

# **AGREEMENT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE REPUBLIC OF KOREA**

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

Encouraged by the desire to intensify economic cooperation for the mutual benefit of both countries;

Desiring to create favorable conditions for investment by investors of one country in the territory of the other, and

Recognizing that an agreement for the promotion and reciprocal protection of investments against non-commercial risks could contribute to stimulating business initiatives that favor the prosperity of both countries,

Have agreed as follows:

## **Article 1. Definitions**

1. For the purposes of this Agreement:

a) The term "investor" means any natural or legal person who carries out a investment in the territory of the other Contracting Party;

I. the term "person" means, in relation to any of the Contracting Parties, an individual who holds the nationality or citizenship of that Contracting Party, in accordance with its legislation, and

II. the term "legal person" means, in relation to any of the Contracting Parties, any entity incorporated or constituted in accordance with its legislation and recognized as a legal entity by that same Party, such as institutions public, joint stock companies, foundations, companies, companies on behalf of collective and associations, regardless of whether they have responsibility or not limited or for profit purposes, whose headquarters are located in its territory.

b) The term "investments" designates all types of invested or reinvested assets by an investor of one Contracting Party in the territory of the other Contracting Party of in accordance with the legislation of the latter Party, including in particular, but not limited to exclusively, the following:

I. movable and immovable assets, as well as any rights in rem, such as mortgages, pledges, guarantees and similar rights;

II. shares and any other forms of participation in' a company or firm as well as bonds, debentures and debts of a company or any commercial company;

III. rights to claims or to the performance of any obligations provided for in a contract that has economic value, associated with an investment;

IV. rights in the field of intellectual property, including copyright, trademarks, patents, industrial models, technical processes, know-how, trade names and trade fund, and

V. any rights conferred by law or contract related to an investment and any licenses or concessions obtained in accordance with the law, including the right to research, extract, cultivate or explore natural resources;

c) the term "income" designates the values generated by an investment and includes in private, though not exclusively, profits, dividends, interest, capital gains, royalties, fees for technical assistance or other fees;

d) the term "territory" means, respectively, the territory of the Federative Republic of the Brazil or the territory of the

Republic of Korea, as well as the maritime areas, comprising the seabed and the subsoil, adjacent to the outer limit of the sea the territory of each of those States, over which the State in question exercises, of in accordance with international law, sovereign rights or jurisdiction for the purposes of research and exploitation of the natural resources that exist there;

e) the term "freely convertible currency" means currency widely used in the payments of international transactions and exchangeable in the main markets international

2. No change in the manner in which the assets and capital have been invested or reinvested will affect your qualification as an investment under this Agreement provided that the relevant laws and regulations are complied with.

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

1. Each Contracting Party shall encourage the creation of favorable conditions for investors of the other Contracting Party to invest in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall always be treated fairly and equitably and shall enjoy full protection and security in the territory of the other Contracting Party.

3. Each Contracting Party shall, in accordance with its legislation, grant the required authorizations for the realization of such investments and shall permit the conclusion of manufacturing, technical, commercial, financial and administrative license agreements, as well as granting the required authorizations for the activities of consultants Or experts hired by investors of the other Contracting Party.

## **Article 3. Investment Management**

1. Each Contracting Party shall grant in its territory fair and equitable treatment of investments and incomes of investors of the other Contracting Party, which shall not be less favorable than that accorded to investments effected, under similar conditions, by its own investors or by Investors of any third country, and their respective income.

2. In its territory, each Contracting Party shall grant to investors of the other Contracting Party, as regards the administration, maintenance, use, usufruct or disposition of its investments, a fair and equitable treatment, which shall not be less favorable than that accorded to its Own investors or to investors from any third country.

3. The provisions of paragraphs 1 and 2 of this Article shall not be interpreted as obliging a Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege granted by the former by virtue of:

a) Any customs union, free trade area, common external tariff area, monetary union or similar international agreement or other existing or future regional cooperation mechanisms of which one of the Contracting Parties is or may become a party, or

b) Any convention or other international instrument, existing or future, totally or closely related to taxation.

## **Article 4. Compensation for Damages or Losses**

1. When investments of investors of either Contracting Party suffer losses due to war, armed conflict, national state of emergency, revolts, insurrections, disturbances or other similar events in the territory of the other Contracting Party, they shall be Restitution, indemnification, compensation or other forms of compensation, treatment no less favorable than that granted by that Contracting Party to its own investors or to investors of any third State.

2. Notwithstanding paragraph 1 of this Article, investors of a Contracting Party who, in any of the events referred to in that paragraph, suffer damage or loss in the territory of the other Contracting Party resulting from:

a) Requisition of his property by the Armed Forces or authorities of that Contracting Party, or

b) Destruction of its property by the Armed Forces or authorities of that Contracting Party which has not been provoked by combat or required by the necessity of the situation

Will receive fair and adequate compensation for the damage or loss that occurred during the period of the requisition or because of the destruction of the property.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subject to measures whose effect is equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except on grounds of public necessity, in accordance with The due legal procedures, on a non-discriminatory basis and through effective, immediate and adequate indemnification. This indemnity shall be equivalent to the market value of the expropriated investment immediately prior to the expropriation action or the date on which it has become a public domain, whichever occurs first, and shall include interest from the date of expropriation; It must, moreover, be granted without delay, be effectively realizable and freely transferable.

2. An investor of a Contracting Party who claims that his investment has been wholly or partly unappropriated shall be entitled to prompt review by the judicial or other competent authority of his case and the value of his investment in accordance with the principles set out in paragraph 1 Of this Article.

3. If a Contracting Party expropriates assets of an enterprise incorporated or constituted in accordance with its laws and regulations in which investors of the other Contracting Party hold a shareholding or other form of participation, the provisions of paragraphs 1 and 2 of this Article shall apply.

## **Article 6. Transfers**

1. The Contracting Parties shall ensure the free transfer of payments related to investments and rentals. Such transfers shall include in particular, but not exclusively:

- a) Net profits, dividends, royalties, fees for the provision of technical assistance or technical services, interest and other current income derived from any investment of an investor of the other Contracting Party;
- b) The net proceeds of the sale or total or partial liquidation of any investment made by an investor of the other Contracting Party;
- c) Amounts for the payment of loans related to an investment;
- d) The net income of nationals of the other Contracting Party who are permitted to work in connection with an investment in their territory;
- e) Additional resources required for the maintenance, management or development of an existing investment, and
- f) Compensations received in accordance with Articles 4 and 5.

2. Transfers shall be made in freely convertible currency without undue delay at the exchange rate in force for current transactions or determined at the official exchange rate in effect on the date of transfer.

## **Article 7. Subrogation**

If a Contracting Party or an agency designated by it makes a payment to its own investors on the basis of a guarantee given to an investment, the other Contracting Party shall recognize:

- a) The assignment to the first Contracting Party, or to the agency designated by it, by law or legal act in that country, of all investor rights, other than those relating to ownership of immovable property, and their claims, and
- b) That the first Contracting Party, or the agency designated by it, shall be entitled, upon subrogation, to exercise the abovementioned rights and to present the investor's claims.

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

1. Any dispute between a Contracting Party and an investor of the other Contracting Party relating to an investment made under this Agreement shall, as far as possible, be settled amicably by the parties to the dispute through consultations and negotiations.

2. If the dispute can not be resolved amicably within a period of six (6) months, counted from the date of the beginning of such consultations, it may be submitted, at the election of the investor:

- a) To the local courts of the Contracting Party in dispute, or
- b) To international arbitration under the conditions described in paragraph 5 of this Article.

3. The choice of one of these two routes will be final and irreversible. However, if the dispute is brought before the local courts, international arbitration will still be possible if the investor withdraws from the proceedings before the local courts before any award is made.
4. Recourse to local courts by the investor of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in which the investment was made shall not be made on terms less favorable than those applicable to investments made by investors of that Contracting Party Contracting Party, or by investors from any third State.
5. If the investor chooses international arbitration, the dispute shall be submitted:
  - a) To the International Center for the Settlement of Investment Disputes, established by the Convention for the Settlement of Disputes concerning Investments between States and Nationals of Other States, opened for signature at Washington on March 18, 1965, provided that the Federative Republic of Brazil to become 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 Verification Processes of that Center, or
  - b) To an ad hoc tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted by Resolution 31/98 of the General Assembly of December 15, 1976. The arbitral tribunal shall be composed of By three arbitrators - one designated by the disputing Contracting Party, one designated by the other party to the dispute, and one by the arbitrator appointed by the two arbitrators selected in accordance with the procedure set out in this paragraph. If the third arbitrator has not been appointed within 30 (thirty) days after the appointment of the two other arbitrators, his appointment shall be assigned to the President of the Arbitration Tribunal of the International Chamber of Commerce.
6. The Arbitral Tribunal shall decide on the basis of the provisions of this Agreement, the domestic law of the Contracting Party in which the investment was made and the relevant provisions of international law.
7. Decisions shall be final and binding on the parties to the dispute and shall be enforced in accordance with national law.
8. The Contracting Parties shall refrain from dealing, through diplomatic channels, with disputes relating to judicial proceedings or international arbitration, until such time as the corresponding procedures have been completed, except in cases where one of the parties to the dispute does not Has complied with the judgment or arbitration award, under the terms established in the respective judgment or award.

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

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through consultations or through diplomatic channels.
2. If no agreement is reached within six (6) months, the dispute may be referred, at the request of either Contracting Party, to an Arbitral Tribunal in accordance with the provisions of this Article.
3. The Arbitral Tribunal shall be constituted, for each individual case, as follows: within two (2) months from the date of receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator. These two arbitrators, in turn, shall select a national of a third State, which, upon approval by both Contracting Parties, shall be designated President of the tribunal (hereinafter referred to as "the President"). The President shall be appointed within three (3) months from the date of appointment of the two other arbitrators.
4. If, within the periods stipulated in paragraph 3 of this Article, the designations provided for therein have not been effected, a request may be addressed to the President of the International Court of Justice to make the designations. If the President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise prevented from performing that function, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is also a national of one of the Contracting Parties, or is also prevented, a member of the International Court of Justice immediately following him in the order of precedence, who is not a national of either Contracting Party, shall be requested To make the necessary assignments.
5. The Arbitral Tribunal shall decide by majority vote and its decisions shall be binding. Each Contracting Party shall bear the costs of its arbitrator and his representation in the arbitral proceedings; The costs of the President and the other costs of the proceedings shall be shared equally between the Contracting Parties. The arbitral tribunal shall determine its own procedures.

## **Article 10. Application of other Standards and Special Commitments**

1. In the event that a matter is governed by this Agreement and by another international agreement to which both Contracting Parties are parties, or by general principles of international law, nothing in this Agreement shall prevent any Contracting Party or any of its investors having Investments in the territory of the other Contracting Party benefit from the rules which are most favorable to them.
2. If treatment accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws or regulations or other specific provisions or contracts is more favorable than provided for in this Agreement, the most favorable treatment shall prevail.
3. Both Contracting Parties shall observe any obligations they have assumed in respect of investments made in their territory by investors of the other Contracting Party.

## **Article 11. Application of the Agreement**

1. Investments already made by investors of the Contracting Parties shall be covered by this Agreement, as of their effective date.
2. This Agreement shall not apply to disputes or disputes arising prior to its entry into force.

## **Article 12. Entry Into Force, Duration and Termination**

1. Each Contracting Party shall notify the other of the fulfillment of its internal legal requirements necessary for the entry into force of this Agreement, which shall be given 30 (thirty) days after the date of receipt of the second notification.
2. This Agreement shall remain in force for an initial period of 10 (ten) years, after which it shall remain in force for subsequent periods of 5 (five) years, unless one year before the expiration of the initial period or any of the periods Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.
3. In the event of termination, the provisions of this Agreement shall continue to apply for a period of 10 (ten) years to all investments made prior to the notification of termination.

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

Done in Brasilia, on September 1, 1995, in two original copies, in the Portuguese, Korean and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.