AGREEMENT ON INVESTMENT PROMOTION AND PROTECTION BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF CABO VERDE

The Portuguese Republic and the Republic of Cabo Verde:

Encouraged by the desire to intensify economic cooperation between the two States;

Desiring to create favorable conditions for investments by nationals or companies of one State in the territory of the other State;

Recognizing that the promotion and protection of such investments through an agreement can serve to stimulate private economic initiative and enhance the well-being of both peoples;

Agree as follows:

Article 1. Promotion and Admission

Both Contracting Parties shall, as far as possible, promote investments by nationals or companies of the other Contracting Party in their territory and shall admit such investments in accordance with their laws and regulations.

Article 2. Definitions

For the purposes of this Agreement:

1) The term 'investments' comprises all kinds of goods and rights, including:

a) The ownership of movable and immovable property, as well as any other real rights of enjoyment or guarantee, inherent or not to the property of those assets, namely mortgages and pledges;

b) Shares and other forms of participation in the capital of companies and / or economic interests resulting from their activities;

c) Credit claims in respect of cash or any other performance of economic value;

d) Copyrights, industrial property rights (patents, technical processes, trademarks, trade names, industrial designs), know-how, firm and name of establishment and clientele (stocking);

e) Concessions of private and public law, including concessions for exploration, research, extraction and exploitation of natural resources;

2) The term "income" means the amounts generated by an investment in a given period, such as profits, dividends, interest, royalties or other forms of remuneration relating to the investment, including any payments for technical assistance or management.

In the event that the income from an investment, as defined above, is reinvested, the proceeds from that reinvestment shall also be treated as proceeds of the initial investment;

3) The term "investment settlement" means the termination of the investment, in accordance with the procedures established by the legislation in force in the country where the investment in question was made;

4) The term 'nationals' means:

a) As regards the Portuguese-Portuguese Republic, as defined in the Constitution of the Portuguese Republic and in the

Portuguese law governing nationality;

b) With regard to the Republic of Cabo Verde - Cape Verdeans, as defined in the Law of Nationality in force in the Republic of Cabo Verde.

For the purposes of this paragraph, the possession of a passport of a national of one of the Contracting Parties duly issued by their respective authorities shall be admitted as a presumption of nationality of the respective holder, without prejudice to either Party being able to elicit such a presumption through other procedures For the determination of the same nationality;

5) The term "companies" means any legal person, including commercial companies or other companies or associations, with or without legal personality, which is established, incorporated and operates under the law of either Contracting Party;

6) The term 'territory' includes not only the territory of each Contracting Party, as defined in the respective fundamental laws, but also the exclusive economic zone and continental shelf areas of each of them, provided that international law permits To the Contracting Party concerned the exercise of sovereign rights or jurisdiction over such areas.

Article 3. Protection

Both Contracting Parties shall accord full protection and security to the investments made in their territory by nationals and companies of the other Contracting Party and shall not impede by unjustified or discriminatory measures the management, use, use and enjoyment, exploitation, extension, sale And, where appropriate, the liquidation of such investments.

Article 4. Treatment

1 - Both Contracting Parties shall ensure in their territory fair and equitable treatment of the investments of nationals or companies of the other Contracting Party.

2 - Neither Contracting Party shall accord to investments in its territory owned or controlled by nationals or companies of the other Contracting Party less favorable treatment than that accorded to the investments of its own nationals and companies or to the investments of nationals and companies Of third States.

3 - Neither Contracting Party shall accord to nationals or companies of the other Contracting Party, in respect of the activity which they carry out in their territory in connection with investments therein, treatment less favorable than that accorded to their own nationals and companies or Nationals and companies of third States.

4 - For the purposes of this Article, discrimination in relation to the purchase of raw materials and auxiliaries, energy and fuel or other means of production and exploitation of any kind or relating to the sale of products within Of the country and abroad, as well as any other measures with similar effects.

Article 5. Exceptions

The provisions of the previous article do not cover:

a) Any privileges or benefits which one of the Contracting Parties grants to nationals or companies of third States on the grounds that they are associated with or are members of a customs or economic union, a common market or a free trade area or as a result of Double taxation or other agreements on tax matters;

b) Any tax advantages, exemptions or reductions which, according to the tax laws of one of the Contracting Parties, are granted only to natural persons or companies resident in its territory.

Article 6. Permits

Within the framework of their internal legal provisions, both Contracting Parties shall treat beneficiaries of entry and residence requirements and of work permits or paid employment submitted to them by nationals of the other Contracting Party in connection with an investment.

Article 7. Transfers

Both Contracting Parties shall guarantee to nationals and companies of the other Contracting Party the free transfer of all sums relating to investments made under this Agreement, including:

a) Of capital and any additional amounts intended to maintain or expand the investment;

b) Income as defined in Article 2 (2) of this Agreement;

c) Of the amounts necessary for the service, repayment and amortization of loans;

d) Royalties or other fees in respect of the rights referred to in Article 2 (1) (d) of this Agreement;

e) Of the proceeds resulting from the liquidation or total or partial disposal of the investment;

f) Compensation and other payments provided for in Article 10 of this Agreement;

g) Of any payments to be made under the subrogation provided for in Article 11 of this Agreement.

Article 8. Exchange Rates

1 - Transfers referred to in the previous article shall be made without delay and at the exchange rate in force on the date of their respective effective date.

2 - For Cabo Verde, the exchange rate referred to in the preceding paragraph shall be in accordance with the cross-rate resulting from the exchange rates that the International Monetary Fund would on that date be based on the exchange of the respective currency in special drawing rights.

3 - For the purposes of this Article, a transfer shall be deemed to have taken place 'without delay' where it is effected within the period normally necessary for completion of the requisite formalities, which may in no event exceed 90 days From the date of submission of the transfer request.

Article 9. Transportation

Without prejudice to rules deriving from international conventions or agreements to which either Contracting Party subscribes, neither Party shall exclude or impede the use of transport undertakings of the other Contracting Party, granting, where necessary, all authorizations for their use in transport in:

a) Goods directly intended for investments covered by this Agreement or acquired in the territory of one of the Contracting Parties or of a third State by an undertaking or on behalf of an enterprise in which an investment has been made under this Agreement;

b) Persons engaged in investment-related travel within the scope of this Agreement.

Article 10. Expropriation / Nationalization

1 - Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party may not be expropriated, nationalized or subject to other measures having equivalent effect to expropriation or nationalization, except for reasons of public utility and compensation. The compensation shall correspond to the value that the expropriated investment had at the time of expropriation, nationalization or equivalent measure. The compensation shall be paid without delay, shall bear interest at the usual bank rate up to the date of its liquidation and shall be freely transferable. Appropriate arrangements shall be made for fixing the amount and method of payment of the compensation at the latest at the time of expropriation, nationalization or equivalent measure. The legality of the expropriation, nationalization or equivalent measure and the amount of compensation must be verifiable in normal judicial process.

2 - There will also be a payment of compensation, in the same terms of the previous number, in the case of intervention of the Road in the company that is the object of the investment in order to considerably and definitively jeopardize the economic situation of the same.

3 - Nationals or companies of one of the Contracting Parties which suffer loss of investment in the territory of the other Contracting Party by virtue of war or other armed conflict, revolution, state of national emergency or uprising shall not receive less favorable treatment from that Contracting Party in Restitution, compensation, compensation or other consideration than that accorded to its own nationals or companies. Such payments shall be freely transferable.

4 - With regard to matters covered by this Article, nationals and companies of either Contracting Party shall enjoy, in the territory of the other Contracting Party, most-favored-nation treatment.

Article 11. Subrogation

In the event that one of the Contracting Parties makes any payments to one of its nationals or companies by virtue of a guarantee given to an investment carried out in the territory of the other Contracting Party, it shall be subrogated to the rights and actions of that national or company, Being able to exercise them in the same terms and conditions as the original owner.

Article 12. More Favorable Conditions

1 - If the legal provisions in force in the territory of one of the Contracting Parties or the obligations under international law that may exist or may exist in the future between the Contracting Parties together with this Agreement results in general or special regulations in which the investments of nationals Or companies of the other Contracting Party more favorable treatment than that provided for in this Agreement, such regulation shall prevail in so far as it is more favorable.

2 - Conditions more favorable than those resulting from this Agreement which have been agreed upon by either Contracting Party with nationals or companies of the other Contracting Party shall remain unchanged and shall not be affected by the entry into force of this Agreement.

Article 13. Existing Investments

The provisions of this Agreement shall also apply to investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party in accordance with their respective legal provisions and which took place before the entry into force of this Agreement.

Article 14. Litigation Concerning the Interpretation / Application of this Agreement

1 - Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiation between the Governments of the two Contracting Parties.

2 - If a dispute can not be settled in this way, it shall be referred to an arbitral tribunal at the request of either Contracting Party.

3 - The arbitral tribunal shall consist of three members, two members and one president, each of the Contracting Parties appointing one member; By common agreement, both members shall designate a national of a third State to perform the duties of chairman, who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within a period of two months and the President within three months, in both cases from the date on which one of the Contracting Parties has notified the other that wishes to submit the dispute to an arbitral tribunal.

4 - If the time limits set out in the preceding paragraph are not fulfilled, either Contracting Party may, in the absence of agreement, request 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 Contracting Party or is otherwise impeded, the Vice-President shall be responsible for making appointments. If the Vice-President is also a national of one of the Contracting Parties or is otherwise prevented from doing so, appointments shall be made to the member of the Tribunal who is in the hierarchy and is not a national of either Contracting Party.

5 - The arbitral tribunal shall decide by majority vote and its decisions shall be binding. Each of the Contracting Parties shall bear the expenses of its member as well as those of its representation in the proceedings before the arbitral tribunal; Both Contracting Parties shall bear the costs of the President and the other expenses in equal parts. The arbitral tribunal may adopt a different regulation on costs and define its own rules of procedure.

6 - In the event that both Contracting Parties become members of the Convention on the Settlement of Disputes between States and Nationals of Other States Relating to Investments of March 18, 1965, no action may be taken, pursuant to article 27, paragraph 1 of Referred to above, to the above-mentioned arbitral tribunal, since between the national or the company of one of the Contracting Parties and the other Contracting Party the agreement referred to in Article 25 of the same Convention exists. The possibility of recourse to the aforementioned Tribunal in case of non-compliance with a decision of the arbitral tribunal established under Article 27 of the said Convention and in the case of transfer of rights by virtue of subrogation under Article 11, Of this Agreement.

Article 15. Litigation Regarding Investments

1 - Disputes arising between one of the Contracting Parties and a national or company of the other Contracting Party in respect of investments shall, as far as possible, be settled amicably between the parties to the dispute.

2 - If the dispute can not be settled within a period of six months from the date on which one of the parties lodged it, it shall be submitted, at the request of the national or company concerned, to arbitration proceedings. By this Agreement, both Contracting Parties declare their agreement to such a proceeding. Unless otherwise agreed, the provisions of Article 14 (3) to (5) shall apply mutatis mutandis, provided that the disputing parties appoint the members of the arbitral tribunal in accordance with paragraph 3 Of the same article, and failing which, in the absence of other agreements, each of them may, in the absence of other agreements, invite the chairman of the Arbitration Tribunal of the International Chamber of Commerce in Paris to make the necessary appointments. The arbitral award shall be enforced in accordance with the national law of the country in which the dispute arose.

3 - Should both Contracting Parties become members of the Convention on the Settlement of Disputes between States and Nationals of Other States Relating to Investments of 18 March 1965, disputes between the parties referred to in this article shall be submitted to Accordance with the said Convention, unless the Contracting Parties mutually agree on a different solution.

Article 16. Subsistence In Case of Conflict

This Agreement shall remain in force even in the case of conflict between the Contracting Parties, without prejudice to the right of interim measures, provided that they are admitted by the general rules of international law. Such provisional measures shall be repealed at the latest at the time when the conflict actually ceases, irrespective of the existence or not of diplomatic relations.

Article 17. In Force, Renewal, Denunciation

1 - Each Contracting Party shall notify the other Contracting Party in writing of the completion of its constitutional procedures relating to the entry into force of this Agreement.

2 - This Agreement shall enter into force on the date of receipt of the last of said communications and shall remain in force for 10 years. Upon expiry of that period, it shall be deemed to be extended indefinitely, unless one of the Contracting Parties denounces it in writing at any time with 12 months' notice.

3 - For investments made up to the termination of this Agreement, the provisions of Articles 1 to 16 shall remain in force for 20 years from the date of such termination.

Done at Lisbon on 26 October 1990, in duplicate in the Portuguese language, both texts being equally authentic.

For the Portuguese Republic:

José Manuel Durão Barroso, Secretary of State for Foreign Affairs and Cooperation.

For the Republic of Cabo Verde:

José Brito, Minister of Planning and Cooperation.

Legal Service and Treaties