Agreement between the Republic of Cabo Verde and the Republic of Cuba for the Promotion and Reciprocal Protection of Investments

The Republic of Cabo Verde and the Republic of Cuba, (hereinafter defined "Contracting Parties");

In the desire to develop economic cooperation for the mutual benefit of both States;

Eager to create and maintain favourable conditions for the investments of investors of a State in the territory of another State, and

Recognizing that incentive and reciprocal protection, based on this Agreement, of such investments will help stimulate business initiatives in this field,

They have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" comprises any type of good invested related to economic activities by an investor of a Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter, including, in particular, though not exclusively:

a) Movable and immovable property, as well as another real right, such as mortgages, rights, real guarantee on property of third parties, claims and other similar rights;

b) Securities, shares and obligations of a company and any other form of participation;

c) Financial credits for sums of money or any another right for obligations or services in accordance with a contract with economic value;

d) Intellectual property rights, in particular copyright, trademarks, patents, industrial models, technological processes and know-how, trade secrets, commercial names and good will related to the investment;

e) Rights or permits conferred by law or by contract, including concessions for the prospecting, cultivation, extraction or exploitation of natural resources;

Any change in the way the assets are invested do not affect their nature as investments.

2. "Investor" means any natural or legal person of a Contracting Party that makes investments in the territory of the other Contracting Party.

a) By "natural person" is understood, in relation to the Republic of Cabo Verde, a person who has the citizenship of that State according to its laws and has permanent residence in its territory.

By "natural person" is understood, in relation to the Republic of Cuba, a person who has the citizenship of that State according to its laws and has permanent residence in its territory;

b) By "legal person" is understood, in relation to each of the Contracting Parties, any entity established in its territory and recognized by its legislation, such as public institutions, partnerships of individuals or capitals, foundations, associations, and this independently that his responsibility is limited or not.

3. "Revenue" includes the sums generated by an investment including, but not limited to, earnings, interest, capital income, shares, dividends, royalties and compensation.

4. "Territory" means, the territory of the Republic of Cuba and the territory of the Republic of Cabo Verde; as well as the

maritime zones, including the seabed and subsoil adjacent to the outer limits of the territorial waters of any of the territories over which the State in question exercises sovereign right and jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investments

1. Each of the Contracting Parties shall stimulate and create favourable conditions, in accordance with its laws and regulations, so that investors of the other Contracting Party may invest in its territory, admitting them in accordance with its laws and regulations.

2. Each of the Contracting Parties, within its own territory, shall agree for the investments of the investors of the other Contracting Party fair and equitable treatment and full protection and security at all times.

3. Each Contracting Party shall create favourable conditions for the granting of visas and work permits necessary in its territory so that the citizens of the other Contracting Party may carry out the activities rcelated to the investment.

Article 3. Most Favoured National and Nation Treatment

1. Each of the Contracting Parties, within its own territory, shall accord fair and equitable treatment to the investments and profits of the investors of the other Contracting Party and not less favourable than that which it accords, for the purposes of investments and profits, to its own investors or to the investments and profits of investors of a third State.

2. Each of the Contracting Parties, within its own territory, shall grant to the investors of the other Contracting Party, in relation to the management, maintenance, use, enjoyment or disposition of the investments, a fair and equitable treatment no less favourable than the one agreed upon for its investors or for investors of a third State.

3. It is confirmed that the investments or revenues of nationals or companies mentioned in paragraphs (1) and (2) above are those governed by national legislation that covers foreign investment and that the treatment provided in paragraphs (1) and (2) above must apply to those provided in articles 1 to 11 of this Agreement.

4. The provisions of paragraphs (1) and (2) of this Article shall not be considered as a clause that obliges a Contracting Party to extend to investors of the other Contracting Party the benefits of any treatment, preference or privilege from a Contracting Party derived from:

a) Any customs union, free zone, monetary union, or any similar international agreement leading to the formation of such unions or institutions, or any other form of regional cooperation of which either of the Contracting Parties is or may be a party;

b) Any international agreement or agreement concerning mainly to the tax regime.

Article 4. Compensation for Losses

1. In case the investors of one of the Contracting Parties suffer losses on their investments in the territory of the other Contracting Party, caused by wars or other armed clashes, a state of national emergency, revolts, insurrection or riots, the Contracting Party where it has been carried out the investment will offer in relation to the restitution, compensation, compensation or other agreement, no less favourable treatment than the one that the Contracting Party applies to its investors or for investors from a third State.

The corresponding payments will be freely transferable and will be executed without unnecessary delay in currency freely convertible.

2. Without being detrimental of paragraph (1) of this article, the investors of one of the Contracting Parties that in any of the situations mentioned in that paragraph suffer losses in the territory of the other Contracting Party as a result of:

a) Occupation of their properties by forces or authorities of the last Contracting Party,

b) Destruction of their properties by forces or authorities of the last Contracting Party, which has not been produced by combative actions or that has not been required for the necessity of the situation, they will receive a fair and adequate compensation for the losses suffered during the period of occupation or as a result of the destruction of their properties. The payments corresponding will be freely transferable and they will be done without unnecessary delay in freely convertible currency.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subject to measures having effects equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, unless the aforementioned acts are made for the public interest, through legal process, on a non-discriminatory basis and through appropriate, prompt and effective compensation. The compensation shall be equivalent to the effective market value of the expropriated investment immediately before the amount in which the expropriation or expropriation decisions have been announced or published and must include accrued interest until the moment of payment. This compensation shall be made immediately and may be carried out in freely convertible currency and shall be freely transferable.

2. The affected investor shall have the right, to an early review, by the judicial authorities or independent authorities of the Contracting Party that carries out the expropriation, of the investment valuation in accordance with the principles established in this article.

3. The provisions of paragraph 1 of this article shall also apply when a Contracting Party carries out the expropriation of the assets of a company established or constituted in accordance with the laws in force in its territory and in which the investors of the other Contracting Party hold shares.

Article 6. Transfers

1. Each Contracting Party shall guarantee the transfer of payments related to investments and profits. Transfers shall be made immediately and without restrictions after payment of any tax due, in freely convertible currency to be agreed and shall include any tax due, and shall include, but not exclusively:

a) Capital and additional sums to maintain or increase the investment;

b) Gains, interest, dividends and other current income;

c) Loan repayment funds;

d) Royalties or commissions;

e) Income from sale or settlement from the investment;

f) Income of natural persons subject to the laws and regulations of the Contracting Party where the investment is made;

g) The payments contemplated in articles 4 and 5 of this Agreement.

2) For the purposes of this Agreement, the exchange rates shall be the rates in effect at the time it makes the transfer for current operations, unless otherwise agreed.

Article 7. Subrogation

1. In the event that a Contracting Party or one of its designated institutions makes a payment to its own investor in accordance with an insurance guarantee against non-commercial risks for investments made in the territory of the other Contracting Party, the last Contracting Party will recognize:

a) The assignment, either by means of the law or by legal transaction in that country, any right or claim, from the investor to the first Contracting Party or its designated institutions, as well as,

b) That the first Contracting Party or its designated institutions are authorized by virtue of subrogation to exercise the said rights and enforce the claims of the said investor and shall assume the obligations related to the investment.

The rights and subrogated claims will not exceed the original rights and claims of the investor.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Disputes that may arise between an investor of one of the Contracting Parties and a Contracting Party with regard to investments made in the territory of that Contracting Party, shall be subject to negotiations between the parties.

2) If a dispute between an investor of one of the Contracting Parties and another Contracting Party cannot be solved within six months from the date of its initiation in writing, it may be submitted, at the investor's discretion, to:

a) The competent Court of the Contracting Party where the investment was made;

b) The Arbitral Tribunal of the International Chamber of Commerce in Paris; and

c) An arbitrator or ad hoc International Arbitral Tribunal constituted according to the Arbitration Rules of the Commission of the United Nations for International Trade Law (CDUDMI).

These rules may be modified by written agreement of the parties. The award of the Arbitral Tribunal is final and binding for the parties in litigation.

Article 9. Reconciliation of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation and application of this Agreement should, where possible, be reconciled by means of consultations or negotiations.

2. In the event that such controversies cannot be reconciled within a period of six months, they shall be submitted, at the request of one of the Parties, to an Arbitral Tribunal, in accordance with the provisions of this article.

3. The Arbitral Tribunal shall be constituted, for each individual case, in the following manner: within two months, from the moment in which the request for arbitration is received, each of the Parties shall appoint a member of the Tribunal. The two members must then select a citizen of a third State who, by approval of both parties, will act as President of the Court (hereinafter defined "President"). The President shall be appointed within three months from the date of appointment of the other two members.

4. If appointments have not yet been made within the time limits set in paragraph 3) of this article, each of the Contracting Parties may send a request to the President of the International Court of Justice to make the appointments. In the event that the President is a citizen of one of the Contracting Parties or is unable to perform such a function, the Vice - President of the Court making the appointment shall be requested. In the event that the Vice-President is a citizen of one of the Contracting Parties or is unable to perform such a function, the member of the Court who is next in seniority and who is not a citizen of either Contracting Party shall be invited to make the appointment.

5. The Court will decide by majority vote and its decision will be binding. Each of the Contracting Parties must pay the expenses of its own arbitrator and those of its representation in the process. The expenses of the President, as well as the rest, shall be borne by the two Contracting Parties in equal parts. The Arbitral Tribunal will establish its own regulations.

Article 10. Application of other Standards and Special Commitments

1. In case an issue is regulated simultaneously by this Agreement, as well as by another International Agreement to which both Contracting Parties participate it will apply to the Contracting Parties and their investors that have investments in the territory of the other Contracting Party whichever rules are more favourable.

2. In the case that a Contracting Party, on the basis of its laws and regulations or specific provisions of contracts, has adopted for the investors of the another Contracting Party an improved rule than provided in this Agreement, it shall be applied the most favourable treatment .

Article 11. Application of this Agreement

The provisions of this Agreement shall apply to investments made by investors of any of the Contracting Parties in the territory of the other Contracting Party both before and after its entry into force, provided that they are operating legally. However, they will not apply to disputes that have arisen, before its entry into force, in relation to investments.

Article 12. Entry Into Force, Extension, Denunciation

1. This Agreement is subject to approval, according to the internal constitutional requirements, of both Contracting Parties, and shall enter into force as of the last date on which any of the Contracting Parties notifies the other Contracting Party said approval.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force automatically for periods of ten years, unless either Contracting Party notifies the other Contracting Party in writing, one year before the expiration date of the initial period or subsequent periods, its intention to report it.

3. In case of denunciation, the provisions provided in this Agreement will continue to apply for a period of ten years from the date of its complaint to the investments made before the denunciation.

In testimony of which, the undersigned, duly authorized parties have signed this Agreement.

Made in the City of Havana on the 22nd day of the month May 1997, in original copies in the Spanish language, both texts with identical validity.

For the Government of the Republic of Cano Verde

For the Government of the Republic of Cuba