

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON INVESTMENT PROMOTION AND PROTECTION**

The Government of the Federative Republic of Brazil and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to create conditions conducive to greater investment by nationals and enterprises of one State in the territory of the other State;

Recognizing that reciprocal encouragement and protection of such investments through an international agreement will foster individual entrepreneurial initiatives and promote prosperity in both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(a) The term "investment" means all types of assets and includes, in particular, but not exclusively, the following:

(i) movable and immovable property, as well as any other rights in rem, such as mortgages, pledges or securities;

(ii) shares, quotas and debentures of a company and any other form of corporate participation;

(iii) rights to credits or any performance of obligations provided for in a contract that has financial value;

(iv) intellectual property rights, goodwill, technical processes, and know-how;

(v) commercial concessions conferred by law or by contract, including concessions for research, cultivation, extraction or exploitation of natural resources;

Changes in the form in which the assets have been invested will not affect their qualification as an investment;

(b) The term "income" means the amounts generated by an investment and includes, but is not limited to, profits, interest, capital gains, dividends, royalties and fees;

(c) The term "nationals" means, for each Contracting Party, the natural persons whose status as nationals of that Contracting Party derives from the legislation in force in the territory of that Contracting Party;

(d) "Companies" means:

(i) as regards the United Kingdom: companies, firms or associations incorporated or established under the laws in force in any part of the United Kingdom or in any territory to which this Agreement extends, in accordance with Article 11;

(ii) as regard to Brazil: companies, firms, and associations established or established under the legislation in force in any part of the territory of Brazil;

(e) The term "territory" means:

(i) in the case of the United Kingdom: Great Britain and Northern Ireland, including the territorial sea and any maritime area situated beyond the boundaries of the territorial sea of the United Kingdom which has been or may be designated in the future under United Kingdom national law and in accordance with international law, an area over which the United Kingdom

may exercise rights in relation to the seabed, subsoil and natural resources and any territory to which this Agreement extends, in accordance with the provisions of Article 11;

(ii) in the case of Brazil: the territory of Brazil, including the territorial sea, as well as maritime areas over which Brazil has sovereign rights or jurisdiction in accordance with international law.

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

(1) Each Contracting Party shall encourage and create favorable conditions for nationals or companies of the other Contracting Party to invest capital in its territory and, in accordance with the right to exercise the powers conferred by its legislation, shall admit such capital.

(2) Fair and equitable treatment shall be afforded to the investments of nationals or companies of each Contracting Party who shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way prejudice, through unjustified or discriminatory measures, the administration, maintenance, use, enjoyment or disposal of investments of nationals or companies of the other Contracting Party in its territory. Each Contracting Party shall observe any obligations assumed in respect of investments of nationals or companies of the other Contracting Party.

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

(1) Subject to the provisions of paragraph (3) of this Article, neither Contracting Party shall subject in its territory the investments or income of nationals or companies of the other Contracting Party to treatment less favorable than that accorded to investments or rent of its own National authorities. Or undertakings or to investments or incomes of nationals or companies of any third State.

(2) Subject to the provisions of paragraph (3) of this Article, neither Contracting Party shall subject nationals or enterprises of the other Contracting Party to treatment less favorable than that accorded to its own nationals or companies or to investment or rental income of Nationals or companies of any third State with respect to the administration, maintenance, use, enjoyment or disposal of their investments.

(3) The provisions of this Agreement on the granting of treatment no less favorable than that accorded to nationals or enterprises of either Contracting Party or to any third State shall not be interpreted as obliging one Contracting Party to grant nationals or enterprises of the other Contracting State The benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or similar international agreement of which either Contracting Party is or may become a party;

(b) Any international agreement or adjustment totally or closely related to taxation or any domestic legislation totally or closely related to taxation;

(c) Any constitutional provision related to the acquisition of goods and services by the Government.

## **Article 4. Compensation for Losses**

(1) Nationals or enterprises of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses as a result of war or other armed conflict, revolution, national state of emergency, revolt, insurrection or disturbances in the territory of the other Contracting Party shall receive, A treatment no less favorable than that which this Contracting Party grants to its own nationals or companies or to nationals or companies of any third State in respect of refunds, indemnities, compensation or other form of consideration. The resulting payments shall be freely transferable.

(2) Notwithstanding paragraph (1) of this Article, nationals and enterprises of a Contracting Party which, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisition of their property by their forces or authorities, or

(b) Destruction of their property by their forces or authorities, such destruction not being caused by combat action or by exigency of the situation, restitution or adequate compensation shall be granted.

## **Article 5. Expropriation**

(1) The investments of nationals or companies of either Contracting Party shall not be nationalized, expropriated, or

subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for reasons of public utility related to needs Of the Party, on a non-discriminatory basis and through immediate, adequate and effective compensation. This indemnity shall correspond to the genuine value of the investment that is expropriated on a date immediately prior to expropriation or before the impending expropriation has been made public, whichever occurs first; will be calculated in freely convertible currency, will include interest at the LIBOR rate from the date of expropriation to the date of payment; shall be paid without delay, effectively realizable and freely transferable. The national or enterprise concerned shall be entitled, under the law of the Contracting Party which has expropriated it, to the prompt review of its case by a judicial or independent authority of that Party and to have its investment assessed in accordance with the principles set out in this paragraph.

(2) When a Contracting Party expropriates the assets of a company incorporated or established under the laws in force in any part of its territory, in which nationals or companies of the other Contracting Party hold shares, it shall ensure the application of paragraph 1 To the extent necessary to ensure prompt, adequate and effective compensation of the investments of nationals or companies of the other Contracting Party who are the owners of such shares.

## **Article 6. Free Transfer of Investments and Income**

Each Contracting Party shall guarantee, in respect of the investments of nationals or companies of the other Contracting Party, the free transfer of its investments and income. Transfers shall be made without delay in the convertible currency in which the principal was invested or in any other freely convertible currency agreed between the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, the transfers shall be made at the exchange rate applicable on the date of the transfer in accordance with the exchange regulations in force. To the extent that formalities must be complied with for the purpose of making transfers, they should be processed without delay.

## **Article 7. Settlement of Disputes between an Investor and the Host State of Investments**

(1) Subject to paragraph (3) of this Article, disputes which have not been settled amicably between a national or enterprise of one Contracting Party and the other Contracting Party in respect of an obligation of the latter Contracting Party under this Agreement to an investment made by one of the former shall be submitted to international arbitration, after a period of three (3) months of written notification of the complaint, if so desired by the national or company in question.

(2) If the dispute is submitted to international arbitration, the national or company and the Contracting Party in dispute may agree to submit it:

(a) To the International Center for the Settlement of Investment Disputes (taking into account, where applicable, the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington DC on March 18, 1965, and the Additional Mechanism for the Administration of Conciliation, Arbitration and Fact-Finding); or

(b) To the Arbitration Court of the International Chamber of Commerce; or

(c) To an international arbitrator or to an ad hoc arbitration tribunal, to be designated by special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

If, within three (3) months of the written notification of the complaint, no agreement is reached on one of the alternative procedures provided for above, the dispute shall be submitted, at the written request of the national or company concerned, to the Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, in the form in force at the time. The parties to the dispute may agree in writing to modify these Rules.

(3) A dispute shall not be submitted to international arbitration in accordance with this Article if the national or company in dispute has already submitted it to the national courts of the Contracting Party in whose territory the investment was made and those courts have rendered a judgment in respect of the dispute.

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

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If it is not possible to resolve a dispute between the Contracting Parties in that manner, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) This arbitration tribunal shall be constituted, for each individual case, as follows: within two (2) months from the receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator to the tribunal. These two arbitrators shall in turn appoint a national of a third State, who, upon the approval of both Contracting Parties, shall be designated as President of the tribunal. The President shall be appointed within a period of two (2) months from the date of appointment of the other two members.

(4) If the necessary appointments are not made within the time limits specified in paragraph (3) of this Article, any 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 a national of one of the Contracting Parties or if for any other reason he is unable to perform this function, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is a national of one of the Contracting Parties or is also prevented from performing that function, the Member of the International Court of Justice immediately following him in the order of precedence and who is not a national of one of the Contracting Parties shall be Requested to make the necessary designations.

(5) The arbitral tribunal shall decide by majority vote. Its decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs of its own arbitrator in court and of its representation in the arbitral proceedings; the expenses of the President and other costs shall be shared equally between the Contracting Parties. The court may, however, decide that a higher share of the costs shall be paid by one of the two Contracting Parties, and that decision shall be binding on both Contracting Parties. The court will determine its own procedures.

## **Article 9. Subrogation**

(1) If a Contracting Party or an agency designated by it ("the first Contracting Party") makes a payment as a result of an indemnity granted to an investment made in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party Shall recognize:

- (a) The assignment to the first Contracting Party, by law or legal act, of all the rights and claims of the indemnified party, and
- (b) That the first Contracting Party may exercise such rights and enforce such claims, by virtue of the subrogation, to the same extent as the indemnified party.

(2) The first Contracting Party shall in all circumstances be entitled to the same treatment as regards:

- (a) Rights and claims acquired by virtue of the subrogation, and
- (b) Any payments received as a result of these rights and claims

That the indemnified party would be entitled to receive, under this Agreement, the investment in question and the incomes related to it.

(3) If the legislation of the second Contracting Party does not permit the subrogation provided for in paragraphs (1) and (2) of this Article in real property rights, the first Contracting Party shall be entitled to be indemnified for any loss resulting from this restriction.

(4) Any payments received in currency not convertible by the first Contracting Party to the rights and claims acquired shall be at the free disposal of the first Contracting Party to cover any expenses incurred in the territory of the second Contracting Party.

## **Article 10. Application of other Rules**

If the legal provisions of any Contracting Party or obligations under international law existing or which may be established in future between the Contracting Parties in addition to this Agreement contain general or specific rules which they grant to the investments of nationals or companies of the other Contracting Party More favorable treatment than that provided for in this Agreement, such rules shall prevail over this Agreement to the extent that they are more favorable.

## **Article 11. Territorial Extension**

Upon entry into force of this Agreement, or at any time after its entry into force, the provisions of this Agreement may be extended to territories for international relations under the responsibility of the Government of the United Kingdom, by agreement between the Parties Contracting Parties to be subject to Exchange of Notes.

## **Article 12. Scope of Application**

This Agreement shall apply to investments made in the territory of one Contracting Party in accordance with its laws and regulations by nationals or companies of the other Contracting Party before or after the entry into force of this Agreement. It shall not apply, however, to disputes which arose prior to its entry into force.

### **Article 13. Implementation**

Each Contracting Party shall notify the other in writing of the completion of the constitutional procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of the last of the two notifications.

### **Article 14. Duration and Termination**

This Agreement shall remain in force for a period of ten 10 (ten) years. After this period, it shall remain in force until the expiration of a period of 12 (twelve) months after the date on which one of the Contracting Parties denounces it in writing to the other. However, in respect of investments made while the Agreement is in force, its provisions shall remain in force for such investments for a period of 15 (fifteen) years after the expiration date and without prejudice to the subsequent application of the general rules of law International.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at London, on 19 July 1994, in two original copies, in the Portuguese and English languages, both texts being equally authentic.

For the Government of the Federal Republic of Brazil

Celso L.N. Amorim

Secretary of State for Foreign Affairs

For the Government of the United Kingdom of Great Britain and Northern Ireland

Douglas Hurd

Secretary of State for Foreign Affairs and the Commonwealth