

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

Preamble

The Government of the Federative Republic of Brazil and the Government of the Kingdom of Denmark (hereinafter referred to as the "Contracting Parties"),

Desiring to create favorable conditions for investment in both States and to intensify cooperation between their respective private enterprises with a view to stimulating economic cooperation for the mutual benefit of both States,

Recognizing that a fair and equitable treatment of investments on a reciprocal basis will serve this purpose,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

- a) The term "investment" means all types of assets and includes, but not exclusively,
  - i. Tangible and intangible, movable and immovable property and any other rights such as concessions, mortgages, liens, sureties, usufructs, guarantees and any other similar rights;
  - ii. A company or business enterprise, or shares, securities or other forms of participation in a company or commercial enterprise, as well as securities and debts of a company or business enterprise;
  - iii. Reinvested income, debt securities or rights in relation to the performance of any activities under a contract of economic value;
  - iv. Intellectual property rights, including copyrights, patents, trademarks, technology, trademarks, goodwill, know-how and other similar rights;
  - v. Concessions or other rights conferred by law or by contract, including concessions for exploration, cultivation, extraction or exploitation of natural resources.
- b) Changes in the form in which the assets have been invested will not affect their qualification as investment;
- c) The term "rents" means the amounts generated by an investment and includes, but not exclusively, profits, interest, capital gains, dividends, royalties or fees;
- d) The income and amounts generated from reinvestments shall have the same protection of the investments under the provisions of this Agreement;
- e) The term "investor" means, in respect of each Contracting Party:
  - i. Natural persons with citizenship or nationality of a Contracting Party, or permanently resident in their territory, in accordance with their legislation;
  - ii. Any entity established under the law of a Contracting Party and recognized by it as a legal entity, such as public limited companies, commercial companies, associations, development finance institutions, foundations or similar entities irrespective of whether or not its liability is limited And whether or not they are for-profit.

f) The term "territory" means for each Contracting Party the territory under its sovereignty as well as an exclusive maritime area of 200 nautical miles over which the Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

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

1. Each Contracting Party shall admit investments of investors of the other Contracting Party in accordance with its laws and administrative practice and shall encourage such investments, including by means of measures facilitating the establishment of representative offices.
2. Investments of investors of each Contracting Party shall enjoy, at all times, 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 investors of the other Contracting Party in its territory.
3. Each Contracting Party shall observe any obligations assumed in respect of investments of investors of the other Contracting Party.

## **Article 3. Investment Management**

1. In their territory, each Contracting Party shall accord fair and equitable treatment to investments made by investors of the other Contracting Party, which shall in no case be less favorable than that accorded to its own investors or to investors of any third State, Prevailing the treatment more favorable to the investor.
2. In its territory, each Contracting Party shall accord to investors of the other Contracting Party, as regards the administration, maintenance, use, enjoyment or disposition of its investments, a fair and equitable treatment, which shall in no case be less favorable Than that granted to its own investors or to investors of any third State, prevailing, among those standards, the most favorable to the investor.

## **Article 4. Exceptions**

The provisions of this Agreement relating to the granting of treatment no less favorable than that extended to the investors of each Contracting Party or to any third State shall not be construed as obliging a Contracting Party to grant to investors of the other Contracting Party the benefit Of any treatment, preference or privilege resulting from:

- a) Participation in any existing or future regional economic integration organization or customs union of which one of the Contracting Parties is or may become a member;
- b) Any international agreement or adjustment totally or closely related to taxation or any domestic legislation totally or closely related to taxation.

## **Article 5. Expropriation and Indemnity**

1. Investments of investors of each Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for public interest purposes, on a non- In accordance with the due legal procedures and through immediate, adequate and effective indemnification.
2. This indemnity shall correspond to the fair market value of the investment that was expropriated on the date immediately prior to expropriation or before the impending expropriation was made public; will be calculated in freely convertible currency and will include interest at the LIBOR rate from the date of expropriation to the date of payment.
3. The affected investor shall be entitled under the law of the Contracting Party which has expropriated to request the prompt review by a judicial or independent authority of that Contracting Party of its case, the assessment of its investment and the payment of the indemnity, in accordance with the principles set forth in paragraph 1 of this Article.
4. When a Contracting Party expropriates the assets of a company incorporated or established in its territory, in accordance with the legislation in force, in which nationals or companies of the other Contracting Party hold an investment, including through equity participation, the provisions of this Article shall be Applied to guarantee an immediate, adequate and effective indemnification to these investors for any loss or diminution of the fair market value that they have experienced their investments due to expropriation.

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

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or another armed conflict, revolution, state of national emergency, revolt, insurrection or disturbances in the territory of the other Contracting Party shall receive treatment Not less favorable than that which this Contracting Party grants to its own investors or to investors of any third State in respect of restitution, indemnification, compensation or other form of compensation, whichever is the more favorable to the investor.

2. Without prejudice to paragraph 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers losses in the territory of the other Contracting Party resulting from:

- a) Request of its investment or part thereof by the latter's forces or authorities, or
- b) Destruction of its investment or part thereof by the forces or authorities of the latter, unnecessarily in the light of the urgency of the situation, shall be entitled to restitution or indemnification, which in any case will be immediate, adequate and effective.

## **Article 7. Transfer of Capital and Income**

1. Each Contracting Party shall permit, in respect of investments made in its territory by investors of the other Contracting Party, the free transfer, into and out of its territory:

- a) Of the initial capital or any additional capital required to maintain or develop an investment;
- b) Of the initial capital or of the revenues measured by means of the sale or total or partial liquidation of an investment;
- c) Interest, dividends, profits or other income;
- d) Payments made for the purposes of repayment of credits for investments and interest due;
- e) Of payments resulting from the rights enumerated in Article 1, letter "a", item iv of this Agreement;
- f) Unpaid rents and other remuneration of employees employed abroad in connection with an investment;
- g) Compensations, restitutions, indemnities and other reimbursements resulting from the provisions of Articles 5 and 6.

2. Transfers of payments in accordance with paragraph 1 of this Article shall be effected without delay and in freely convertible currency.

3. Transfers shall be made at the exchange rate applicable on the date of transfer to the currency to be transferred in the spot transaction market.

## **Article 8. Subrogation**

1. If a Contracting Party or agency designated by it makes a payment to its own investors as a result of a guarantee given to an investment made in the territory of the other Contracting Party, the latter shall recognize:

- a) The assignment to the first Contracting Party, or the agency designated by it, by law or legal act, of all rights and claims of the investor, and
- b) That the first Contracting Party or agency designated by it is qualified by subrogation to exercise the rights and to present the claims of that investor.

2. Such rights shall be exercised in accordance with the law of the Contracting Party in whose territory the investment was made.

## **Article 9. Disputes between a Contracting Party and an Investor**

1. Any dispute arising between an investor of one Contracting Party and the other Contracting Party relating to an investment made in the territory of the latter shall, as far as possible, be settled amicably.

2. If the dispute between an investor of one Contracting Party and the other Contracting Party is not resolved within a period of three (3) months, the investor may submit it to the competent courts of the Contracting Party in whose territory

the investment was made or to the International arbitration. In the latter case, the investor may choose between submitting the controversy:

a) To the International Center for Settlement of Investment Disputes established by the Convention for the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington DC on March 18, 1965, as soon as the Republic Federative Republic of Brazil becomes a party to this Convention. As long as this does not occur, the controversy may be submitted to the Additional Mechanism for the Administration of Conciliation, Arbitration and Fact-Finding, or

b) To an ad hoc arbitrator or arbitration tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law.

3. An investor who has submitted a dispute to the national court may still refer one of the arbitration tribunals referred to in paragraph 2 of this Article if, before a decision is rendered by a national court, an investor declares that he Pursue its action before the national courts.

4. The arbitral award shall be final and binding on the parties to the dispute and shall be enforced in accordance with national law.

## **Article 10. Disputes between the Contracting Parties**

1. The Contracting Parties shall endeavor, as far as possible, to resolve, through negotiations, any disputes arising between them concerning the interpretation and application of this Agreement.

2. If it is not possible to resolve the dispute within a period of three (3) months after it has been raised, 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:

a) 3 (Three) months after receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator to the tribunal. These two arbitrators shall select 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 three (3) months from the date of appointment of the other two arbitrators;

b) If the necessary appointments are not made within the specified time limits, 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 he is otherwise prevented from performing that 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 if he is also prevented, the Member of the International Court of Justice immediately following him in the order of precedence, who is not a national of one of the Contracting Parties, shall be requested to do so. The necessary designations;

c) The arbitration tribunal shall apply the provisions of this Agreement, other Agreements signed between the Contracting Parties and the procedural rules established under international law. He shall decide by majority vote and determine his own procedures;

d) The decisions of the court shall be final and binding on the Contracting Parties to the dispute;

e) Each Contracting Party shall bear the costs of the arbitrator designated by it for the composition of the tribunal and its representation in the arbitral proceedings. The costs relating to the President and other costs shall also be shared between the Contracting Parties.

## **Article 11. Consultation**

Each Contracting Party may propose consultations with the other Contracting Party on any matter affecting the application of this Agreement. Such consultations shall be held on the proposal of one of the Contracting Parties, at a time and place agreed through diplomatic channels.

## **Article 12. Applicability of the Agreement**

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party before or after its entry into force. However, divergence or controversies arising before its entry

into force shall not apply.

## **Article 13. Amendments**

At the time of entry into force of this Agreement or at any time after its entry into force, it may be amended as agreed between the Contracting Parties. The Contracting Parties shall notify one another of the fulfillment of the constitutional requirements necessary for the entry into force of such amendments. Amendments shall enter into force thirty (30) days after the date of receipt of the last notification.

## **Article 14. Territorial Scope**

1. This Agreement shall not apply to the Faroe Islands and Greenland.
2. The provisions of this Agreement may be extended to the Faroe Islands and Greenland by agreement between the Contracting Parties, subject to exchange of Notes.

## **Article 15. Implementation**

The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been met. The Agreement shall enter into force thirty (30) days after the date of the last notification.

## **Article 16. Duration and Termination**

1. This Agreement shall remain in force for a period of 10 (ten) years. It shall remain in force after this period until one of the Contracting Parties denounces it in writing to the other. The notification of withdrawal shall take effect one (1) year after the date of notification.
2. In respect of investments made before the date on which the notification of termination of this Agreement takes effect, the provisions of Articles 1 to 12 shall remain in force for an additional period of 15 (fifteen) years, as against that date.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Brasilia, on May 4, 1995, in two original copies, in the Portuguese, Danish and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

## **Protocol**

In signing the Agreement on the Promotion and Reciprocal Protection of Investments between the Government of the Federative Republic of Brazil and the Government of the Kingdom of Denmark, the signatories have agreed on the following provisions which form an integral part of this Agreement:

1. Without prejudice to paragraph 1 of Article 3 of this Agreement, the Brazilian Government reserves the right to grant a more favorable treatment to Brazilian companies in the purchase of goods and in the contracting of services by the public authority, pursuant to Article 171, paragraph 2, of the Constitution of the Federative Republic of Brazil.
2. This Protocol shall cease to have effect in the event that Article 171, paragraph 2, of the Constitution of the Federative Republic of Brazil is revoked or amended by amendment or constitutional revision. The Government of the Federative Republic of Brazil shall notify the Government of the Kingdom of Denmark immediately through diplomatic channels of the occurrence of amendment or revision of the said Article of the Brazilian Constitution.

Done at Brasilia, on 04 May 1995, in duplicate in the Portuguese, Danish and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.