

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE UNITED ARAB EMIRATES ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Portuguese Republic and the United Arab Emirates, hereinafter referred to as the "Parties":

Desiring to create conditions favourable for fostering greater investments which are made, in accordance with the laws and regulations, by investors of one Party in the territory of the other Party on the basis of equality and mutual benefit;

Recognising that the promotion and protection of these investments will stimulate the flow of capital and technology between the two Parties in the interest of economic sustainable development;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement, and unless stated otherwise:

1 — The term "investments" means any kind of assets and rights invested by investors of one of the Parties in the territory of the other Party, in accordance with the law of the latter, including in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in real, such as mortgages, liens, pledges and similar rights;
- b) Shares, stocks, debentures, or other forms of interest in companies and/or economic interests from the respective activity;
- c) Claims to money or to any other rights having an economic value;
- d) Intellectual property rights such as copyrights, patents, utility models, industrial designs, trade marks, trade names, trade and business secrets, technical processes, know-how and good will;
- e) Concessions conferred by law, under a contract or by an administrative act of a competent state authority, excluding concessions for prospecting research and exploitation of natural resources;

1.1 — Any changes of the form in which assets are invested does not affect their character as investments, provided that such a change does not go against the laws and regulations of the Party in whose territory the investment was made.

2 — The term "investors" means:

In respect of the Portuguese Republic:

- a) Natural persons having the nationality of the Portuguese Republic, in accordance with its laws and regulations;
- b) Legal persons, including corporations, commercial companies and associations, which main office is in the territory of the Portuguese Republic and are incorporated or constituted in accordance with its laws and regulations.

In respect of the United Arab Emirates:

- a) Natural persons deriving their status as nationals of the United Arab Emirates according to its applicable law;
- b) Government and Governmental agencies, corporations, companies, firms and business associations incorporated or constituted under the law in force in the United Arab Emirates and having their headquarters in the territory of the United Arab Emirates.

3 — The term "returns" means the amounts yielded by investments, over a given period, including in particular, though not

exclusively, profits, dividends, interests, royalties or other forms of income related to the investments, including technical assistance fees.

3.1 — 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.

3.2 — The returns of investments are subject to the same protection given to the investments.

4 — The term "territory" means:

a) In respect of the Portuguese Republic: the territory in which the Portuguese Republic has in accordance with international law and its national laws, sovereign rights or jurisdiction, including land territory, territorial sea and air space above it, as well as those maritime areas adjacent to the outer limits of the territorial sea, including seabed and subsoil thereof;

b) In respect of the United Arab Emirates: the territory of the United Arab Emirates which is under its sovereignty as well as the area outside the territorial water, airspace and submarine areas over which the United Arab Emirates exercises sovereign and jurisdictional rights in respect of any activity carried on its water, seabed, subsoil, in connection with the exploration for or the exploitation of natural resources, by virtue of its law and international law.

Article 2. Scope

This Agreement shall apply to all investments made by investors from one of the Parties in the territory of the other Party, which are made prior to as well as after its entry into force, in accordance with the respective laws and regulations, but shall not apply to disputes arising out of any events concerning an investment that have occurred before the entry into force of this Agreement nor any claim that was settled before the entry into force of this Agreement.

Article 3. Promotion and Protection 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 — Investments of investors of either Party made in accordance with the respective laws and regulations shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party.

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

Article 4. National and Most Favoured Nation Treatment

1 — Investments made by investors of one Party in the territory of the other shall be accorded treatment that is not less favourable than the latter Party accords to the investments of its own investors or investments of investors of any third State, whichever is more favourable.

2 — Investors of one Party shall be accorded by the other Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment that 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) Any membership of or association with any existing or future customs unions, free trade zones, economic union, monetary union and any international agreement resulting in such unions or similar institution;

b) Bilateral and multilateral agreements having or not regional nature, relating wholly or mainly to taxation.

4 — However, the MFN shall not apply to settlement of disputes.

Article 5. Other Obligations

Without prejudice to Article 1, paragraph 1, subparagraph (e), if the 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 the one provided for by this Agreement, such regulation shall, to the extent that is more favourable, prevail over this Agreement.

Article 6. Expropriation

1 — Investments made by investors of either Party in the territory of the other Party shall not be expropriated, nationalised or subject to any other measures with equivalent effects to expropriation or nationalisation (hereinafter referred to as expropriation) except by virtue of law, for the public interest, on a non-discriminatory basis and against prompt, effective and adequate compensation.

2 — The compensation mentioned in paragraph 1 of this Article shall amount to the market value of the expropriated investments immediately before the expropriations taken or before the impending expropriation became public knowledge, whichever is the earlier. The compensation shall be paid without delay, shall include the usual commercial interest at a fair and equitable rate — which shall not be less than the prevailing six month EURIBOR —, from the date of the expropriation until the date of payment and shall be freely transferable.

3 — Investors whose investments are expropriated shall have the right under the law of the expropriating Party to the prompt review, by a judicial or other competent authority of that Party, of their cases, including the decision, and of valuation of their investments in accordance with the principles set out in this Article.

Article 7. Compensation for Losses

1 — Investors of one Party whose investments suffer losses in the territory of the other Party, owing to war or other armed conflict, revolution, a state of national emergency or other events considered as such by international law, shall be accorded treatment no less favourable by the latter Party than that Party accords to the investments of its own investors, or of any third State, whichever is more favourable, as regards restitution, indemnification or other valuable consideration.

2 — The compensation foreseen in paragraph 1 of this Article shall be, without delay, freely transferable in convertible currency.

Article 8. Transfers

1 — Each Party, in accordance with its laws and regulations, shall guarantee to investors of the other Party the free transfer of sums related to their investments including, in particular, though not exclusively:

- a) The initial capital and additional amounts necessary to maintain or increase the investments;
- b) The returns defined in paragraph 3 of Article 1 of this Agreement;
- c) The funds in service, repayments and amortisation of loans, recognised by both Parties to be an investment;
- d) The proceeds obtained from the total or partial sale or from the total or partial liquidation of the investment;
- e) The compensation or other payments referred to in Articles 6 and 7 of this Agreement;
- f) Any preliminary payments that may be made in the name of the investor in accordance with Article 9 of this Agreement;
- g) The wages earned by foreign workers duly authorised to work in connection with an investment in the territory of the other Party.

2 — The transfers referred to in this Article are made without delay, in a freely convertible currency, at the exchange rate applicable by the Party in which territory the investments are made, on the date of the transfer.

3 — For the purposes of the present Article, a transfer shall be deemed to have been made "without delay" if effected in such a period as is normally required for the completion of the necessary transfer formalities, which should not in any circumstances exceed thirty (30) days from the date the requirement for transfer has been submitted.

4 — For the purpose of this Article, and concerning the Portuguese Republic, the applicable law includes any measures adopted by the European Union on the matter.

5 — With respect to paragraph 4 of this Article, it is understood that it shall not impose any obligation on United Arab Emirates towards an investment or investor of a third State.

Article 9. Subrogation

1 — If one Party or its designated agency makes a payment to one of its investors under a guarantee in respect of an investment made in the territory of the other Party, the latter Party shall recognize the assignment of all the rights and claims of the indemnified investor to the former Party or its designated agency to exercise by virtue of subrogation any such right to the same extent as the investor.

2 — Subrogation will take place after prior consent of the Party in whose territory the investment is made, only if such an approval is required in accordance with its Domestic Law.

Article 10. Settlement of Disputes between the Parties

1 — Any disputes concerning the interpretation or application of this Agreement shall be settled through amicably negotiation and diplomatic channels.

2 — If the Parties fail to reach such settlement within six (6) months after the beginning of negotiations, the dispute shall, upon the request of either Party, be submitted to an ad hoc arbitral tribunal, in accordance with the provisions of the following paragraphs.

3 — The Arbitral Tribunal shall be constituted, as follows:

a) Each Party shall appoint one arbitrator within two (2) months of the receipt of the written request for arbitration;

b) The two shall together within two (2) months appoint a national of a third State with whom both States have diplomatic relations as president of the arbitral tribunal.

4 — If the arbitral tribunal is not constituted within four (4) months of the receipt of the written request for arbitration, either Party may request the President of the International Court of Justice to make the necessary appointments.

5 — If the President of the International Court of Justice is a national of one of the Parties or is prevented from making the appointments for any other reason, the next member of the International Court of Justice who is not a national of either Party or who is not prevented shall be requested to make the appointments.

6 — The President and other members of the International Court of Justice shall namely be prevented from making appointments when they are not a national of a third State with whom both States have diplomatic relations.

7 — The arbitral tribunal shall determine its own rules of procedure and shall render its decisions in accordance with the provisions of this Agreement and the International Law.

8 — The decision of the arbitral tribunal, which shall be final and binding on both Parties, shall be by majority vote.

9 — In the event of dispute as to the meaning or scope of the decision, the arbitral tribunal shall construe it upon the request of any Party.

10 — Each Party shall bear the costs for its arbitrator and for its representation before the arbitral tribunal, being the costs with the president and with the tribunal shared equally between the Parties.

11 — The arbitral tribunal may make a different decision regarding costs.

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

1 — Any dispute which arises between an investor of one Party and the other Party concerning investments of that investor in the territory of the latter Party shall be settled amicably between the parties in dispute.

2 — If such dispute cannot be settled within six (6) months of the date when it has been raised by one of the parties in dispute, it shall at the written request of the investor, be submitted to:

a) The competent courts of the Party in which territory the investments are made; or

b) The International Centre for the Settlement of Investments Disputes (ICSID) through conciliation or arbitration, 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; or

c) An ad hoc arbitral tribunal established in accordance with the arbitral rules of the United Nations Commission on

International Trade Law (UNCITRAL).

3 — The decision to submit the dispute to one of the above mentioned procedures shall be final.

4 — Notwithstanding the provisions of the preceding paragraph, if the investor chooses to resolve the dispute through the national courts of the Party where the investment is made, and if no decision is taken within twenty-four (24) months, the investor may choose to put an end to the national proceedings and submit the dispute to any form of international arbitration referred to in paragraph 2 of this article by notifying the national court of this decision.

5 — Any award by an ad hoc tribunal shall be final and binding. Any award under the procedures of the Convention mentioned in subparagraph b) of paragraph 2 above, shall be binding and subject only to those appeals or remedies provided for in this Convention. The awards shall be enforced in accordance with domestic law.

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

Article 12. Relations between the Parties

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Parties.

Article 13. Consultations

Either Party may propose to the other Party that consultations be held on any matter concerning interpretation, application and implementation of this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 14. Entry Into Force

The present Agreement shall enter into force thirty (30) days after the date of receipt of the latter of the notifications, in writing through diplomatic channels, conveying the completion of the legal internal procedures of each Party required for that purpose.

Article 15. Duration and Termination

1 — This Agreement shall remain in force for successive and automatically renewable periods of ten (10) years.

2 — Either Party may denounce this Agreement upon notification, in writing, through diplomatic channels, at least twelve (12) months prior its expire date.

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

4 — In respect of investments made prior to the date of termination of this Agreement the provisions of articles 1 to 13 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

Article 16. 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 14 of this Agreement.

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

Done in Abu Dhabi, on the 19th of November, 2011, in two originals, in the Portuguese, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Portuguese Republic:

For the United Arab Emirates:

