

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE FRENCH REPUBLIC ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Federative Republic of Brazil and the Government of the French Republic, hereinafter referred to as the Contracting Parties,

Desirous of strengthening economic cooperation between the two States and of creating favorable conditions for Brazilian investments in France and French investments in Brazil,

Convinced that the promotion and protection of such investments against non-commercial risks will stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

## **Article 1.**

For the application of this Agreement:

1. The term "investment" means all assets, such as assets, rights and interests of all kinds, and in particular but not exclusively:

- a) Movable and immovable property, as well as all other real rights, such as mortgages, pledges, usufructs, bonds and similar rights;
- b) Shares, goodwill above subscription value and other forms of participation, even minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;
- c) The obligations, credits and rights on any commitments that have economic value;
- d) Intellectual, commercial or industrial property rights, such as copyrights, patents, licenses, trademarks, industrial models and modules, technical procedures, registered names and goodwill;
- e) Concessions granted by law or under contract, in particular those relating to prospecting, cultivation, extraction or exploitation of natural resources, including those located in the maritime area of the Contracting Parties;

It is understood that such assets must be or have been invested in accordance with the legislation of the Contracting Party in whose territory the investment is made before or after the entry into force of this Agreement.

Any change in the manner in which the assets were invested does not affect their qualification as investment, unless such modification would be contrary to the law of the Contracting Party in whose territory the investment is made.

2. The term "investors" means:

- a) Natural persons who hold the nationality of one of the Contracting Parties;
- b) Any legal entity incorporated in the territory of one of the Contracting Parties in accordance with its legislation and having its seat there;
- c) Any legal entity incorporated in a third country and controlled directly or indirectly by natural persons who are nationals of one of the Contracting Parties or by legal persons whose headquarters are located in the territory of one of the Contracting Parties and which have been constituted in accordance with the latter's legislation;

3. The term "income" means all the amounts produced by an investment, such as profits, dividends, royalties or interest, over a period of time.

The proceeds of an investment and, in case of reinvestment, the proceeds of the investment will enjoy the same protection as the investment itself.

4. This Agreement shall apply to the territory of each of the Contracting Parties as well as to the maritime zone of each of them, here defined as the economic zone and continental shelf extending beyond the territorial waters of each of the Parties Contracting Parties and over which they hold, in accordance with international law, sovereign rights and jurisdiction for the purpose of prospecting, exploration and preservation of natural resources.

## **Article 2.**

Each Contracting Party shall encourage and admit, under its legislation and the provisions of this Agreement, the investments made by investors of the other Party in its territory and in its maritime area.

The Contracting Parties shall, with due consideration, comply with their national law, applications for entry and residence, work and movement permits submitted by natural persons who are nationals of one of the Contracting Parties in connection with an investment made in the territory or in the maritime area Of the other Contracting Party.

## **Article 3.**

Each Contracting Party undertakes to ensure, within its territory and in its maritime zone, a fair and equitable treatment, in accordance with the principles of international law, with the investments of investors of the other Party, and to Exercise of the right thus recognized is not hindered, in law or in fact. In particular, although not exclusively, any restrictions on the purchase and transport of raw materials and auxiliary materials, energy and fuels, as well as means of production and exploitation of any kind, any Obstacle to the sale and transport of products within and outside the country and any other measures having a similar effect.

## **Article 4.**

Each Contracting Party shall apply in its territory and in its maritime area to investors of the other Contracting Party, in respect of its investments and related activities, treatment no less favorable than that accorded to its own investors or to investors Of the most favored nation if it is more advantageous. In that capacity, natural persons who are nationals of one of the Contracting Parties who are authorized to work in the territory or sea area of the other Contracting Party may benefit from the material facilities proper to the exercise of their professional activities.

Such treatment shall not, however, extend to the privileges which a Contracting Party grants to investors of a third country by virtue of its participation in or association with a free trade area, customs agreement, common market or any other form of regional economic organization. The provisions of this Article shall not apply to tax matters.

## **Article 5.**

1. Investments made by investors of either Contracting Party shall enjoy full and complete protection and security in the territory and sea area of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures whose effect is to deprive investors of the other Party, directly or indirectly, of the investments belonging to them, in its territory and in its maritime zone, except for reasons of utility Public and provided that such measures are not discriminatory or contrary to a commitment made by one of the Contracting Parties to a national or legal entity of the other Contracting Party.

Any measures of expropriation that may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, equal to the actual value of the Investments in question, shall be assessed in the light of a normal economic situation prior to the date on which Such measures have been taken or become public knowledge. This indemnity, amount and payment terms shall be set, at the latest, on the date of expropriation. The indemnity must be effectively realizable, paid without delay and freely transferable. Until the date of payment, it will yield interest calculated at the LIBOR rate applicable to the currencies in question.

3. Investors of one of the Contracting Parties whose investments suffer losses due to war or any other armed conflict, revolution, state of national emergency or revolt that may occur in the territory or in the maritime zone of the other Contracting Party shall be entitled by the latter Treatment not less favorable than that accorded to its own investors or most-favored-nation investors.

## **Article 6.**

Each Contracting Party in whose territory or in whose maritime area investments have been made by an investor of the other Contracting Party shall grant such investors the free transfer of:

- a) Interest, dividends, profits and other current income;
- b) "Royalties" deriving from the immaterial rights mentioned in subparagraphs d) and e) of paragraph 1 of article 1;
- c) Payments made for the repayment of regularly contracted loans;
- d) Proceeds from the total or partial assignment or liquidation of the investment, including rents of invested capital;
- e) Indemnities due to expropriation or losses, provided for in paragraphs 2 and 3 of article 5.

Natural persons who are nationals of one of the Contracting Parties who are authorized to work in the territory or sea area of the other Contracting Party by virtue of an admitted investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration. The transfers referred to in the foregoing paragraphs shall be made without delay at the normal exchange rate, in force on the date of the transfer.

## **Article 7.**

To the extent that the legislation of one of the Contracting Parties provides for a guarantee for investments abroad, it may be granted, on a case-by-case basis, to investments made by investors of that Contracting Party in the territory or maritime zone of the other Contracting Party.

Investments of investors of one Contracting Party in the territory or sea zone of the other Party shall be entitled to the security provided for in the preceding paragraph only if the consent of the other Contracting Party has been obtained in advance.

## **Article 8.**

Any dispute relating to investments between one of the Contracting Parties and an investor of the other Contracting Party shall be settled amicably between the two parties concerned,

An unresolved dispute within six months from the date of its International Settlement for Settlement of Investment Disputes, established by the Convention for the Settlement of Disputes concerning Investments between States and Nationals of Other States, opened for signature at Washington on March 18, 1965, as of the date on which the Federative Republic of Brazil signed the said Convention.

Before that date, the dispute shall be submitted to an ad hoc Court of Arbitration established in accordance with the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL). If the Permanent Secretary of the Permanent Court of Arbitration in The Hague is a national of any of the Contracting Parties or if, for any other reason, they are prevented from performing the function assigned to them in the Article 7 of the UNCITRAL Rules of Procedure, any party to the dispute may request the President of the Court to of the Stockholm International Chamber of Commerce performing that function.

The dispute shall not be subject to international arbitration under the provisions of this Article if the national or legal entity in dispute has already submitted it to the competent national jurisdictions of the Contracting Party in which the investment was made and if such jurisdictions have already rendered a judgment of merit over the controversy.

The provisions of this Article shall not apply to disputes which have given rise to legal proceedings before the entry into force of this Agreement.

## **Article 9.**

If an insurance company of one of the Contracting Parties, as a result of a guarantee granted to an investment carried out in the territory or in the maritime area of the other Contracting Party, makes payments to one of its investors, it shall subrogate, consequently, the rights and actions of that investor.

In the course of arbitration or enforcement of an arbitral award, the Contracting Party to the dispute shall not seek any exception arising out of such payments.

## **Article 10.**

Investments committed by one of the Contracting Parties in respect of investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of the said undertaking, insofar as it provides for more favorable provisions than those provided for This Agreement.

## **Article 11.**

1. Disputes concerning the interpretation and application of this Agreement shall be resolved, if possible, through diplomatic channels.
2. An unresolved dispute within a period of six months from the date on which it is raised shall be referred to an Arbitral Tribunal at the request of either Contracting Party.
3. That Court shall be constituted for each particular case as follows: each Contracting Party shall designate an arbitrator and these two arbitrators shall indicate by mutual agreement a third-country national who shall be designated as President by the two Contracting Parties. All arbitrators shall be appointed within a period of two months from the date on which one of the Contracting Parties notifies the other Contracting Party of their intention to submit the dispute to arbitration.
4. In the absence of any other agreement, either Contracting Party may invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if for any other reason he is prevented from exercising that function, the Deputy Secretary-General shall follow him in the order of precedence, who does not hold the nationality of one of the Shall make the necessary designations.
5. The Arbitral Tribunal shall take its decisions by majority vote. Such decisions shall be final and their implementation enforceable in full for the Contracting Parties.

The Court itself shall determine its rules. He shall interpret the judgment and request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account specific circumstances, the expenses of the arbitral proceedings, including holiday of the arbitrators, shall be shared equally between the Contracting Parties.

## **Article 12.**

Each Party shall notify the other of the completion of its internal procedures required for the entry into force of this Agreement, which shall be given one month after the date of receipt of the last notification.

The agreement will have an initial term of 10 years. It shall remain in force after this period, unless one of the Parties denounces it through diplomatic channels, with one year in advance.

Upon the expiration of this Agreement, investments made during the term of this Agreement shall continue to benefit from the protection of its provisions for an additional period of 15 years.

Done at Paris on 21 March 1995, in two original copies, in the Portuguese and French languages, both texts being equally authentic.

For the Government of the Federative Republic of Brazil

For the Government of the French Republic