Agreement on the Promotion and Reciprocal Protection of Investments between the Republic of Angola and the Republic of Cabo Verde

The Government of the Republic of Angola and the Government of the Republic of Cabo Verde;

Desiring to create and maintain favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion of these investments could serve as a stimulus to the economic initiative of the operators of both countries and consequently to increase the employment and well-being of their peoples;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement.

1. The term "investments" shall comprise all goods and rights, in particular:

a) Acquisition of movable and immovable property situated in national territory and any other rights in rem, such as easements, land charges, mortgages and pledges;

b) The participation or acquisition of a share in the capital of new or existing undertakings or groups of undertakings, in whatever form it may be reviewed;

c) Monetary credits and rights to any benefits of economic value;

d) The establishment and expansion of branches or other forms of social representation of foreign undertakings or of new undertakings exclusively belonging to the investor or part of an existing company or group of undertakings;

e) Copyrights and industrial property rights;

f) Concessions for the exercise of research activities, extraction or exploitation of natural resources as well as any other rights conferred by law, by contract or by decision of the authority under the Law.

2. The term "investor" shall designate, for each Contracting Party, in particular:

(a) Natural persons who, in accordance with the law of that Contracting Party, are deemed to be nationals of that State;

(b) Legal persons, including corporations, whether or not they are State-owned, and organizations constituted or otherwise organized in accordance with the law of that Contracting Party and having their headquarters and actual economic activity in the territory of that Contracting Party.

3. The term "territory" means the land area and the territorial sea of each of the Contracting Parties as well as the exclusive economic zone and the platform on which the State, in accordance with international law, exercises sovereignty or jurisdiction for the purpose of exploitation and preservation of natural resources.

Article 2. Making Investments

Each Contracting Party shall adopt a series of measures to enable investments by investors of the other Party in its territory and shall admit them in accordance with the respective legislation in force.

Article 3. Admission

Where an investment is admitted on its territory, each Contracting Party shall arrange for the issue of all authorizations and licenses which are deemed necessary for such investment, in accordance with the laws and regulations of each of the Contracting Parties.

Article 4. Protection and Treatment

1. Each Contracting Party shall protect in its territory the investments made in accordance with the laws and its regulations by investors of the other Contracting Party and shall not impede, by means of unjustified or discriminatory, the management, maintenance, use, usufruct, expansion, sale and, if applicable, settlement of such investments.

2. Each Contracting Party shall ensure in its territory fair and equitable treatment of the investments of investors of the other Contracting Party.

3. The provisions of this Article shall not extend to the privileges which one of the Contracting Parties grants to investments of a third State by virtue of its participation in or association with a free-trade zone, a customs union or a common market.

Article 5. Free Transfer

Each Contracting Party in whose territory the investors of the other Contracting Party have made investments shall permit such investors, in accordance with their legislation, to freely transfer payments relating to the investments in question, namely:

a) Dividends, profits and other current income;

b) Repayments of loans;

c) The amounts intended to cover the costs arising from the management of investments;

d) The additional capital contributions necessary for the maintenance or development of investments;

e) Proceeds from the sale or partial or total liquidation of an investment including any capital gains;

f) Other remuneration arising from the rights referred to in Article 1 (1) (c), (e) and (f) of this Agreement.

Article 6. Expropriation and Compensation

1. Neither Contracting Party shall take, directly or indirectly, a measure of expropriation, nationalization or any other similar or equivalent effect against the investors of the other Contracting Party, except for reasons of public interest and provided that such measures are not insolvency proceedings, are in accordance with the legal provisions, provide for the payment of an effective and adequate compensation. The amount of compensation, including interest, shall be calculated in accordance with the legislation in force in each of the Contracting Parties and shall be recorded in freely convertible currency and paid promptly to the creditor irrespective of his domicile or seat.

2. Investors of one of the Contracting Parties who suffer loss of investment in the territory of the other Contracting Party by virtue of war, armed conflict, revolution, national state of emergency or uprising shall not receive less favourable treatment from that Contracting Party in restrictions, compensation, compensation or other consideration than that granted to its own investors. Such payments shall be freely transferable.

Article 7. Investments Prior to the Agreement

The provisions of this Agreement shall also apply to investments made in the territory of one of the Contracting Parties in accordance with their respective laws and regulations by investors of another Contracting Party before the entry into force of this Agreement.

Article 8. More Favourable Conditions

Without prejudice to the conditions set out in this Agreement, any more favourable conditions which have been or will be agreed for each with the investors of the other Party.

Article 9. Subrogation

1. In the event that one of the Contracting Parties has issued any financial guarantee against the non-commercial risks of an investment of one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party in accordance with the principle of subrogation the rights of the investor if it has made any payment under such guarantees.

2. With regard to rights of ownership, usufruct or any other right in rem, subrogation may take place with the prior authorization of the competent authorities in accordance with the law of the Contracting Party in which the investment is made.

Article 10. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. With the aim of finding a solution to disputes concerning investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 11 of this Agreement, there shall be concertation between the Parties concerned.

2. If consultations do not lead to a solution within six months of the date on which the dispute arose, it shall be referred to a court at the request of the investor or the Contracting Party.

3. The arbitral tribunal referred to in paragraph 2 of this article shall be constituted on a case-by-case basis as follows:

a) Unless the Parties to the dispute otherwise decide, each Party shall appoint an arbitrator and the two arbitrators shall appoint a chairman who shall be a national of a third State. The arbitrators shall be appointed within 2 months of receipt of the request for submission of the dispute to arbitration and the chairman shall be appointed no later than 60 working days thereafter;

b) If the time limits referred to in subparagraph (a) of this Article have not been met, each Party to the dispute may, in the absence of any agreement, invite the President of the International Chamber of Commerce Tribunal in Paris to process the necessary designations;

c) In the case referred to in subparagraph (b) of this Article, the President of the Arbitral Tribunal of the International Chamber of Commerce in Paris is prevented from exercising his mandate or if he is a national of one of the Contracting Parties, appointments shall be made by the Vice President and if the latter is impeded or if he is a national of one of the Contracting Parties, appointments shall be made by the oldest member of the court who is not a national of either Contracting Party;

d) The court shall render the judgment by a majority of votes, which shall be final for the parties to the dispute.

4. If both Parties are Parties to the Convention of 18 March 1965 on the settlement of investment disputes between States and nationals of other States, the dispute shall, at the request of the investor submitted to the International Centre for the settlement of disputes relating to investments (I.C.S.I.D.) in lieu of the procedure set out in paragraph 3 of this Article.

5. The Contracting Party which is a party to the dispute may not, at any time during the resolution and enforcement of a judgment, assert that the investor has received, under an insurance contract, compensation covering all or part of the damage caused.

Article 11. Disputes between the Contracting Parties

1. The differences between the Contracting Parties as to the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If both Contracting Parties do not reach a settlement within 12 months of the occurrence of the dispute, it shall be submitted, at the request of one or more Contracting Party to an Arbitral Tribunal composed of three members. Each Contracting Party shall appoint an arbitrator, who shall in turn appoint a President who must be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not acted on the invitation of the other Contracting Party to make such appointment within two months, the arbitrator shall be appointed, at the request of this Contracting Party, by the President of the International Court of Justice.

4. If the two arbitrators cannot agree on the election of the President within two months of their appointment, the latter shall be appointed at the request of one or the other Contracting Party by the President of the Court of Justice.

5. If, in the cases provided for in paragraphs 3 and 4 of this Article, the President of the International Court of Justice is

prevented from exercising his mandate, or if he is a national of one of the Contracting Parties, the provisions of article 10 N° 3, c) of this agreement shall apply mutatis mutandis.

6. Unless the Contracting Parties agree otherwise, the Court shall determine its own procedure.

7. Decisions are final and binding on the Contracting Parties.

Article 12. Final Dispositions

1. This Agreement shall be valid for a period of five years from the date on which the two Governments have received notification that the constitutional formalities required for the conclusion and implementation of international agreements have been fulfilled.

2. This Agreement may be denounced by either party by giving written notice to the other party at least six months in advance.

3. This Agreement shall be deemed extended, in the same conditions, for successive periods of five years.

4. In case of denunciation, the provisions of Articles 5, 6 and 10 of this Agreement shall also apply for a period of 10 years to the investments made before the denunciation.

Done at Luanda on 11 September 1997 in two originals in Portuguese language, both being equally authentic.

For the Government of the Republic of Angola,

Mr Venâncio de Moura,

Minister for Foreign Affairs.

For the Government of the Republic of Cabo Verde,

Mr Amilcar Spencer Lopes,

Minister for Foreign Affairs and Communities.