

# **Agreement between the Federal Republic of Germany and the Republic of Mozambique on the promotion and mutual protection of capital investments**

The Federal Republic of Germany and the Republic of Mozambique -

In the desire to deepen the relations of economic cooperation between the two countries,

In the endeavor to create favorable conditions for the investment of capital of nationals or companies of one of the two States in the territory of the other State,

Recognizing the fact that the promotion and mutual contractual protection of these investments is capable of stimulating private economic initiatives and increasing the prosperity of both peoples -

Have agreed as Contracting Parties as follows:

## **Article 1.**

For the purposes of this Treaty

(1) The term "investments" means assets of any kind invested and carried out by nationals or companies of one of the Contracting Parties in the territory of the other Contracting Party, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Interests in companies, in particular share rights and shares;
- c) Loans and other forms of use of capital or entitlement to benefits having an economic value;
- d) Intellectual property rights, such as, in particular, copyrights, patents, utility models, trademarks, industrial designs, registered trade names, know-how and goodwill;
- e) Concessions, including concessions and concessions for natural resources;

A change in the form in which assets are invested does not affect their property as an investment;

(2) The term "income" means the amounts accruing to an investment for a certain period, such as profits, dividends, interest, royalties or other charges;

(3) The term "nationals"

a) As regards the Republic of Mozambique:

Mozambicans within the meaning of the Constitution and the nationality law of the Republic of Mozambique;

b) In relation to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

(4) The term "companies"

a) As regards the Republic of Mozambique:

Any collective personality with legal personality including the bourgeois-legal trading companies which are domiciled in Mozambican territory, whether their activity is directed towards profit or not;

b) In relation to the Federal Republic of Germany:

Any legal person, as well as a trading company or any other company or association, with or without legal personality, which has its seat in the territory of the Federal Republic of Germany, whether or not its activity is directed at profit.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws. In any case, fair and equitable treatment of these investments is ensured and granted.

(2) Investments authorized in accordance with the legislation in force in the territory of the respective Contracting Parties and made by nationals or companies of the other Contracting Parties shall enjoy the full protection and security of this Agreement.

(3) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

## **Article 3.**

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to nationals or companies of third States because of their membership in a customs or economic union, a common market or a free trade zone or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

## **Article 4.**

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the usual bank interest rate until the time of payment; It must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure must be taken in an appropriate manner for the determination and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) With regard to the matters governed by this Article, the nationals or companies of a Contracting Party shall enjoy in the territory of the other Contracting Parties no less favorable treatment than nationals and companies of third States.

## **Article 5.**

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of

payments made in connection with an authorized investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of the investment;
- b) Of the income referred to in Article 1 (2);
- c) To repay loans;
- d) Of the proceeds from the complete or partial liquidation or disposal of the investment;
- e) Of the compensation provided for in Article 4.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights of such nationals or companies by law or by law to business without prejudice to the rights of the former Contracting Party. The former Contracting Party which is entitled to exercise it to the same extent as its legal predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

## **Article 7.**

(1) Transfers pursuant to Article 4 (2) or (3), Article 5 or Article 6 shall be effected without delay at the rate valid on the date of the transfer.

(2) This price must correspond to the rate which the International Monetary Fund would use as a special drawing right at the time of the conversion of the currencies concerned.

## **Article 8.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 9.**

This contract shall also apply to the investments of nationals and companies of the one Contracting Party in the territory of the other Contracting Parties which were entered into before the entry into force of this Treaty. However, the agreement shall in no case be applicable to differences of opinion and disputes arising before its entry into force.

## **Article 10.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled amicably by negotiations between the Governments of the two Contracting Parties.

(2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be formed on a case-by-case basis by appointing a member to each of the contracting parties. Both members agree to the members of a third state as chairman, who is to be appointed for the exercise of his function by the governments of the two contracting parties. Within two months, the members shall be appointed to the chairman within three months after the one party to the agreement has notified the other that they intend to submit the dispute to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the Vice-President is also a national of either Contracting Party or if he is also prevented from doing so

for another reason, the next member of the Court, who is not a national of either Contracting Party or is prevented for any other reason, shall make the appointments ,

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions shall be binding on both parties. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. In addition, the arbitral tribunal shall regulate its own procedures.

## **Article 11.**

(1) Disputes concerning investment between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the parties concerned.

(2) If the disagreement can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. Unless the parties to the dispute reach a dissenting agreement, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitration award shall be binding and shall not be subject to any means of redress or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The Contracting Party involved in the dispute shall not argue as an objection during the arbitration proceedings or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part of the damage or the total loss resulting from an insurance.

## **Article 12.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 13.**

The attached protocol is an integral part of this contract.

## **Article 14.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for fifteen years; After the expiry of which period, the period of validity shall be extended indefinitely, unless one of the two Contracting Parties terminates the contract in writing by a period of at least twelve months before the expiry of the contract by diplomatic means. After expiry of fifteen years the contract can be terminated at any time with a period of at least twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 13 shall continue to apply for a further fifteen years from the date of expiry of the Treaty.

Done at Maputo, this 6th day of March 2002, in two originals, each in the German and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany

Zirpel

For the Republic of Mozambique

Luisa Dias Diogo

## Protocol

At the signing of the Treaty between the Federal Republic of Germany and the Republic of Mozambique on the Promotion and Reciprocal Protection of Capital Investments, the undersigned Plenipotentiaries of the two Parties also agreed on the following provisions, which shall be deemed an integral part of the Treaty:

### (1) Ad Article 1

(a) The ownership and rights to industrial designs, samples and trade secrets and to technical processes shall enjoy the same protection and security of this Treaty.

b) Income from the capital investment and, in the case of its reinvestment, also its income, shall enjoy the same protection as the capital investment.

### (2) Ad Article 2

This Treaty shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that international law permits the exercise of sovereign rights or powers in such areas by the respective Contracting Party.

### (3) Ad Article 3

(a) For the purposes of paragraph 2 of Article 3, "activity" shall include, but not be limited to, the management, use, enjoyment and enjoyment of a capital investment. "Less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular: Restrictions on the purchase of raw materials and supplies, energy and fuels, and means of production and operation of all kinds, obstruction of the sale of products at home and abroad, and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(b) Special incentives granted by the Government of the Republic of Mozambique to its nationals or companies for the purpose of promoting the establishment and development of small and medium-sized Mozambican enterprises shall not be considered to be in violation of the treatment set forth in Article 3 of this Treaty, provided that they do not affect the economic substance of the investments or investment-related activities of nationals or companies of the other Party.

(c) The provisions of Article 3 of this Treaty shall not oblige a Party to extend to individuals and companies resident in the territory of the other Party tax advantages, exemptions and reductions granted under its tax laws only to individuals and companies resident in its territory.

(d) The Parties shall give favorable consideration, within the framework of their domestic legislation, to applications for entry and residence of persons of one Party who wish to enter the territory of the other Party in connection with an investment of capital, and to workers of one Party who wish to enter and reside in the territory of the other Party in connection with an investment of capital in order to carry on an activity as an employee. Applications for work permits shall also be considered favorably.

### (4) Ad Article 4

An entitlement to compensation shall also exist if government measures interfere with the enterprise which is the subject of the capital investment of a national or a company of the other Contracting Party and thereby substantially impair its economic substance.

### (5) Ad Article 7

For the purposes of Article 7, paragraph 1, a transfer shall be deemed to have been effected "without delay" if it is effected within a period of time normally necessary for the observance of transfer formalities. The period shall commence with the submission of an appropriate application and shall under no circumstances exceed two months.

(6) In the case of transfers of goods and persons related to a capital investment, a Party shall neither eliminate nor impede the carriers of the other Party and shall, to the extent necessary, grant authorizations to carry out the transfers.