

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE GABONESE REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Portuguese Republic and the Gabonese Republic referred to herein as the Parties:

Aspiring to intensify economic cooperation between the two countries;

For the creation of favourable conditions for investment by investors of one party in the territory of the other Party on the basis of equality and mutual benefit;

Recognizing that the reciprocal promotion and protection of investments, in accordance with the terms of this Agreement will contribute to stimulate private initiative;

Have agreed as follows:

Chapter I. Scope and Object

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" comprises all kinds of property and rights invested by investors of one Party in the territory of the other Party under the laws of the latter Party, including in particular, but not limited to:

(a) Property in movable and immovable, as well as any other real rights, such as mortgages, guarantees, pledges and similar rights;

b) Shares, quotas or other social parts representing the capital of companies or any other forms of participation and or economic interests resulting from the respective activity;

c) Credit rights or any other rights with economic value

d) Intellectual property rights, such as copyrights, patents, utility models and industrial designs, trademarks, trade names, commercial and industrial secrets, technical processes, know-how and goodwill

e) Concessions granted by operation of law, under contract or administrative act issued by a competent public authority, including concessions for prospecting, research and exploitation of natural resources;

(f) goods which, under and in accordance with the law and their respective leases, are put at the disposal of a lessor in the territory of a Party in accordance with its law.

Any change in the manner in which investments are made shall not affect their qualification as investments provided that such change is made in accordance with the law of the Party in whose territory the investments were made.

2. The term "income" means income generated by investments in a given period, including in particular, but not limited to, profits, dividends, interest, royalties, payments on account of technical assistance or other forms of earnings related to the investment.

If income from investments as defined above is reinvested, the income from such reinvestment is also considered income from the first investment.

Income from investments shall enjoy the same protection granted to investments.

3. The term "investors" means

(a) natural persons, having the nationality of either Party, in accordance with their respective laws; and

(b) legal persons, including companies, firms or other incorporated or unincorporated entities or associations which have their registered offices in the territory of a Party and are incorporated and function under the law of that Party.

4. The term "territory" includes the territory of each Party, its internal waters, territorial sea or any other area over which the Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2. Management

This Agreement shall apply to all investments made by investors of one party in the territory of the other party before and after its entry into force, in accordance with the respective legal provisions, with the exception of investment disputes prior to its entry into force.

Chapter II. General Provisions

Article 3. Promotion and Protection of Investments

1. Both Parties shall promote and encourage, to the extent possible, the realisation of investments by investors of the other Party in their territories and admit such investments in accordance with their respective legislation. In any case, they shall accord to the investments fair and equitable treatment.

2. Investments made by investors of one Party in the territory of the other Party in accordance with the legal provisions in force in that territory shall be afforded full protection and security in the territory of the latter Party.

3. Each Party shall not subject the management, maintenance, use, enjoyment or disposition of investments held in its territory by investors of another Party to unjustified, arbitrary or discriminatory measures.

Article 4. National and Most-favoured Nation Treatment

1. Investments made by investors of one Party in the territory of the other Party, as well as income derived therefrom, shall be subject to fair and equitable treatment no less favourable than that accorded by the latter Party to investments of its own investors or to investments of investors of third States.

2. Both Parties shall accord to investors of the other Party, in respect of the management, maintenance, use, enjoyment or disposition of investments made in their territories, fair and equitable treatment no less favourable than that accorded to investors of the latter Party or to investors of third States.

3. The provisions of this Article shall not imply the granting of preferential treatment or privilege by a Party to investors of the other Party that may be granted by virtue of:

(a) participation in free trade areas, customs unions, existing or future common markets and other similar international agreements, including other forms of economic cooperation to which either Party has acceded or will accede; and

(b) bilateral, multilateral, regional or non-regional agreements of a fully or partly tax nature.

4. The Parties agree that the provisions of this Article are without prejudice to the right of either Party to apply the relevant provisions of its tax legislation which distinguish, under its domestic law, between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

Article 5. Application of other Rules

1. If, in addition to this Agreement, the provisions of the domestic law of one of the Parties or obligations arising from international law in force or to come into force between the two Parties lay down a system, whether general or special, which accords more favorable treatment to investments made by investors of the other Party than that provided for in this Agreement, the more favorable system shall prevail.

2. Both Parties shall comply with any obligations, not covered by this Agreement, undertaken with respect to investments made by investors of the other Party in their territories.

Article 6. Expropriation

1. Investments made by investors of one Party in the territory of the other Party may not be expropriated, nationalized or otherwise subjected to measures having effects equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except by operation of law, in the public interest, on a non-discriminatory basis and against prompt compensation.
2. The compensation must correspond to the market value that the expropriated investments had on the date immediately prior to the moment in which the expropriation took place or the moment in which the future expropriation is public knowledge, the first of these dates counting for this purpose. The compensation must be paid without delay, interest at the usual bank rate, from the date of expropriation until the date of liquidation, and must be prompt, effective, adequate and freely transferable.
3. An investor whose investments have been expropriated shall have the right, in accordance with the law of the Party in whose territory the assets have been expropriated, to have his case promptly reviewed, in judicial or other proceedings, and to have his investments valued in accordance with the principles set out in this Article.

Article 7. Compensation for Losses

1. Investors of a Party who suffer losses on investments made in the territory of the other Party because of war or other armed conflicts, revolution, state of national emergency or other events considered equivalent by international law, shall receive treatment no less favorable from that Party than that accorded by that Party to investments of its own investors or of investors of third States, whichever is more favorable as regards restitution, compensation or other relevant factors.
2. The compensation provided for in the preceding paragraph shall be transferable freely and without delay in convertible currency.

Article 8. Transfers

1. Both Parties, in accordance with their respective legislation, guarantee to the investors of the other Party the free transfer of the amounts related to the investments, in particular, but not exclusively:
 - (a) of the capital and additional amounts necessary for the maintenance or expansion of the investments;
 - (b) income as defined in paragraph 2 of Article 1 of this Agreement
 - (c) sums required for the servicing, repayment and amortization of loans recognized by both Parties as investments;
 - (d) proceeds from the disposal or liquidation in whole or in part of investments;
 - (e) the indemnities or other payments provided for in Articles 4 and 7 of this Agreement;
 - (f) any preliminary payments that may have been made on behalf of the investor in accordance with Article 9 of this Agreement;
 - (g) of the salaries of foreign workers, authorized to work, in connection with the investment in the territory of the other Party.
2. The transfers referred to in this Article shall be made without delay, in convertible currency, at the exchange rate applicable on the date of transfer.
3. For the purposes of this Article, a transfer shall be deemed to have been made "without delay" where it is effected within the time normally necessary for the completion of the necessary formalities, which shall in no case exceed 30 days from the date of submission of the request for transfer.

Article 9. Subrogation

In case one Party or the agency designated by it makes payments to one of its investors by virtue of a guarantee provided for an investment made in the territory of the other Party, it is thereby subrogated to the rights and shares of such investor, and may exercise them under the same terms and conditions as the original holder.

Article 10. Disputes between the Parties

1. Disputes arising between the Parties concerning the interpretation or application of this Agreement shall be settled, to the

extent possible, through negotiations via diplomatic channels.

2. If the Parties fail to reach agreement within six months after negotiations have begun, the dispute shall, at the request of either Party, be submitted to an arbitral tribunal to be established in accordance with the following paragraphs.

3. The arbitral tribunal shall be constituted ad hoc as follows:

(a) Each Party shall designate one member and both members shall propose a national of a third State as chairman, who shall be appointed by both Parties;

(b) The members shall be appointed within two months, and the President within three months, of the date on which either Party has notified the other of its intention to submit the dispute to an arbitral tribunal

(c) The president of the arbitral tribunal must be a national of a State with which both Parties maintain diplomatic relations.

4. If the time-limits set forth in paragraph 3 of this Article are not observed, either party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments.

5. If the President is unable to make the appointments or is a national of a Party, the Vice-President shall make the appointments. If the latter is also prevented from attending or is a national of one of the Parties, the appointments shall be made by the Member of the Court next in rank, provided that member is not a national of either Party.

6. The arbitral tribunal shall decide by majority vote. Its decisions shall be final and binding on both Parties.

7. Each Party shall bear the expenses of its arbitrator as well as its representation in the proceedings before the arbitral tribunal. Both Parties shall bear equally the expenses of the chairman, as well as the other expenses.

8. The arbitral tribunal may adopt different rules as to costs. In all other matters, the arbitral tribunal shall establish its own rules of procedure.

Article 11. Disputes between an Investor and a Party of the other Party

1. Disputes between an investor of one Party and the other Party concerning an investment of the former in the territory of the latter shall be settled amicably by negotiation.

2. If disputes cannot be resolved in accordance with the provisions of paragraph 1 of this Article within six months from the date on which one of the disputing Parties has raised it, either Party may refer the dispute

(a) to the competent courts of the Party in whose territory the investment is situated; or

(b) to the International Centre for Settlement of Investment Disputes for conciliation or arbitration in accordance with the Convention for the Settlement of Disputes between States and Nationals of Other States done at Washington, D.C. March 18, 1965; or

(c) an ad hoc arbitral tribunal established in accordance with the arbitration rules of the United Nations Commission on Trade and Development (UNCTAD).

3. The decision to submit the dispute to one of the procedures referred to in the preceding paragraph is irreversible.

4. The award shall be binding on both parties and shall not be subject to any form of appeal other than those provided for in national legislation, in the case of paragraph a) of the preceding number, or in the referred Conventions. The award shall be binding according to the domestic law of the Party in whose territory the investment in question is located.

5. After the conclusion of the judicial or arbitral proceedings and in case of non-compliance with the award rendered pursuant to this Article, the Parties may, exceptionally, have recourse to diplomatic channels in order to ensure the enforcement of such award.

Chapter III. Final Provisions

Article 12. Consultations

Representatives of the Parties shall, whenever necessary, hold consultations on any matter concerning the interpretation and application of this Agreement. These consultations shall be held on the proposal of either Party, and the Parties may, if necessary, propose to meet at a place and on a date to be agreed through diplomatic channels.

Article 13. Entry Into Force

This Agreement shall enter into force 30 days after the date of receipt of the last written notification through diplomatic channels that all constitutional and/or legal formalities required for both Parties have been completed.

Article 14. Duration

This Agreement shall remain in force for a period of 10 years, renewable for equal periods.

Article 15. Termination

1. This Agreement may be terminated by either Party by written notification through diplomatic channels. It shall cease to be in force 12 months after the date of receipt of such notification by the other Party.

2. The provisions of Articles 1 to 12 shall remain in force for a period of 10 years from the date of termination of this Agreement for the investments made.

Done in duplicate, in Lisbon, on December 17, 2001, in the Portuguese language and in the French language, both texts being equally authentic.

For the Portuguese Republic

For the Gabonese Republic