

# **Agreement between the Government of the People's Democratic Republic of Algeria and the Portuguese Republic on the reciprocal promotion and protection of investments.**

The Portuguese Republic and the Government of the people's Democratic Republic of Algeria, hereinafter referred to as the contracting parties: ""

Desiring to enhance economic cooperation between the two countries;

In order to create favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party; convinced that the promotion and protection of such investments will contribute to stimulate investor dès initiatives in the field of economic cooperation and in particular to promote the transfer of capital and technology between the contracting parties, in the interests of their economic development;

Motivated by the desire to conclude an agreement on the Promotion and Reciprocal Protection dès investments between the two countries;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term means "" investment assets, such as property rights of every kind of asset and any related to an economic activity, invested by investors of one Party

Contracting in the territory of the other contracting party, and, in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, bonds, usufruits and similar rights;
- b) The actions, premiums and discounts shares and other forms of participation, even minority, either directly or indirectly, to companies established in the territory of one of the contracting parties;
- c) The obligations and rights, claims to any performance having an economic value;
- d) Intellectual property rights, including copyrights and industrial property rights, such as patents, models and technical processes, industrial designs, patents, trademarks, appellations of origin, indications of source, trade names, know-how and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, agriculture, extract or exploit natural resources.

It is understood that such investment must be admitted in accordance with the law of the Contracting Party in whose territory the investment is made. any alteration of the form of investment or Pás reinvestment shall not affect their classification as investment provided that such alteration is not contrary to the legislation of the Contracting Party in whose territory the investment is made;

2. The term investor means:

- a) Natural persons having the nationality of one of the contracting parties;
- b) Legal entities, including companies or any entity that has the ability to invest, which have their principal place of business in the territory of one of the Contracting Parties and shall be constituted in accordance with the law of that Contracting

Party;

3. The term returns means all such amounts as interests, profits, dividends, royalties, fees, royalties or bonds or other forms of remuneration related to investment, produced during a period of time by an investment.

Where the investment income as defined above, would be reinvested earnings of these reinvestments shall be considered within the framework of this Agreement. returns shall enjoy the same protection as the investment;

4. The term shall mean territory in respect of either Contracting Party, the territory of the latter including the territorial sea and, if th thereof, which over the areas in accordance with international law and its national legislation, it has jurisdiction or sovereign rights for the purpose of exploration and exploitation of natural resources whether living or non-living seabed and subsoil waters dès above.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party recognizes and encourages the implementation in its territory investments by investors of the other contracting party, within the framework of its laws and regulations.

2. Investments made by investors of one Contracting Party in the territory of the other contracting party, in accordance with the legislation of the latter, shall enjoy the full protection and security.

3. Each Contracting Party shall ensure the proper conduct of all operations necessary for the development of an investment project œuvre and in any event no measures shall subject to arbitrary or unjustified or discriminatory use, administration, enjoyment and use of investments made in its territory by investors of the other contracting party.

## **Article 3. National Treatment and Most-favoured-nation Clause**

1. Each Contracting Party shall accord to investments in its territory of the other Contracting Party which is fair and equitable treatment and no less favourable than that accorded to investments of its own to investors or investments of investors of third States.

2. Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, use, use and enjoyment of their investments, which is fair and equitable treatment and not less favourable than that accorded to its own investors or to investors of third States.

3. This treatment does not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union, Common Market or any other form of regional economic organization and of agreements for the avoidance of double taxation or other tax convention.

## **Article 4. Expropriation**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized, subject to any other measures having the same effect as expropriation or nationalization (hereinafter "" expropriation), unless the measures are taken pursuant to Act in the public interest; and not discriminatory against compensation.

2. The compensation shall correspond to the market value of the affected investments immediately before the measure is taken of expropriation or the day before the date on which it was issued the first panellist shall be selected. it shall be settled in a convertible currency denominated in accordance with the laws of the currency of the Contracting Party in which the responsibility for the payment of such compensation. El shall be freely transferable. the transfers shall be made in accordance with the laws of the currency of the Contracting Party having made the expropriation at the latest within a period of three months. in the event of late payment, generate interest at the official rate of the Special Drawing Right (SDR), on the date of its receipt as determined by the International Monetary Fund.

3. In case of disagreement on the valuation of the amount of compensation, the investor concerned shall have the right under the law of the Contracting Party which has expropriated, ensure that its case and the valuation of its investment should be reviewed by the competent court of the Party in accordance with the principles set out in this article.

## **Article 5. Compensation for Losses Resulting**

Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict,

revolution, state of emergency or national revolt or other similar events considered by international law, which took place in the territory of the other Contracting Party, shall be accorded by the latter, as regards restitution, indemnification, compensation or other settlement of a treatment no less favourable than that accorded to its own investors or to those of a third State.

## **Article 6. Transfers**

1. Each Contracting Party shall, in accordance with its laws, shall ensure to investors of the other Contracting Party shall, after the payment of all fiscal obligations, the free transfer of payments related to investments and in particular:

- a) Capital necessary for the maintenance or development of the investment, to the location of the investment;
- b) Investment income;
- c) The repayment of loans which the Contracting Parties have recognised as investment;
- d) The proceeds of the total or partial sale or liquidation of the investment;
- e) The compensation and other payments made pursuant to articles 4 and 5 of this Agreement;
- f) Any payment to be achieved by virtue of subrogation as provided for in article 7 of this Agreement.

2. The transfers referred to in this article shall be made without delay in a freely convertible currency and in the official rate of exchange in force at the time of their entry into *œuvre*.

3. For the purposes of this article, the transfer shall be effected without delay if it is normally made within the period necessary for the completion of formalities.

4. The time limit shall be calculated from the date on which the application together with all the relevant documents shall be made and shall in no case exceed two months.

## **Article 7. Subrogation**

1. If one of the contracting parties or the body designated by the said party (hereinafter referred to as the first "contracting party") makes a payment under given an indemnity in respect of an investment made in the territory of the other contracting party (hereinafter referred to as the second "contracting party"), the second Contracting Party shall recognize:

- a) The first assignment to the Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified;
- b) The right of the former Contracting Party to exercise the rights and assert such claims by virtue of subrogation to the same extent as the party indemnified.

2. The first Contracting Party shall be entitled in all circumstances to:

- a) To the same treatment in respect of the rights and claims by acquired it by virtue of the assignment; and
- b) Any payments received in respect of those rights and claims as the party was entitled to receive indemnified by virtue of this Agreement in respect of the investment concerned and incomes.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes between the contracting parties concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. If within six months from the date when it was raised by either contracting party to the dispute is not resolved, it shall be submitted, at the request of either of the contracting parties to an arbitration tribunal.

3. The arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be chairman appointed by both contracting parties. the members shall be appointed within two months and the Chairman within three months from the date one Contracting Party has informed the other contracting party of its intention to submit the dispute to arbitration.

4. In the event of non-compliance with the time limits specified in paragraph 3 above, and in the absence of any other agreement, one of the Contracting Parties shall request the President of the International Court of Justice to carry the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is unable to perform this function for another reason, the Vice-President shall be invited to the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also prevented from carrying out the said function, it shall request the member of the International Court of Justice following next in the order of precedence, and who is not a national of either Contracting Party, to make the necessary appointments.

The Chairman of the arbitral tribunal shall be a national of a State with which the contracting parties have diplomatic relations.

5. The arbitral tribunal shall reach its decisions by a majority of votes and its decisions shall be final and binding on the contracting parties.

6. The tribunal shall determine its own rules of procedure and interpret its decisions at the request of one of the Contracting Parties.

7. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the proceedings of the arbitral tribunal.

The costs of the Chairman and the remaining costs shall be borne in equal parts by the parties, unless the court decides otherwise, in light of the particular circumstances.

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall as far as possible, be settled amicably between the parties concerned.

2. If such a dispute cannot be settled amicably within six months from the time at which it was raised by one of the Parties to the dispute, the investor may either submit the dispute to the competent court of the Contracting Party involved in the dispute, or to international arbitration. The choice of one of these procedures is final.

3. Where a dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute to the one of the following procedures:

a) Either to the International Centre for Settlement of Investment Disputes (ICSID) taking into account, where appropriate, the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965 and the additional facility for the administration of conciliation, arbitration and investigation;

b) Or to an ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

c) Either on the International Chamber of Commerce (ICC).

4. For the resolution of the dispute shall take into account the principles of international law and the provisions of this Agreement, the terms of the specific agreement which may have been entered into regarding the investment as well as the national law of the Contracting Party involved in the dispute, including the rules relating to conflicts of law.

5. The arbitral award made under this article shall bind the parties to the dispute and shall be enforceable in the territories of the Contracting Parties.

6. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration, except in cases of non-compliance or failure by the other party to the arbitral award rendered by the arbitral tribunal.

## **Article 10. Specific Obligations**

1. If the provisions of the domestic law of either Contracting Party or obligations under international law accepted by the contracting parties or in force and subsequently additionally to this Agreement contain rules), whether general or specific for returns of investments and investors of the other contracting party to more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

2. Each Contracting Party shall observe any obligation it has assumed with regard to investments made by investors of the other contracting party.

## **Article 11. Scope**

This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other contracting party, before or after the entry into force of this Agreement provided that such investments in accordance with the laws and regulations in force of the Contracting Party in whose territory the investments were made. however, this Agreement shall not apply to disputes which occurred prior to its entry into force.

## **Article 12. Consultations between the Contracting Parties**

The representatives of the Contracting Parties may conduct consultations or meetings if necessary for the purpose of:

- a) To assess the implementation of this Agreement;
- b) The exchange of information on legislation and investment opportunities;
- c) Submit proposals on promotion of investment;
- d) Consider other investment opportunities.

## **Article 13. Entry Into Force and Termination**

1. This Agreement shall enter into force thirty days after the date of receipt of the latter notification through diplomatic channels by which the contracting parties have notified each other of the completion dês internal procedures necessary to that effect.
2. This Agreement shall remain in force for an initial period of ten years. it shall be renewable, tacitly renewed for further periods of ten years unless either contracting party notifies the other contracting party through diplomatic channels its intention to revise or to terminate the agreement in twelve months notice.
3. Investments made prior to the termination of this Agreement shall continue to be protected in its provisions for a further period of ten years from the date of denunciation.

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

Done at Lisbon on 15 September, in duplicate originals each in Portuguese, Arabic and French languages, all texts being equally authentic. in cãs divergence of interpretation, the English text shall be the legislative authority.

For the Government of the People's Democratic Republic of Algeria

Lachemi DJAABOUBE

Minister of Industry

For the Portuguese Republic

Alvaro BARRETO

Minister of State for Economic Activities and Labour

When carrying out the signing of the Agreement on the Promotion and Reciprocal Protection of Investments date concluded between the Portuguese Republic and the Government of the people's Democratic Republic of Algeria, the undersigned have agreed to an additional provision which shall form an integral part of this Agreement:

Nothing in the Agreement shall not have the effect of opposing the right of either party to apply the relevant provisions of its tax legislation to taxpayers who are not in identical situations as regards their place of residence.

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

Done at Lisbon on 15 September, in duplicate originals àrabe each in French and Portuguese languages, all texts being equally authentic.

In case of divergence of interpretation, the English text shall be the legislative authority.

For the Government of the People's Democratic Republic of Algeria

Lachemi DJAABOUBE

Minister of Industry

For the Portuguese Republic

Alvaro BARRETO

Minister of State for Economic Activities and Labour