

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

## **PREAMBLE**

The Government of the Federative Republic of Brazil

And

The Swiss Federal Council (hereinafter referred to as "the Contracting Parties")

Desirous of intensifying economic cooperation for the mutual benefit of both States;

In order to create and maintain favorable conditions for the investments of investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and protection of such investments against non-commercial risks can help stimulate entrepreneurship and promote economic prosperity in both States,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investor" refers to each individual Contracting Party to: natural persons who, in accordance with the law of that Contracting Party, are deemed to be its nationals, legal persons, including companies, companies, trade associations and other organizations, Constituted or otherwise duly organized under the laws of one of the Contracting Parties and having their headquarters in the territory of that Contracting Party, legal persons which have not been established in accordance with the law of that Contracting Party but are Effectively controlled by individuals as defined in subsection (a) above or by legal entities as defined in subsection (b) above. Natural persons who, in accordance with the law of that Contracting Party, are considered as nationals of that State; Legal persons, including companies, any companies, trade associations and other organizations, incorporated or otherwise duly organized under the laws of one of the Contracting Parties and having their headquarters in the territory of that Contracting Party; Legal persons that have not been established under the law of that same Contracting Party but are actually controlled by natural persons as defined in subsection (a) above or by legal entities as defined in subsection (b) above.

2. The term "investment" means all types of assets and includes in particular, but not exclusively, movable or immovable property, as well as any other rights in rem, such as mortgages, pledges, bonds or usufructs, shares and other forms of equity interest; Rights to credits, including securities and debentures, and rights in relation to the performance of any activities that have economic value, copyright, industrial property rights (such as patents, utility models, industrial designs, trademarks or services, Trade names, indications of origin), know-how and goodwill, concessions or similar rights conferred by law or under contract, including concessions for research, cultivation, extraction or exploitation of natural resources. Changes in the form in which assets Have not been invested will not affect their qualification as an investment. Movable or immovable property, as well as any other rights in rem, such as mortgages, pledges, securities or usufruct; Shares and other forms of equity interest; Rights over credits, including bonds and debentures, and rights in relation to the performance of any activities that have economic value; Copyrights, industrial property rights (such as patents, utility models, industrial designs, trade or service marks, trade names, indications of origin), know-how and goodwill; Concessions or similar rights conferred by law or under contract, including concessions for the 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.

3. The term "income" means the amounts generated by an investment and particularly, but not exclusively, includes profits,

interest, capital gains, dividends, royalties and remuneration.

4. The term "territory" means the territory of each Contracting Party, comprising the maritime areas adjacent to the coast of the State concerned, in so far as that State may exercise sovereign rights or jurisdiction over them in accordance with international law.

## **Article 2. Scope of Application**

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

## **Article 3. Promotion, Admission**

1. Each Contracting Party shall promote in its territory investments of investors of the other Contracting Party to the greatest extent possible and shall admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall, in accordance with its laws and regulations, grant the necessary authorizations for such investments, including authorization for the execution of licensing agreements and contracts for technical, commercial or administrative assistance, as well as the necessary authorizations for the activities of consultants Or experts.

## **Article 4. Protection, Treatment**

1. Investments and income of investors of each Contracting Party shall be accorded at all times a fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way prejudice, through the taking of unjustified or discriminatory measures, the administration, maintenance, use, enjoyment or disposal of investments made in its territory by investors of the other Contracting Party.

2. In their territory, each Contracting Party shall accord to investments or income of investors of the other Contracting Party treatment no less favorable than that accorded to the investments or income of its own investors or investors of any third State, prevailing for that purpose , The most favorable treatment for the investor in question.

3. In their territory, each Contracting Party shall accord to investors of the other Contracting Party, as regards the administration, maintenance, use, usufruct or disposition of its investments, treatment no less favorable than that accorded to its own investors or to investors of Any third State, where the most favorable treatment for the investor concerned prevails.

4. If a Contracting Party grants special advantages to investors of a third State by virtue of an agreement establishing a free trade area, customs union, common market or similar regional organization, or by virtue of an agreement to avoid double taxation, it shall not be Obligated to grant such advantages to investors of the other Contracting Party.

## **Article 5. Expropriation, Compensation**

1. Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measures of the same nature or similar effect against investments of investors of the other Contracting Party, unless such measures are adopted on the grounds of public interest, on a Discriminatory and in accordance with due legal procedures and provided that they are accompanied by provisions for the payment of effective and adequate indemnification. This indemnity shall correspond to the market value of the expropriated investment immediately before the measure of expropriation has been taken or made public, whichever occurs first. In addition, the indemnity will include interest from the date of expropriation, will be paid without delay, in a freely convertible currency and will be freely transferable.

2. If a Contracting Party expropriates or nationalizes assets of a company incorporated or constituted under the law in force in any part of its territory and in which investors of the other Contracting Party hold shares or other equity securities, the first Contracting Party shall ensure that the indemnity Referred to in paragraph 1 of this article is paid to persons entitled to it.

3. If the investments of an investor of one Contracting Party in the territory of the other Contracting Party suffer losses due to war or other armed conflict, revolution, national state of emergency, revolt, insurrection or disorder in the territory of the other Contracting Party, the investor in question Shall receive, in respect of refunds, indemnities, compensation or other consideration, treatment no less favorable than that which would be accorded in the same circumstances to an investor of the other Contracting Party or of any third State.

## **Article 6. Free Transfer**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments related to an investment, in particular the following:

- a) Income;
- b) Loan repayments;
- c) Amounts to cover expenses related to the administration of the investment;
- d) Royalties and other payments arising from the rights referred to in Article 1, paragraph 2, subparagraphs (c), (d) and (e) of this Agreement;
- e) Additional capital contributions required to maintain the investment;
- f) Revenues from the sale or partial or total liquidation of the investment.

2. To the extent that formalities for effecting the transfer are to be complied with, such formalities should be processed without delay.

## **Article 7. Principle of Subrogation**

If a Contracting Party pays compensation to one of its investors in connection with an investment in the territory of the other Contracting Party, by reason of a guarantee against non-commercial risks, that Contracting Party shall recognize the subrogation of the former in the rights or Investor's securities. If national law does not allow subrogation in rights or title, the Contracting Party concerned shall be entitled to pecuniary compensation.

## **Article 8. Disputes between One Contracting Party and an Investor of the other Contracting Party**

1. With a view to a friendly settlement of disputes between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 9 of this Agreement ("Disputes between the Contracting Parties"), consultations shall be held between the parties to the dispute.

2. If such consultations do not result in a settlement within a period of six (6) months from the date of request, the investor may refer the dispute to the national 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:

- a) The International Center for the Settlement of Investment Disputes, established by the Convention on the Settlement of Disputes concerning Investments between States and Nationals of Other States, opened for signature at Washington on March 18, 1965, as soon as the Federative Republic of Brazil Become a Party to that Convention. As long as this does not occur, the controversy may be submitted to the Additional Mechanism for the Administration of Conciliation, Arbitration and Verification Processes of that Center;
- b) An ad hoc arbitration tribunal which, in the absence of a different agreement between the parties to the dispute, shall be established in accordance with the arbitration rules established by the United Nations Commission on International Trade Law (UNCITRAL).

3. An investor who has referred the dispute to national jurisdiction may nevertheless refer one of the arbitration tribunals referred to in paragraph 2 of this article if, before a decision has been rendered by a national court, it declares that it will not proceed With its action before the national courts.

4. The Contracting Party involved in the dispute may not at any time during legal proceedings claim, as an element of defense, its immunity or the fact that the investor has received compensation under an insurance contract covering totally or partially The damage or loss it has incurred.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and other relevant agreements between the Contracting Parties; Under any particular agreement that has been concluded on the investment in question; In the legislation of the Contracting Party involved in the dispute, including its conflict of law rules; And the principles and rules of international law applicable to the case.

6. Neither Contracting Party may use the diplomatic channel to resolve a dispute submitted to international arbitration,

unless the other Contracting Party does not comply with and fails to comply with the arbitral award.

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

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

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, wherever possible, be controversial. Consultations or negotiations.

2. If a dispute between the Contracting Parties can not be settled in such a manner within a period of six (6) months, it may be referred to an arbitral tribunal at the request of either Contracting Party.

3. This arbitration tribunal shall be constituted, for each individual case, as follows:

a) Each Contracting Party shall designate an arbitrator and these two arbitrators shall appoint a national of a third State, who, upon approval of both Contracting Parties, shall be designated as President of the tribunal;

b) The said arbitrators shall be appointed within a period of three (3) months and the President shall be appointed within four (4) months from the date on which either of the Contracting Parties has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the necessary appointments are not made within the time limits specified in paragraph 3 of this article, either Contracting Party may, in the absence of any other relevant agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from exercising that function, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is a national of either Contracting Party, or if he is also prevented from attending, the member of the International Court of Justice immediately following the order of precedence who is not a national of either Contracting Party, You will be asked to make the necessary assignments.

5. Save as otherwise agreed between the Contracting Parties, the tribunal shall determine its own procedures.

6. Each Contracting Party shall bear the costs of the arbitrator designated by it and its representation in the arbitral proceedings. The costs relating to the President and other costs shall also be shared between the Contracting Parties, unless otherwise agreed by the Contracting Parties.

7. The decisions of the tribunal shall be final and binding on both Contracting Parties.

## **Article 10. Other Obligations**

1. If the provisions of the laws of either Contracting Party or of international agreements grant the investments of investors of the other Contracting Party more favorable treatment than provided for in this Agreement, such provisions shall take precedence over this Agreement to the extent that they are more favorable.

2. Each Contracting Party shall observe any other obligation it has undertaken in respect of investments in its territory by investors of the other Contracting Party.

## **Article 11. Final Dispositions**

1. This Agreement shall enter into force thirty (30) days after the date on which the Contracting Parties notify each other that their constitutional procedures necessary for the conclusion and entry into force of international agreements have been complied with. The Agreement will remain in force for a period of 10 (ten) years, after which it will be extended indefinitely. After the initial term of ten (10) years, this Agreement may be denounced at any time by either Contracting Party. Denunciation shall take effect twelve (12) months after its notification.

2. In the event of an official notification of termination of this Agreement, the provisions of Articles 1 to 10 shall remain in force for an additional period of 15 (fifteen) years for investments made prior to such notification.

Done in Brasilia, on 11 November 1994, in two original copies, in the English, French and Portuguese languages, each being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL

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Celso L. N. Amorim

Minister of State for Foreign Affairs

FOR THE SWISS FEDERAL COUNCIL

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Catherine Krieg

Ministro de Estado das Relações Exteriores Ambassador of Switzerland

In signing the Agreement between the Swiss Confederation and the Federative Republic of Brazil on the Promotion and Reciprocal Protection of Investments, the undersigned Plenipotentiaries have agreed, with respect to Article 4, the following supplementary provisions, which shall be considered as an integral part of the said Agreement.

1. Without prejudice to the treatment provided for in paragraph 1 of article 4 of this Agreement, neither Contracting Party shall be obliged temporarily to grant strict national treatment to the procurement of goods or services by the Government. This restriction shall cease to apply to both Contracting Parties if the Brazilian Constitution, through constitutional revision or amendment, allows the Brazilian Government to grant national treatment for this purpose.

2. Without prejudice to the treatment provided for in paragraph 1 of Article 4 of this Agreement, most-favored-nation treatment shall not be construed as obliging the Brazilian Government to extend to Swiss investors the special advantages granted over a reasonable period of time to investors Of any third country under an intergovernmental technological capacity-building agreement.

Done in Brasilia, on November 13, 1994, in two original copies, in the Portuguese, French and English languages, each being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL

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Celso L. N. Amorim

Minister of State for Foreign Affairs

FOR THE SWISS FEDERAL COUNCIL

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Catherine Krieg

Ambassador of Switzerland