Agreement between the republic of Portugal and the Socialist Popular Libyan Arab great Jamahiriya on the Reciprocal Promotion and Protection of Investments

The Portuguese Republic and Great Socialist Peoples

Libyan Arab Jamahiriya hereinafter referred to as the «Parties»:

Desiring to create encouraging conditions to develop economic cooperation between them, especially investments made by investors of one Party in the territory of the other Party;

Both Parties realising that mutual promotion and protection of such investments will activate economic cooperation between both countries;

Have agreed as follows:

Chapter I

Scope and object

Article 1. Definitions

For the purpose of this Agreement, the following terms have the following corresponding explanation:

1. «Investments»: all kinds of assets and rights owned by investors of one Party and invested in the territory of the other Party in accordance with the laws of the latter.

This definition especially includes the following: a) Tangible and intangible assets and rights such as mortgage, liens, pledges and similar rights;

b) Shares, stocks, or other forms of interest in the equity of companies;

c) Debits, financial claims or any payments according to a loan agreement or according to another contract having an economic value and related to the investment;

d) Intellectual property rights such as copyrights, patents, trade marks and names, trade secrets, good will, industrial designs, technical processes and know-how;

e) Any rights conferred by a permission or licence, or in compliance with a contract, in accordance with the law including the rights of drilling, extracting and exploiting natural resources.

Any changes in the form in which assets are invested shall not affect their character as investments, provided that such a change does not contradict the laws and regulations of the Party in which territory the investment was made. 2. «Investor»:

a) Any natural person having the nationality of either Party; and

b) Any legal person established in accordance with the laws of one of the Parties and which have a main office in the territory of that Party.

3. «Territory»: the term territory means the land territory, the internal waters, the territorial sea, the continental shelf and all the other areas upon which the Parties exercise their sovereignty, sovereign rights or jurisdictional rights in accordance with the international law.

4. «Returns»: amounts resulting from investments, including profits, dividends, interests, royalties and technical assistance fees and other forms of income related to the investment.

The returns of investments shall be subject to the same protection given to investment. The reinvestments of the returns and their income shall enjoy the same treatment given to the first investment.

Article 2. Scope

This Agreement shall be applied to all investments made by investors from one of the Parties in the territory of the other Party in accordance with the respective legal provisions, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which have arisen before its entry into force.

Chapter II General provisions

Article 3. Promotion and Protection of Investments

To achieve the goals of the Agreement:

1. Each Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Party and shall admit such investments into its territory in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment.

2. Investments made by investors of one of the Parties in the territory of the other Party in accordance with its laws and regulations shall enjoy full protection and security in the territory of the latter.

3. Neither Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Party.

Article 4. National and Most Favoured Nation Treatment

1. Both Parties shall accord to investments made by investors of the other Party in its territory fair and equitable treatment not less favourable than the one accorded to the investments of its own investors or investments of investors of any third State.

2. Each Party shall accord to investors of the other Party - in its territory - as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than the latter Party accords to its own investors or to investors of any third State.

3. The provisions of this article shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of:

a) Existing or future free trade area, customs union, common market or other similar international agreements including other forms of economic cooperation to which either of the Parties is or may become a Party; and

b) Any agreement or international arrangements, relating wholly or partially to taxation.

4. The provisions of this article shall be without prejudice to the right of either Party to apply the relevant provisions of their tax law which distinguish 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 the provisions of laws and regulations of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

2. If the provisions of any international agreement or contract entered into by both Parties or by one Party and an investor of the other Party provide better terms than those provided by this Agreement, such provisions shall, to the extent they are more favourable, prevail over this Agreement.

Article 6. Nationalisation and Expropriation

1. According to this Agreement, investments made by investors of either Party in the territory of the other Party shall not be nationalised, expropriated, or subject to any arrangement that limit the right of ownership, management or use of the

investment (measures hereinafter referred to as expropriation), permanently or temporarily, except by virtue of law for a public purpose, on a non-discriminatory basis and against prompt compensation.

2. Such compensation shall amount to the market value of the expropriated investments immediately before the expropriation or before it became publicly known, whichever occurs first. The compensation shall be paid without delay, shall include the usual commercial interest from the date of the expropriation until the date of payment and shall be prompt, effective, adequate and freely transferable.

3. The investor whose investments are expropriated shall have the right under the laws of the expropriating Party to the prompt review by a judicial or other competent authority of that Party of his or its case and of valuation of his or its investments in accordance with the principles set out in this article.

Article 7. Compensation for Damages or Losses

Each Party shall provide to investors of the other Party, whose investments suffer losses in the territory of the first Party owing to war or armed conflict, revolution, a state of national emergency, disobedience or disturbances or any other event considered as such, treatment that restitutes the conditions of these investments that existed before the damage had occurred, or compensation, or any other settlement that is no less favourable than that Party accords to the investments of its own investors, or of any third State, whichever is more favourable. Any payment made under this article shall be, without delay, freely transferable in convertible currency.

Article 8. Transfers

1. Each Party guarantees to investors of the other Party the free transfer of sums related to their investments, in the same currency they were brought in, or in any convertible currency in particular, though not exclusively:

a) The original invested capital and any other related amounts necessary to maintain or increase the investments;

b) The returns defined in paragraph 4, article 1 of this Agreement;

c) Funds allocated for the payment of debts and loans related to operations recognised by both Parties as an investment;

d) Compensation or other payment referred to in articles 6 and 7 of this Agreement;

e) The proceeds obtained from the sale or from the total or partial liquidation of the investment;

f) Any payments that may be made in the name of the investor in accordance with article 9 of this Agreement;

g) An appropriate amount of the income and the property of foreign workers dully authorised to work in connection with the investment in the territory of the other Party.

2. Payments stated in item (1) of this article would be transferred without delay, according to the Exchange rate effective on the day of the transfer in the territory of the Contracting Party where the investment was made and in convertible currency.

Article 9. Subrogation

If either Party or its designated agency makes any payment to one of its investors as a result of a guarantee in respect of an investment made in the territory of the other Party, the former Party shall be subrogated to the rights and actions of this investor, and may exercise them according to the same terms and conditions as the original holder.

Article 10. Settlement of Disputes between the Parties

1. Disputes between the Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled amicably.

2. If the Parties fail to reach such settlement within six months from the date that one Party notifies the other Party in writing, the dispute shall be submitted to an arbitral court, in accordance with the provisions of this Article upon the request of either Party.

3. The arbitral court shall be constituted as follows:

Each Party shall appoint one member and these two members shall propose a national of a third State as chairman of the arbitral court to be appointed by the two Parties. The members shall be appointed within two months and the chairman

shall be appointed within five months from the date on which either Party notifies the other of its wish to submit the dispute to an arbitral court. 4. If the deadlines specified in paragraph 3 of this article are not complied with, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from doing so, or is a national of either Party, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President is also a national of either Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is not a national of either Party. 5. The arbitral court shall rule in accordance with this Agreement and the rules of international law and its decisions shall be made by majority of votes and shall be final and binding on both Parties.

6. The arbitral court shall define the rules and arrangements applicable to its work procedures.

7. Each Party shall be responsible for the costs of its own arbitrator and of its representatives at the arbitral proceedings. Both Parties shall assume an equal share of the expenses incurred by the chairman, as well as any other expenses.

Article 11. Settlement of Disputes between a Party and Investors of the other Party

1. Any dispute in respect of investments arising between one Party and investors of the other Party shall be settled amicably.

2. If it is not possible to reach such settlement within six months from the date of a written notification requesting for settlement, the dispute should be submited to one of the following, subject to the choice of the investor:

a) Acompetent court of the Party in which territory the investment was made; or

b) The International Chamber of Commerce in Paris; or

c) The International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D. C., on March 18, 1965. If the Party to the dispute is not a party to the above mentioned Convention, the dispute shall be settled in accordance with the Additional Facilities for the Administration of Proceedings by the Secretariat of the ICSID.

3. The awards shall not be subject to any appeal or remedy other than those provided for in domestic laws or regulations in the case of a) above or in the said Conventions.

4. The awards shall be enforceable for both parties in the dispute and both Parties should abide by implementing it.

5. Once the proceedings have terminated and a Party has failed to abide by or to comply with the award rendered in compliance with this article, Parties may exceptionally use diplomatic channels in order to guarantee the enforcement of the said award.

Chapter III Final provisions

Article 12. Consultations

Representatives of the Parties shall, whenever necessary, hold consultations on any matter related to the interpretation and application of this Agreement. These consultations shall be held on the proposal of one of the Parties, which shall, if necessary, propose meetings at a place and a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force

This Agreement shall enter into force 30 days after the Parties notify each other in writing and by diplomatic channels that their respective internal constitutional or legal procedures have been fulfilled.

Article 14. Duration, Termination and Amendments

1. This Agreement shall remain in force for a period of 10 years, which shall be extended for equal periods, unless, 12 months before the expiration of the period, either Party notifies the other in writing and by diplomatic channels of its intention to terminate the Agreement.

2. In respect of investments made prior to the date of termination of this Agreement the provisions of articles 1 to 12 shall

remain in force for a further period of 10 years from the date of termination of this Agreement.

3. The present Agreement can be revised if required by any of the Parties. The amendments shall enter into force in accordance with the article 13.

Done in duplicate at this ..... day of ..... 2003, in the Portuguese, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.