

AGREEMENT BETWEEN THE GOVERNMENT OF THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS.

The Government of the Portuguese Republic and the Government of Hashemite Kingdom of Jordan, hereinafter referred to as the «Parties»:

Desiring to promote greater economic cooperation between them, with respect to investment made by investors of one Party in the territory of the other Party;

3194

Diario da Republica, 1. a serie — N.º 121 — 25 de junho de 2012

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the flow of private capital and the economic development of the Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

Having resolved to conclude an Agreement on the promotion and reciprocal protection of investments;

Have agreed as follows:

Article 1.

Definitions

For the purposes of this Agreement:

1 — The term «investment» means every kind of assets invested by investors of one Party in the territory of the other Party in accordance with its laws and regulations and shall include in particular, though not exclusively:

- a) movable and immovable property as well as any other rights, such as mortgages, liens, pledges, usufructs and similar rights;
- b) stock, shares, debentures and other forms of participation in companies;
- c) claims to money and claims to performance having an economic value;
- d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Parties are parties to them, including, but not limited to, copyrights and neighbouring rights, industrial property rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;
- e) rights to engage in economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources;

F goods that, under a leasing agreement, are placed at the disposal of a lessee in the territory of a Party in conformity with its law.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such change is not contrary to the approvals granted, if any, to the assets originally invested or does not contradict the

law of the Party in which territory the investment was made.

2 — The term «investor» means in respect of either Party:

a) a natural person, having the nationality of a Party in accordance with its law who makes an investment in the territory of the other Party;

b) a legal person incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Party, having its seat and performing real business activity in the territory of the same Party and making an investment in the territory of the other Party.

3 — The term «returns» means income deriving from an investment and includes, in particular though not exclusively, profits, dividends, interests, capital gains, royalties, patent and license fees, and any other fees or other forms of income related to the investments.

4 — In cases where the returns of investments, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investments. The returns of investments shall be subject to the same protection given to the investment.

5 — The term «without delay» shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

6 — The term «freely convertible currency» shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the articles of Agreement of the International Monetary Fund and any amendment thereto.

7 — The term «territory» means the territory in which the Parties have, in accordance with International Law and their national laws, sovereign rights or jurisdiction, including land territory, territorial sea and air space above them, as well as those maritime areas adjacent to the outer limit of the territorial sea, including seabed and subsoil.

Article 2. Promotion and Admission of Investments

1 — Each Party shall encourage and create favourable conditions for investors of the other Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2 — In order to encourage mutual investment flows, each Party shall endeavour to inform the other Party, at the request of either Party, on the investment opportunities in its territory.

3 — Each Party shall grant, whenever necessary, in accordance with its laws and regulations, the permits required in connection with the activities of consultants or experts engaged by investors of the other Party.

4 — Each Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporary and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Party.

Article 3. Protection of Investments

1 — Each Party shall extend in its territory full protection and security to investments and returns of investors of the other Party. Neither Party shall hamper, by arbitrary or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and, if it is the case, the liquidation of such investments.

2 — Investments or returns of investors of either Party in the territory of the other Party shall be accorded fair and equitable treatment.

Diario da Republica, 1. a serie — N.º 121 — 25 de junho de 2012

3195

Article 4. National Treatment and Most Favoured Nation Treatment

1 — Neither Party shall accord in its territory to investments and returns of investors of the other Party a treatment less favourable than that which it accords to investments and returns of its own investors, or investments and returns of investors of any other third State, whichever is more favourable to the investors concerned.

2 — Neither Party shall accord in its territory to the investors of the other Party, as regards, acquisition, expansion, operation, management, maintenance, enjoyment, use, sale or disposal of their investment, a treatment which is less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

3 — Each Party shall accord to investors of the other Party and to their investments and return the better of the treatments required by paragraphs 1 and 2 of this article, whichever is more favourable to the investors or investments and returns.

4 — The provisions of paragraphs 1 and 2 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) any existing or future customs union or economic or monetary union, free trade area or similar international agreements to which either of the Party is or may become a Party in the future;
- b) any international agreement or arrangement, wholly or partially related to taxation.

5 — 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.

Expropriation

1 — A Party shall not expropriate or nationalize directly or indirectly an investment in its territory of an investor of the other Party or take any measure or measures having equivalent effect (hereinafter referred to as «expropriation») except:

- a) for a purpose which is in the public interest;
- b) on a non-discriminatory basis;
- c) in accordance with due process of law; and
- d) accompanied by payment of prompt, adequate and effective compensation.

2 — Compensation shall be paid without delay.

3 — Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

4 — Compensation shall be fully realizable and freely transferable.

5 — An investor of a Party affected by the expropriation carried out by the other Party shall have the right to prompt

Review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this article, by a judicial authority or another competent and independent authority of the latter Party.

Article 6.

Compensation for damage or loss

1 — When investments made by investors of either Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Party they shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than the treatment that the latter Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

2 — Without prejudice to paragraph 1 of this article and of article 5, investors of one Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Party resulting from:

a) requisitioning of their property or part thereof by its forces or authorities;

b) destruction of their property or part thereof by its forces or authorities which was not caused in combat or was not required by the necessity of the situation;

Shall be accorded a prompt, adequate and effective compensation or restitution for the damage or loss sustained during the period of requisitioning as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without delay.

Article 7.

Transfers

1 — Each Party shall ensure that all payments relating to an investment in its territory of an investor of the other Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:

a) the initial capital and additional amounts to maintain or increase an investment;

b) returns;

c) payments made under a contract including a loan agreement;

d) proceeds from the sale or liquidation of all or any part of an investment;

e) payments of compensation under articles 5 and 6 of this Agreement;

f) payments arising out of the settlement of an investment dispute;

g) earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2 — Each Party shall ensure that the transfers under paragraph 1 of this article are made in a freely convertible currency, at the market rate of exchange prevailing on the date of transfers and shall be made without delay.

3 — Each Party shall ensure that the interest at EURIBOR rate calculated together with compensation for the period starting from the occurrence of events under

3196

Diario da Republica, 1. a serie — N.º 121 — 25 de junho de 2012

Articles 5 and 6 until the date of transfer of payment and payment will be effected in accordance with provisions of payment and payment will be effected in accordance with provisions of paragraphs 1 and 2 of this article.

Article 8.

Subrogation

1 — If one Party or its designated Agency (for the purpose of this article: the «First Party») makes a payment under an indemnity given in respect of an investment in the territory of the other Party (for the purpose of this article: the «Second Party»), the Second Party shall recognize:

a) the assignment to the First Party by law or by legal transaction of all the rights and claims of the party indemnified; and

b) that the First Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2 — The First Party shall be entitled in all circumstances to:

a) the same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and

b) any payments received in pursuance of those rights and claims;

As the party indemnified was entitled to receive it by virtue of this Agreement, in respect of the investment concerned and its related returns.

Article 9. Application of other Obligations

1 — If the provisions of law of either Party or international obligations existing at present or established thereafter between the Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

2 — Each Party shall observe any contractual obligation it may have entered into towards an investor of the other Party with regard to investments approved by it in its territory.

Article 10. Settlement of Disputes between a Party and an Investor of the other Party

1 — Any investment dispute between a Party and an investor of the other Party shall be settled by negotiations.

2 — If a dispute under paragraph 1 of this article cannot be settled within six (6) months of a written notification, the dispute shall be upon the request of the investor settled as follows:

a) by a competent court of the Party; or

b) by conciliation or arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18th,

1965. In case of arbitration, each Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Party and the investor, to submit any such dispute to this Centre. This consent implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted; or

c) by arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Parties at the time of the request for initiation of the arbitration procedure. In case of arbitration, each Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Party and the investor, to submit any such dispute to the tribunal mentioned.

3 — The award shall be final and binding; it shall be executed according to the national law; each Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

4 — A Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

5 — An investor who has submitted the dispute to a national court in accordance with paragraph 2, a), of this article or to one of the arbitral tribunals mentioned in paragraph 2, b) to d), shall not have the right to pursue his case in any other court or tribunal. The investor's choice to the court or arbitral tribunal is final and binding.

Article 11. Settlement of Disputes between the Parties

1 — Disputes between the Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2 — If a dispute according to paragraph 1 of this article cannot be settled within six (6) months it shall upon the request of either Party be submitted to an arbitral tribunal.

3 — Such arbitral tribunal shall be constituted ad hoc as follows: each Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman. Such arbitrators shall be appointed within two (2) months from the date one Party has informed the other Party, of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

4 — If the periods specified in paragraph 3 of this article are not observed, either Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Parties or if he is otherwise prevented from discharging the said function, the Vice-president or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5 — The tribunal shall establish its own rules of procedure.

Diario da Republica, 1. a serie — N.º 121 — 25 de junho de 2012

3197

6 — The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7 — Each Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 12. Application of the Agreement

This Agreement shall apply to investments made prior to or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen before its entry into force.

Article 13. Amendments

1 — The present Agreement may be amended by request of one of the Parties.

2 — The amendments shall enter into force in accordance with the terms specified in article 15 of the present Agreement.

Article 14. Duration and Termination

1 — The present Agreement shall remain in force for successive and automatically renewable periods of ten years.

2 — Either Party may denounce the present Agreement upon a notification, in writing through diplomatic channels, at least one year prior to its expiry date.

3 — In case of denunciation, the present Agreement shall terminate on its expiry date.

4 — In respect of investments made prior to the date of termination of the present Agreement, the provisions of articles 1 to 12 shall remain in force for a further period of ten years from the date of termination.

Article 15. Entry Into Force

The present Agreement shall enter into force thirty days after the date of receipt of the later of the notifications, in writing through diplomatic channels, conveying the completion of the internal procedures of each Party required for that purpose.

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

Done at Lisbon, on this 17th day of March 2009, in two original versions, in Portuguese, Arabic and English languages, all three texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

For the Government of the Portuguese Republic:

Manuel Pinho, Minister of Economy and Innovation.

For the Government of the Hashemite Kingdom of Jordan:

Amer Al Hadidi, Minister of Industry and Trade.