation.

**G) RESOLUTION OF CONTROVERSIES BETWEEN A STATE PARTY AND A THIRD STATE**

1) Controversies that may arise between a State Party and a Third State relating to the interpretation or application of the agreement that they enter into shall be resolved through diplomatic channels insofar as possible.

2) If said controversy cannot be settled in this manner within a reasonable period of time, to be determined, it shall be subjected to international arbitration.

**H) RESOLUTION OF CONTROVERSIES BETWEEN AN INVESTOR FROM A THIRD STATE AND A PARTY STATE RECEIVING THE INVESTMENT**

1) Any controversy relating to the interpretation or application of an agreement on reciprocal promotion and protection of investments that may arise between an investor from a Third State and a Party State shall be resolved through friendly consultations insofar as possible.

2) If the controversy cannot be resolved within a reasonable period of time after it has been posed by either of the parties, at the investor's request it may be submitted:

- a) either to the competent courts of the State Party in whose territory the investment was made, or
- b) to international arbitration under the conditions described in section 3.

Once an investor has submitted the controversy to the jurisdiction of the State Party involved, or to international arbitration, the selection of either of these procedures shall be final.

3) In the event of an appeal for international arbitration, the controversy may, at the discretion of the investor, be subjected to an "ad hoc" court of arbitration or to an international arbitration.

4) The arbitration body shall decide, based on the provisions of the agreement entered into, the right of the State Party involved in the controversy, including the rules relating to conflicts of laws, and the terms of possible private agreements concluded in connection with the investment, as well as based on the principles of international law pertaining to the subject.

5) The arbitrator's decisions shall be definitive and binding on the parties to the controversy. The State Party shall execute them in accordance with its legislation.

**I) INVESTMENTS AND CONTROVERSIES COVERED IN THE AGREEMENT**

The rules of the agreements to be entered into may be applied to all the investments made before or after the date that they took effect, but shall not apply to any controversy, claim, or dispute that may have arisen before they took effect.

**J) DURATION AND TERMINATION**

The minimum period of validity of the agreements shall be ten years. In the case of those investments made before the expiration date of the agreement's effective period, the State Party may decide that its provisions shall remain in effect for a maximum period of 15 years beginning from that date forward.

**Article 3**

The State Parties are obliged to exchange information on the future negotiations and those in progress on agreements for reciprocal promotion and protection of investments with Third States, and prior consultations shall be held regarding any substantial amendment to the general treatment agreed upon in Article 2 of this Protocol. For this purpose, the Commission on the Promotion and Reciprocal Protection of Investments of the Common Market Group, and any body which may eventually replace it, shall concern itself with the consultations and the exchange of information pertaining to the subject.

**Article 4**

This Protocol is an integral part of the Treaty of Asuncion.

Accession of a State to the Treaty of Asuncion shall imply, ipso jure, accession to this Protocol.

This Protocol shall go into effect 30 days after the date of deposit of the fourth ratification instrument.

The Government of the Republic of Paraguay shall be the depositary of this Protocol and of the ratification instruments, and shall send a duly authenticated copy thereof to the Governments of the other State Parties.

Executed in the city of Buenos Aires on the fifth of August of 1994, in an original copy, in the Spanish and Portuguese languages, both texts being equally authentic.