

# **AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF PARAGUAY ON THE PROMOTION AND PROTECTION OF INVESTMENT**

The Portuguese Republic and the Republic of Paraguay, hereinafter referred to as "contracting parties":

Desiring to intensify economic cooperation between the two States:

Desiring to create and maintain favourable conditions for investments by investors of either 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 stimulate private initiative and improving the well-being of the peoples of both countries;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. the term investment shall comprise every kind of asset and duties applied in undertakings of economic activities by investors of either Contracting Party in the territory of the other contracting party, in terms of the respective legislation applicable in the field, including in particular, though not exclusively:

- a) In movable and immovable property as well as any other rights in rem, such as mortgages and pledges;
- b) Actions, quotas or other parties representing the social capital of a company or any other forms of participation in companies, as well as the economic interests arising from the relevant activity;
- c) Rights of claim or any other rights having financial value, provided that are directly linked to a specific investment;
- d) Intellectual Property Rights, such as copyrights, patents, utility models and industrial designs, trademarks, trade names, technical know-how, processes and key value;
- e) Acquisition and development of concessions granted in accordance with the law, including concessions for research, prospecting and exploitation of natural resources;
- f) Goods that within the scope and in accordance with the respective legislation and rental contracts, are placed at the disposal of a leaser in the territory of a Contracting Party in accordance with its laws and regulations.

Any change in the form of investments does not affect their character as investments provided that such change is made in accordance with the laws and regulations of the Contracting Party in the territory of which the investment has been made.

2. the term "proceeds" shall mean the amounts produced or generated by, or in connection with investments in a given period, including in particular interests, profits, dividends, royalties, "payments or management of technical assistance and other returns related to investments.

3. the term "investors' means:

- a) Nationality of natural persons with either of the Contracting Parties, in terms of the respective legislation; and
- b) Legal entities, including companies, corporations or corporations or other associations having its seat in the territory of one of the Contracting Parties constituted and is functioning according to the laws of that Contracting Party.

4. the term "territory" shall mean the territory of each of the Contracting Parties, as defined in the 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 or jurisdiction.

## **Article 2. Implementation of the Agreement**

This Agreement shall also 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. However, this Agreement shall not apply to any dispute, claim or dispute which have been initiated prior to its Entry into Force.

## **Article 3. Promotion and Protection of Investments**

1. either Contracting Party shall promote and encourage, as far as possible investments by investors of the other contracting party in its territory and admit such investments in accordance with the respective laws and regulations. In any case accord investments to a fair and equitable treatment.

2. investments made by investors of either 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 the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party by arbitrary or unjustified discriminatory measures.

## **Article 4. 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, shall be fair and equitable and 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 treatment which is fair and equitable and 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 treatment of preference or privilege by investors of one Contracting Party to the other Contracting Party that may be granted under:

a) Participation in the free trade area, customs union, common market existing or future, and other similar international agreements, including other forms of regional economic cooperation to which either of the contracting parties or acceded to accede; and

b) Bilateral and multilateral agreements with regional or not, of a fiscal nature.

## **Article 5. Expropriation**

Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to expropriation or nationalization other equivalent measures (hereinafter referred to as expropriation) except for motives of public interest, including the social interest, according to the terms of the law, on a non-discriminatory basis and against payment of prompt, effective and adequate compensation. Such compensation shall correspond to the market value of the investment at the time immediately before the expropriation or immediately before the time when the expropriation was publicly known. In the event of an unjustified delay in payment of compensation shall include interest at a normal commercial rate.

## **Article 6. Compensation for Losses**

Investors of one Contracting Party who may suffer losses of investments in the territory of the other contracting party pursuant to war or other armed conflict, revolution, state of national emergency or other similar events considered by the International Law of that Contracting Party, shall be accorded treatment no less favourable than that accorded to its own investors or to investors of third States, according to what is more favourable as regards restitution, indemnification or other relevant factors. Such compensation payments shall be freely transferable without delay in a freely convertible currency.

## **Article 7. Transfers**

1. each Contracting Party, in accordance with the law applicable to the subject, shall guarantee to investors of the other Contracting Party the free transfer of payments related to investments, namely:

- a) The capital and additional amounts needed for the maintenance or extension of the investment;
- b) Profits as defined in paragraph 2 of article 1 of this Agreement;
- c) The amounts required for reimbursement and amortisation of loans;
- d) The proceeds of the sale of or the partial or total liquidation of the Investment;
- e) Compensation and other payments under the artículos 5y6 de this agreement; or
- f) Any preliminary payment that may have been made on behalf of the investor according to article 8 of this Agreement.

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

3. for the purposes of this article, a transfer was made without delay "" when it is normally made within the period necessary for the completion of the necessary procedures, which may not in any case exceed 60 days from the date of filing of the application of transfer.

4. without prejudice to the provisions of the preceding paragraphs of this article, the Contracting Parties shall ensure compliance with legal procedures, including civil and commercial, administrative and criminal through the enforcement of competition laws in a manner that is fair, non-discriminatory basis and in good faith principles.

## **Article 8. Subrogation**

If one contracting party or its designated agency by it to make payment to one of its investors under a guarantee or insurance to cover non-commercial risks, in relation to an investment made in the territory of the other Contracting Party, it shall be by subrogada this fact in the rights of the said investor, recognized by the legislation of the Contracting Party in whose territory the investment was made, may exercise those rights in the same terms and conditions as the original holder.

## **Article 9. Disputes between the Contracting Parties**

1. disputes that may arise éntrelas contracting parties sóbre la interpretation or application of this Agreement shall, as far as possible, be settled by negotiations through diplomatic channels.

2. if the contracting parties fail to reach 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 two members shall nominate a national of a third State as Chairman who shall be appointed by the two contracting parties. the members shall be appointed within two months and the Chairman within three months from the date on which either Contracting Party has informed the other intends to submit the dispute to an arbitral 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 proceed with the necessary nominations. if the President is an impediment or is a national of one of the Contracting Parties, the designations shall correspond to the Vice-President.

5. if this is also an impediment or is a national of one of the Contracting Parties, the designations shall correspond to the member of the Court who is still in hierarchy, provided that such Member shall not be a national of either of the Contracting Parties.

6. the Chairman of the arbitral tribunal shall be a national of a State with which both contracting parties maintain diplomatic relations.

7. the arbitral tribunal shall be decided by majority vote. the decisions shall be final and binding on both contracting parties. a contracting cada parte shall meet the costs of its own arbitrator and of the respective representation in the proceedings.

before the arbitral tribunal. both Contracting Parties shall be borne in equal parts by the cost of the Chairman, as well as any other costs. the Contracting Parties may, may agree on a different regulation concerning costs. the arbitral tribunal shall determine its own procedural rules.

## **Article 10. 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 to the dispute.
2. if the dispute cannot be resolved as provided for in paragraph 1 of this Article within six months from the date on which the disputing parties so requested, either party may refer the dispute to:
  - a) The competent courts of the Contracting Party in the territory of which the investment;
  - b) The International Centre International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration under the terms of the Convention on the settlement of investment dispute between States and Nationals of Other States done at Washington D. C. on 18 March 1965;
  - c) An ad hoc tribunal established in accordance with the rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. once expressly accepted by the other party and submitted the dispute to one of the procedures referred to in subparagraphs (a), (b) and (c) referred to in the preceding paragraph, the choice shall be final.
4. neither of the contracting parties may appeal to the diplomatic channels to resolve any issue related to the arbitration except if the process is already concluded and the contracting party has failed to abide by or comply with the ruling.
5. the award shall be binding on both parties and shall not be subject to any form of appeal other than those provided for in those conventions. the decision shall be binding in accordance with the domestic legislation of the Contracting Party in the territory of which the investment in question.

## **Article 11. Implementation of other Rules**

1. if, in addition to the present Agreement, the provisions of the domestic law of either Contracting Party or obligations under international law in force or to produce govern between the two Contracting Parties establishes a regime, general or specific, entitling investments made by investors of the other contracting party to a more favourable treatment than that provided for in this Agreement, prevail over this the most favourable regime.
2. each Contracting Party shall comply with the obligations assumed with regard to investments made by investors of the other contracting party in its territory.

## **Article 12. Consultations**

The representatives of the Contracting Parties shall, where necessary, undertake meetings on any matter relating to the implementation of this Agreement. such consultations shall be held on the proposal of one of the Contracting Parties may, if necessary, propose meetings at a place and date to be agreed upon through diplomatic channels.

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

1. this Agreement shall enter into force 30 days from the date of the last notification by the Contracting Parties which have notified each other in writing that it has complied with the internal constitutional or legal procedures necessary for its approval in their respective countries and shall remain in force for a period of 10 years.
2. in the event that either Contracting Party may terminate this Agreement, shall notify in writing of its decision to the other contracting party at least 12 months before the date of expiry of the current period. otherwise, the present Agreement shall be extended indefinitely, at this stage, the Contracting Parties shall notify each of its decision to terminate this Agreement. the termination of the Agreement shall take effect 12 months after the date of the written notification.
3. with respect to investments made prior to the date of termination of this Agreement, articles 1 to 12, precedents, shall remain in force for a period of ten years from that date.

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

Done at Lisbon on 25 November 1999, in two originals in the English and Portuguese languages, both texts being equally authentic.