

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF CUBA ON THE RECIPROCAL INVESTMENT PROMOTION AND PROTECTION

The Portuguese Republic and the Republic of Cuba, henceforth designated as Contracting Parties:

Desiring to promote and intensify economic cooperation between the two States;

Taking into account the encouragement and the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit;

Recognizing that the reciprocal promotion and protection of investments under the terms of this Agreement will contribute to maintain a stable framework for 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 "investment" shall comprise all assets and rights invested by investors of one Contracting Party in the territory of the other Contracting party, according to the respective legislation applicable in the field, including in particular, though not exclusively:

- a) movable and immovable property as well as any other property rights such as mortgages and similar rights;
- b) shares, quotas or other equity representing the capital of companies or any other form of participation and or economic interests resulting from their activity;
- c) rights to claim or any other rights having financial value;
- d) intellectual Property Rights, such as copyrights, patents, industrial designs, trademarks, trade names, know-how, technological processes and good-will;
- e) acquisition and development of concessions conferred in accordance with the law, including concessions for prospecting, exploration and exploitation of natural resources;
- f) goods placed at the disposition of a lessor under a lease agreement in the territory of a Contracting Party in accordance with its laws and regulations.

Any alteration in the form of investments shall not affect their classification as such, provided that such change is taking place under the laws and regulations of the Contracting Party in whose territory investments have been implemented.

2. The term "proceeds" shall mean amounts derived from the investment in a given period, including in particular, though not exclusively, profits, dividends, interest, payments of royalties, technical assistance or management or other proceeds related to investments.

In the event that investment proceeds as defined above are reinvested, the income resulting from such reinvestment shall also be considered as income from the initial investment.

3. The term "investor" includes:

(a) natural persons having the nationality or citizenship of either of the Contracting Parties, in accordance with their fundamental laws, foreign investment laws and other legal provisions; and

(b) legal persons, including companies, firms or other companies or associations, having their registered office in the territory of one of the Contracting Parties and being incorporated and operating under the law of that Contracting Party.

4. The term "territory" shall mean the territory of each of the Contracting Parties, as is defined in their respective laws, including the territorial sea and any other area over which the Contracting Party concerned exercises, in accordance with international law, sovereign, sovereign rights and jurisdiction.

Article 2. Promotion and Protection of Investments

1. Both Contracting Parties shall promote and encourage investment, as far as possible by investors of the other Contracting Party in its territory, and shall admit such investments in accordance with their respective laws and regulations applicable on the matter. In any case, shall accord to investments a fair and equitable treatment.

2. Investments by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with their respective applicable legal provisions in force in the territory, shall enjoy full protection and security in the territory of the other Contracting Party.

3. No Contracting Party shall subject the management, maintenance, use, enjoyment or disposal of investments made in its territory by investors of the other Contracting Party, to arbitrary or unjustified discriminatory measures.

Article 3. National and Most-favoured-nation Treatment

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party, as well as their respective profits will receive a fair and equitable treatment not less favourable than that accorded by the latter Contracting Party to its own investors or to investors of third States.

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

3. The provisions of this article does not involve the granting of preferential treatment or privileged by investors of one Contracting Party to the other Contracting Party that may be awarded under:

a) Participation in the free trade area, customs union or common market, existing or future, and other similar international agreements, including other forms of economic cooperation to which either of the Contracting Parties is a signatory or intends to subscribe; and

b) International agreements of fiscal nature.

Article 4. Expropriacion

Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to other measures having an equivalent effect to expropriation or nationalisation, hereinafter referred to as expropriation, except by virtue of law and in accordance with applicable legal procedure, in the public interest, without discrimination and with prompt compensation.

2. The compensation should correspond to the value market that the expropriated investments had at the date immediately before the expropriation became public knowledge, the amount and the form of payment being determined at that time. The compensation shall be paid without delay and shall include the payment of interest at the bank rate applicable on the date of its settlement. The compensation should be swift, effective, adequate and freely transferable in freely convertible currency, in accordance with the regulations established by Contracting Party in whose territory the investment.

3. The investor whose investments have been expropriated shall be entitled to a review of their case and the amount of compensation, in legal proceedings or other, in accordance with the principles set out in this article and in accordance with the law of the Contracting Party in the territory from which the goods have been expropriated.

Article 5. Compensation for Losses

Investors from one Contracting Party who suffer investment losses in the territory of the other Contracting Party as a result of war, or other armed conflicts, state of national emergency and other events deemed equivalent by law international shall not receive from that Contracting Party less favourable treatment than that accorded to their own investors or to third party investors States, whichever is more favourable, in which concerns restitution, compensation or other pertinent matters. The resulting compensation should be freely and without delay transferable in currency freely convertible in accordance with the regulations established by the Contracting Party in which territory the investment was made.

Article 6. Transfers

1. Each Contracting Party, in accordance with their respective legislation applicable in the field, shall guarantee to investors of the other Contracting Party the free transfer of proceeds arising from their investments, specifically:

- a) The capital and additional amounts to maintain or increase investments;
- b) Profits as defined in paragraph 2 of article 1 of this Agreement;
- c) The amounts required for reimbursement of loans and amortisation recognized by both Contracting Parties as investments;
- d) The proceeds from the sale or liquidation of all or part of the investments;
- e) Compensation and other payments made pursuant to articles 4 and 5 of this Agreement;
- f) Any preliminary payment that may have been made on behalf of the investor under Article 7 of this Agreement.

2. The transfers referred to in this article shall be made without delay in freely convertible currency in accordance with the regulations of the Contracting Party in whose territory the investment was made, at the rate of exchange applicable on the date of transfer.

3. For the purpose of this article a transfer shall be deemed to be made without delay when made within the period is normally necessary to meet the required formalities, which may not exceed 30 days from the date of filing of the application of transfer.

Article 7. Subrogation

Where one of the Contracting Parties or the entity designated by it makes payments to one of its investors by virtue of a guarantee provided against non-commercial risks for an investment made in the territory of the other Contracting Party, it shall thereby be subrogated to the rights and shares of that investor and may exercise them on the same terms and conditions as the original holder.

Article 8. Disputes between the Contracting Parties

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible through negotiations through diplomatic channels.

2. If the Contracting Parties cannot reach an agreement within six months after the beginning of negotiations, the dispute shall be submitted to an arbitral tribunal at the request of either of the Contracting Parties.

3. The arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these shall nominate a national of a third State as Chairman who shall be appointed by the Contracting Parties. The members shall be appointed within two months and the Chairman within three months from the date on which either contracting party notifies the other party of its wish to submit the dispute to an arbitration tribunal.

4. If the periods specified in paragraph 3 of this article are not observed, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is prevented from attending or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President. If the Vice-President is also prevented from exercising his functions or is a national of one of the Contracting Parties, the appointments shall be made by the member of the Court next in seniority, provided that the member is not a national of any of the Contracting Parties.

The Chairman of the arbitral tribunal shall be a national of a State which has diplomatic relations with both Contracting Parties.

5. The arbitral tribunal shall be decided by majority vote. The decisions shall be final and binding on both Contracting Parties. Each Contracting Party shall make the costs of the arbitrator and of its representation in the proceedings before the arbitral tribunal. Both Contracting Parties shall have equal share of the cost of the Chairman and any other costs. The arbitral tribunal may make a different regulation concerning costs. The arbitral tribunal shall determine its own rules of procedure.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes arising between an investor of one Contracting Party and the other Contracting Party relating to an investment of the former in the territory of the latter shall be settled amicably through negotiations between the parties.
2. If a dispute cannot be settled in accordance with the provisions of paragraph 1 of this Article within six months of the date on which one of the parties to the dispute has raised it, either party may refer the dispute to one of the following remedies:
 - a) The competent courts of the Contracting Party in whose territory the investment is;
 - b) The Court of Arbitration of the International Chamber of Commerce;
 - c) To an ad hoc arbitral tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.
3. Once the dispute is submitted to one of the procedures referred to in the preceding paragraph the choice shall be definitive.
4. The award shall be binding on both parties and shall not be subject to any form of appeal except those provided for the process referred to in paragraph 2 of this article. The award shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment is located.
5. After the conclusion of the judicial or arbitral proceedings and in case of failure to comply with the award rendered in terms of this article, the Contracting Parties may, exceptionally, through the diplomatic channel to ensure the implementation of the ruling.

Article 10. Implementation of other Rules

1. If, in addition to this Agreement, the provisions of the domestic law of one of the Contracting Parties or obligations under international law in force or existing between the two Contracting Parties provide for a regime, whether general or particular, which treats investments made by investors of the other Contracting Party more favourably than the provisions of this Agreement, the more favourable regime shall prevail over this Agreement.
2. Each Contracting Party shall comply with the obligations assumed with regard to investments by investors of the other Contracting Party in its territory.

Article 11. Implementation of the Agreement

This Agreement shall apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the respective legal provisions, but shall not apply to disputes arising before its entry into force.

Article 12. Consultations

The representatives of the Contracting Parties shall whenever necessary conduct consultations on any matter relating to the implementation of this Agreement. Such consultations shall be conducted at the request of either Contracting Party, and may, if necessary, propose meetings, at a time and place to be agreed through diplomatic channels.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force 30 days after the date on which both Contracting Parties have exchanged written notes on compliance with the respective constitutional or legal internal procedures necessary to that effect.
2. This Agreement shall remain in force for a period of 10 years which may be extended by the same periods, except if the agreement is denounced in writing by either Contracting Party at least 12 months before the date of expiry of the current period of validity.
3. With respect to investments made prior to the date that was made effective notice of denunciation of the Agreement, the provisions of articles 1 to 12 shall remain in force for a further period of ten years from that date.

Done in the city of Havana on 8 July 1998, in Portuguese and Spanish languages, both texts of the same terms and legal force.

For the Portuguese Republic:

Jaime Gama, Minister of Foreign Affairs.

For the Republic of Cuba:

Roberto Robaina González, Minister of Foreign Affairs.

PROTOCOL

On the signing of the Agreement on the reciprocal promotion and protection of investments between the Portuguese Republic and the Republic of Cuba, the undersigned Plenipotentiaries have agreed to further the following provisions, which constitute an integral part of this Agreement:

1. With Reference to Article 2 of this Agreement:

The provisions of Article 2 of this Agreement shall apply to investors of either Contracting Party who are already established in the territory of the other Contracting Party and wish to expand their business or become established in other sectors.

Such investments shall be conducted in accordance with the rules governing the admission of investment within the meaning of article 2 of this Agreement.

2. In Respect of Article 3 of this Agreement:

The Contracting Parties consider that the provisions of article 3 of this Agreement shall not affect the right of each of the Contracting Parties to implement the provisions that respond to their tax law and differentiate between taxpayers who are not in an identical situation as regards their place of residence or with regard to the place where their capital is invested.

3. With Respect to Article 3, Paragraphs 1 and 2 of this Agreement:

For the avoidance of doubt it is confirmed that investments and their respective gains mentioned in paragraphs above are those governed by national legislation covering foreign investment in the host country of the investment and that the treatment provided for in paragraphs above shall apply to the provisions of articles 1 to 12 of this Agreement.

4. With Respect to Article 9, Paragraph 2 of this Agreement:

In the event that both Contracting Parties are signatories to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965, the dispute referred to in article 9, may be submitted at the request of the investor, the International Centre for the Settlement of Investment Disputes (ICSID), established pursuant to the Convention.

Done in the city of Havana on 8 July 1998, in Portuguese and Spanish languages, both texts of the same terms and legal force.

For the Portuguese Republic:

Jaime Gama, Minister of Foreign Affairs.

For the Republic of Cuba: Roberto Robaina González, Minister of Foreign Affairs.