

OVERVIEW OF THE UPDATED BILATERAL INVESTMENT TREATY BETWEEN AUSTRALIA AND THE ORIENTAL REPUBLIC OF URUGUAY

Australia and the Oriental Republic of Uruguay have an existing 2002 bilateral investment treaty (BIT): *Agreement between Australia and Uruguay on the Promotion and Protection of Investments*.

On 5 April 2019, Australia and the Oriental Republic of Uruguay signed an updated BIT which is a substantial improvement on the 2002 BIT.

Upon entry into force, the updated BIT will terminate the 2002 BIT and replace its older-style provisions with more detailed modern investment protections that will provide greater certainty for Australian investors.

The updated BIT includes a range of explicit procedural and substantive safeguards in relation to investor-State dispute settlement (ISDS).

The explicit substantive safeguards in the updated BIT include:

- ✓ recognising the Government's right to regulate and protect legitimate public welfare objectives, such as public health and the environment
- ✓ linking the fair and equitable treatment obligation and the full protection and security obligation to the customary international law minimum standard of treatment
- ✓ incorporating the concept of 'like circumstances' into the most favoured nation obligation to enable distinctions on the basis of legitimate public welfare objectives
- ✓ allowing unilateral denial of benefits where the investor is an enterprise owned or controlled by a non-Party and has no substantial business activities in a Party
- ✓ adding an indirect expropriation annex; and
- ✓ adding general exceptions and security exceptions.

The explicit procedural safeguards in the updated BIT include:

- ✓ introducing a three year time limit on bringing a claim
- ✓ requiring claimants to waive their right to pursue dispute settlement proceedings in any other fora
- ✓ providing a detailed set of ethical rules for arbitrators
- ✓ incorporating expedited review of preliminary objections regarding the tribunal's competence
- ✓ enhancing transparency for ISDS proceedings; and
- ✓ enabling Parties to issue joint interpretations of the BIT which are binding on tribunals.

The conclusion of the updated BIT is part of the Government's broader ISDS reform agenda, which includes multilateral reform efforts in the United Nations Commission on International Trade Law (UNCITRAL) and the International Centre for the Settlement of Investment Disputes (ICSID).