Fait à Dakar le 25 janvier 2011, en deux exemplaires, en langues portugaise, française et anglaise, tous les textes faisant également foi. En cas de divergence liée à l'interprétation du présent Accord, la version anglaise prévaudra.

Pour la République Portugaise:

João Gomes Cravinho, Secrétaire d'État des Affaires Étrangères et de la Coopération.

Pour la République du Sénégal:

Madické Niang, Ministre d'État, Ministre des Affaires Étrangères.

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF SENEGAL FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Portuguese Republic and the Republic of Senegal, hereinafter referred to as the «Parties»:

Desiring to intensify economic co-operation between the two States;

Intending to create favourable conditions for investments by investors of one Party in the territory of the other Party based on the principles of equality and mutual benefit;

And recognising that the reciprocal promotion and protection of investments under this Agreement will contribute to the stimulation of the sustainable economic development in both States;

have agreed as follows:

Article 1

Purpose

This Agreement establishes the framework of principles and rules for the reciprocal promotion and protection of investments that the Parties shall provide to the investors as well as to the investments that have been or will be made in the territory of the other Party.

Article 2

Scope

This Agreement shall apply to all investments, whether made before or after its entry into force, by investors of either Party in the territory of the other Party, in accordance with their respective applicable law, but shall not apply to any dispute with regard to facts that occurred before its entry into force.

Article 3

Definitions

For the purposes of this Agreement:

a) «Investment» shall mean every kind of asset invested by an investor of one Party in the territory of the other Party, in accordance with the law in force in the latter, and in particular, though not exclusively, includes:

i) Movable and immovable property, as well as any other rights in rem, such as mortgages, liens and pledges;

ii) Shares in, stock, debentures or any other equity securities of a company, as well as any other kind of participation in a company and or economic interest arising from the respective activity;

iii) Claims to money or any other performance under contract having an economic value;

iv) Intellectual property rights such as copyrights, patents, utility models, industrial designs, trademarks, trade names, trade and industrial secrets, technical processes, know-how and goodwill;

v) Concessions conferred by law, under contract or by administrative decision issued by a competent public authority, including any concession to search for, extract or exploit natural resources;

vi) Assets made available to the lessee under a lease contract in the territory of one Party, in accordance with its respective legislation;

b) Any change in the form in which assets are invested does not affect their character as investments, provided that it has been made in accordance with the legislation of the Party within whose territory the investment is made;

c) «Investor» shall mean any person of one Party investing in the territory of the other Party, in accordance with its applicable law, who is either:

i) A «natural person» having the nationality of either Party, in accordance with their respective legislation;

ii) A «legal person», an entity with legal personality which has its seat in the territory of one Party and is incorporated or constituted under the law in force in that Party, including commercial companies, corporations, foundations and associations;

d) «Returns» shall mean the amounts yielded by an investment over a given period, and in particular, though not exclusively, includes profits, dividends, interests, royalties, payments for technical assistance or other types of investment returns, and:

i) In the event of the reinvestment of the investment returns covered by the definition referred above, the returns there from are also considered to be returns related to the first investment;

ii) The returns from the investment shall enjoy the same protection as the investment;

e) «Territory» shall mean the territory on which the Parties exercise sovereign rights or jurisdiction, in accordance with international law and their respective national law, including land territory, territorial sea and the air space above them, as well as the maritime areas adjacent to the territorial sea, the seabed and subsoil thereof.

Article 4

Promotion and protection of investments

1 — Each Party shall encourage the making of investments by investors of the other Party in its territory and shall admit such investments in accordance with its legislation.

2 — Investments of investors of either Party in the territory of the other Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in that territory.

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

Article 5

National treatment

Neither Party shall in its territory subject the investors of the other Party, as regards the establishment, acquisition, expansion, management, enjoyment, use, maintenance and disposal of their investments, to treatment less favourable than that which it accords to its own investors and their investments.

Article 6

Most-favoured-nation treatment

1 — Neither Party shall in its territory subject the investors of the other Party, as regards the establishment, acquisition, expansion, management, enjoyment, maintenance, use or disposal of their investments, to treatment less favourable than that which it accords to the investors and their investments of any third State.

2 — The most-favoured-nation clause also applies to the rules governing the settlement of disputes.

Article 7

Exceptions to the national treatment as well as to the most-favoured-nation clause

1 — The provisions of articles 5 and 6 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 result from:

a) Any existing or future free trade area, customs union, common market, monetary union or other similar international agreements which include other forms of economic co-operation, to which either of the Parties is or may become a party;

b) Bilateral or multilateral agreements of a regional nature or not, relating wholly or mainly to taxation, namely those which aim to avoid double taxation.

2 — The Parties consider that the provisions of this Article do not affect 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 8

Application of other rules

1 — If the provisions of law of either Party or obligations under international law, contain rules, whether general or specific, entitling investments made by investors of the other Party to a treatment more favourable than that provided for by this Agreement, such rules shall prevail over this Agreement.

2 — Each Party shall observe any other obligations undertaken with regard to investments made in its territory by investors of the other Party and which are not included in this Agreement.

Article 9

Expropriation

1 — Investments made by investors of either Party in the territory of the other Party shall not be expropriated, nationalised or subjected to any other measure tantamount to expropriation or nationalisation (hereinafter referred to as «expropriation») except for a public purpose, on a non-discriminatory basis, in accordance with the applicable law and against prompt and fair compensation.

2 — The compensation referred to in the preceding paragraph shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, and taking into account the following:

a) The market value shall be determined in accordance with generally accepted valuation principles;

b) The compensation shall include interest at the six-month Euribor rate from the date of expropriation until the date of the final payment;

c) The compensation provided for in this Article shall be made without delay, be effectively realizable and be freely transferable into a convertible currency at the rate of exchange applicable on the date of transfer in the Party within whose territory the investment is made.

3 — Any investor whose investment has been expropriated shall have a right, under the law of the Party making the expropriation, to prompt review, by a judicial or other competent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this article.

Article 10

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 similar events under international law shall be accorded by the latter Party treatment, as regards restitution, compensation, indemnification or other relevant factors, no less favourable than that which the latter Party accords to investments of its own investors or to those of investors of any third State, whichever is more favourable.

2 — Without prejudice to paragraph 1 of this article, investors of one Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Party resulting from the requisitioning or destruction of their property by its authorities, which were not caused in combat action or were not required by the necessity of the situation, shall be accorded by that Party restitution, compensation, indemnification or other forms of reparation on conditions no less favourable than those it accords to its own investors or to the investors of any third State.

3 — The payments provided for in this article shall be freely and without delay transferable into a convertible currency at the rate of exchange applicable on the date of transfer in the Party within whose territory the investment is made.

4 — In the case of the restitution of a movable asset, it should be made within a reasonable period of time at the end of which compensation shall be paid pursuant to the preceding paragraph.

Article 11

Transfers

1 — Each Party shall, subject to its applicable law, guarantee to investors of the other Party the free transfer of

payments related to their investments, in particular, though not exclusively:

a) Initial capital and additional amounts necessary to maintain or increase the investments;
b) The returns defined in article 3, *d*), of this Agreement;
c) The amounts necessary for the loan servicing, repayment and amortization considered by both Parties as investments;
d) Proceeds from total or partial liquidation or sale of the investment;
e) Compensation or other payments referred to in articles 9 and 10 of this Agreement;
f) Any initial payments made on behalf of the investor under article 12 of this Agreement;
g) The salaries earned by foreign workers dully authorised to work, in connection with the investment in the territory of the other Party.

2 — The transfers provided for in this article shall be made without delay, into a convertible currency at the rate of exchange applicable on the date of transfer in the Party within whose territory the investment is made.
3 — For the purposes of this Article, a transfer shall be deemed to be done «without delay» when it is made within the time limit normally necessary to accomplish the indispensable formalities, but in no case shall it exceed 30 days from the date the transfer request is made.
4 — If the transfer is not made within the time limit specified in the preceding paragraph, the defaulting Party shall pay interest at the commercial rate normally applicable in the territory of the Party where the investment is made, without prejudice to the right to use the dispute settlement mechanisms established in this Agreement.
5 — For the purposes of this article, and concerning the Portuguese Republic, the applicable law includes any measures adopted by the European Union on the matter.

Article 12

Subrogation

If one Party or its designated agency makes a payment under an indemnity given in respect of an investment made by one of its investors in the territory of the other Party, it is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

Article 13

Settlement of disputes between the Parties

1 — Disputes between the Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled by negotiations through the diplomatic channel.
2 — If the dispute cannot be settled within six months from the beginning of negotiations, it shall at the request in writing of either Party, through the diplomatic channel, be submitted to an ad hoc arbitration tribunal and shall be constituted as follows.
3 — The arbitration tribunal shall consist of three arbitrators who shall be appointed as follows:

a) Within two months of the receipt of the written request for arbitration, each Party shall appoint one arbitrator;

b) Within one month of their appointment, these two arbitrators shall jointly select a national of a third State with whom both Parties maintain diplomatic relations who will act as chairman of the arbitration tribunal.

4 — If within the periods specified in paragraph 3 of this article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make those appointments.
5 — If the President is prevented from carrying out the said function or if he is a national of either Party, the Vice-President of the Court shall be invited to make the necessary appointments.
6 — If the Vice-President is equally prevented from carrying out the said function or if he is a national of either Party, the member of the Court next in seniority who is not prevented from discharging the said function and is not a national of either Party shall be invited to make the necessary appointments.
7 — The arbitration tribunal shall determine its own rules of procedure.
8 — The arbitration tribunal shall decide on the basis of the provisions of this Agreement as well as of the applicable international law.
9 — The arbitration tribunal shall decide by a majority of votes and its decisions shall be final and binding on both Parties.
10 — In case of disagreement as to the meaning and scope of the decision, the tribunal shall interpret it at the request of either Party.
11 — Each Party shall bear the cost of its own arbitrator and of its representation in the arbitral proceedings.
12 — The cost of the chairman and the remaining costs shall be borne in equal parts by both Parties.
13 — The tribunal may decide on a different distribution of the costs.

Article 14

Settlement of disputes between a Party and an investor of the other Party

1 — Any dispute which may arise between an investor of one Party and the other Party concerning an investment made by the former in the territory of the latter shall, as far as possible, be settled amicably.
2 — If such dispute cannot be settled in accordance with paragraph 1 of this article within a period of six months from the beginning of the negotiations, the investor may submit the dispute to:

a) The competent courts of the Party within whose territory the investment is been made; or
b) The International Centre for the Settlement of Investment Disputes (ICSID) for the settlement by conciliation or arbitration under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965; or
c) An ad hoc arbitration tribunal appointed by a special agreement between the Parties or established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
d) Any other arbitration institution, or in accordance with any other arbitration rules, provided that the State which is a party to the dispute does not raise an objection to it.

3 — The decision to submit the dispute to any of the procedures referred to in paragraph 2 of this article is 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 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 — The awards shall be binding, but they may be subject to appeal or any other review procedure solely as provided by law and the applicable rules.

6 — The State which is a party to the dispute shall not raise as an objection at any stage of the proceedings the fact that the investor has received in pursuance of an insurance contract an indemnity in respect of some or all of his losses.

7 — Once the proceedings have ended and in case of non-compliance with the award, the Parties may exceptionally pursue through the diplomatic channel the dispute in order to ensure that the said award is enforced.

8 — The awards shall be recognized and enforced in accordance with the domestic law of the Party within whose territory the investment is made and in compliance with the applicable international law.

Article 15

Consultations

The Parties shall whenever necessary consult each other over issues of interpretation and application of this Agreement, on a date and at a place to be agreed upon through the diplomatic channel.

Article 16

Entry into force

This Agreement shall enter into force on the thirtieth day following the date of receipt of the later of the notifications in writing through the diplomatic channel, conveying the completion of the internal procedures of each Party required for that purpose.

Article 17

Amendments

1 — This Agreement may be amended at the request of either Party.

2 — The amendments shall enter into force in accordance with article 16 of this Agreement.

Article 18

Duration and termination

1 — This Agreement shall remain in force for an initial term of 10 years and shall be automatically renewed for successive periods of 5 years.

2 — Either Party may terminate this Agreement by giving written notice through the diplomatic channel of its intention to do so at least 12 months prior to the end of the current term.

3 — The termination shall become effective on the first day following the expiry of the current term.

4 — The provisions of articles 1 to 15 shall continue in effect with respect to investments made before the date of termination of this Agreement for a period of 10 years after the date of termination.

Article 19

Registration

The Party in whose territory the Agreement is signed shall, upon its entry into force and in accordance with article 102 of the Charter of the United Nations, transmit it to the Secretariat of the United Nations for registration and notify the other Party of the completion of this procedure as well as of its registration number.

Done in duplicate at Dakar, on the 25th of January 2011, in the portuguese, french and english languages, all texts being equally authentic. In case of any difference in interpretation, the english text shall prevail.

For the Portuguese Republic:

João Gomes Cravinho, Secretary of State of Foreign Affairs and Cooperation.

For the Republic of Senegal:

Madické Niang, Minister of State, Minister of Foreign Affairs.

MINISTÉRIOS DAS FINANÇAS E DA ADMINISTRAÇÃO PÚBLICA E DA SAÚDE

Portaria n.º 209/2011

de 25 de Maio

A Lei n.º 66-B/2007, de 28 de Dezembro, institui o sistema integrado de gestão e avaliação do desempenho na Administração Pública (SIADAP), aplicando-se aos desempenhos dos serviços públicos, dos respectivos dirigentes e demais trabalhadores, concretizando uma concepção integrada dos sistemas de gestão e avaliação, permitindo alinhar, de uma forma coerente, os desempenhos dos serviços e dos que neles trabalham.

Apesar de o sistema ali previsto ter uma vocação de aplicação universal às administrações directa e indirecta do Estado, regional e autárquica, no seu artigo 3.º, permite-se que, por portaria conjunta dos membros do Governo da tutela e responsáveis pelas áreas das finanças e da Administração Pública, sejam realizadas adaptações ao regime previsto na referida lei, em razão das atribuições e organização dos serviços, das carreiras do seu pessoal ou das necessidades da sua gestão, sem prejuízo do que nela se dispõe em matéria de princípios, objectivos e subsistemas do SIADAP, de avaliação do desempenho baseada na confrontação entre objectivos fixados e resultados obtidos e de diferenciação de desempenhos, respeitando o número mínimo de menções de avaliação e o valor das percentagens máximas legalmente previstos.

Atendendo às especificidades da carreira especial médica, decorre do artigo 26.º do Decreto-Lei n.º 177/2009, de 4 de Agosto, diploma que estabelece o regime da carreira especial médica, bem como os respectivos requisitos de habilitação profissional, que a avaliação do desempenho relativa aos trabalhadores que a integram se rege pelo