Agreement on the encouragement and mutual protection of investments between the Kingdom of the Netherlands and the Republic of Cabo Verde

The Government of the Kingdom of the Netherlands

and

the Government of the Republic of Cabo Verde,

Hereinafter referred to as the Contracting Parties,

Desiring to strengthen the traditional bonds of friendship between their countries and to develop and intensify their economic relations, in particular as regards investments made by nationals of one Contracting Party in the territory of the other Contracting Party

Recognizing that an agreement on the treatment to be accorded to such investments is likely to stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investments is desirable,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

(a) The term "investment" means all classes of assets and specifically, but not exclusively:

I. movable and immovable property and all rights in rem with respect to all classes of assets ;

II. rights arising from shares, bonds and other forms of participation in companies and joint ventures

III. rights of claim, and other assets as well as rights to any performance having an economic value;

IV. rights in the field of intellectual property, technical processes, goodwill and know-how;

V. rights granted by law, including concessions for prospecting, exploration, extraction and exploitation of natural resources.

b) The term "nationals" includes, with respect to either of the Contracting Parties

I. natural persons having the nationality of that Contracting Party in accordance with its legislation;

II. without prejudice to the provisions of point III below, legal persons constituted under the legislation of that Contracting Party

III. legal persons controlled, directly or indirectly, wherever they are established, by nationals of that Contracting Party.

(c) The term "territory" includes the maritime areas adjacent to the coast of the State concerned, in so far as that State may exercise sovereign rights or jurisdiction in those areas in accordance with international law.

Article 2.

Each Contracting Party undertakes to promote, in accordance with its laws and regulations, economic cooperation by protecting in its territory investments made by nationals of the other Contracting Party. Subject to its right to exercise the powers conferred on it by its laws and regulations, each Contracting Party shall admit such investments.

Article 3.

1. Each Contracting Party shall ensure fair and equitable treatment of investments made by nationals of the other Contracting Party and shall not impede by unjustified or discriminatory measures their operation, administration, maintenance, use, enjoyment or disposal by such nationals.

2. In particular, each Contracting Party shall afford to such investments security and protection which in any event shall not be less than that afforded to investments made by its own nationals or nationals of any other third State, in any event, that which is most favourable to the national concerned.

3. If a Contracting Party has granted special advantages to nationals of a third State under agreements establishing customs unions, economic unions or similar institutions, or under agreements to establish such unions or institutions, that Contracting Party shall not be obliged to grant such advantages to nationals of the other Contracting Party.

4. Each Contracting Party shall comply with any obligation it has entered into in respect of investments made by nationals of the other Contracting Party.

5. If the legislative provisions of one of the Contracting Parties or obligations under international law now in force or established at a later date between the Contracting Parties under provisions additional to this Agreement contain regulations of a general or particular character entitling nationals of the other Contracting Party to more favourable treatment than this Agreement, such regulations shall prevail over this Agreement to the extent that they are more favourable than this Agreement.

Article 4.

With respect to taxes, duties, charges, deductions and exemptions from taxation, each Contracting Party shall accord to nationals of the other Contracting Party who have undertaken any economic activity whatsoever in its territory treatment no less favorable than that which it accords to its own nationals or to the nationals of any third State, or in any event, whichever is more favorable to the nationals concerned. However, for this purpose, no account shall be taken of any special tax advantages granted by that Party under an agreement for the avoidance of double taxation, or on the basis of its participation in a customs union, an economic union or a related institution, or on the basis of reciprocity with a third State.

Article 5.

1. Each Contracting Party shall ensure that payments resulting from investment activities may be transferred. The transfer shall be made without undue restrictions or delays, in a freely convertible currency. Transfers shall include in particular, but not exclusively

(a) current profits, interest, dividends and income;

b) funds required:

I. for the acquisition of raw or auxiliary materials, semi-finished or finished products,

or

II. to replace capital goods to ensure the continuity of an investment;

c) additional funds necessary for the development of an investment

(d) funds for the repayment of loans;

(e) royalties or management fees

(f) income from individuals;

g) proceeds from the sale or liquidation of the investment.

2. Transfers shall be made in the convertible currency in which the investment was made or in another convertible currency agreed between the investor and the competent Cape Verdean authority.

Article 6.

Neither of the Contracting Parties shall take measures against nationals of the other Contracting Party which directly or indirectly deprive them of their investments, unless the following conditions are met

(a) the measures are taken in the public interest and under a legal procedure

(b) the measures are not discriminatory or contrary to the commitments assumed by that other Contracting Party

(c) the measures are accompanied by provisions for the payment of fair compensation. Such compensation shall correspond to the real value of the investment in question and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants and in the currency of the country of which they are nationals or in any freely convertible currency accepted by the claimants

Article 7.

If nationals of a Contracting Party suffer loss of investment in the territory of the other Contracting Party as a result of war or other armed conflict, revolution, national emergency, revolt, insurrection or riot, they shall be entitled to receive from the latter Contracting Party as regards restitution, indemnity, compensation or other damages, treatment not less favourable than that accorded to nationals of that Party or to nationals of any other third State, and in any event, whichever treatment is more favourable to the nationals concerned.

Article 8.

If the investments of a national of one of the Contracting Parties are insured against non-commercial risks under a system established by law, the other Contracting Party shall recognize the subrogation of the insurer or reinsurer in the rights of the said national in accordance with the terms of the insurance contracted.

Article 9.

The provisions of this Agreement shall apply, as of the date of its entry into force, also to investments made before that date.

Article 10.

As regards the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and Aruba, unless the notifications referred to in Article 14, paragraph 1, provide otherwise.

Article 11.

Each Contracting Party may propose to the other Party that consultations be held on any matter concerning the interpretation or application of this Agreement. The other Party shall give sympathetic consideration to such a proposal and shall take all appropriate measures to permit such consultations.

Article 12.

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement which cannot be settled within a reasonable time by diplomatic means shall, unless the Parties have agreed otherwise, be submitted at the request of either Contracting Party to an arbitral tribunal.

2. The tribunal shall consist of three members. Each Party shall appoint an arbitrator and the two arbitrators shall propose by mutual agreement a third arbitrator as chairman, the latter being a national of a third State.

3. If one of the Parties has not appointed its arbitrator and has not responded to the invitation of the other Party to do so within two months, the other Party may request the President of the International Court of Justice to make the necessary appointment.

4. If, within three months of their appointment, the two arbitrators have not reached agreement as to the choice of the third arbitrator, either Party may request the President of the International Court of Justice to make the necessary appointment.

5. If, in the cases provided for in paragraphs 3 and 4 of this article, the President of the International Court of Justice is unable to act or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President. If the Vice-President is unable to act or is a national of one of the Contracting Parties, the appointments shall be made by the next

member of the Court in the hierarchy who is not a national of one of the Parties.

6. The court shall rule in accordance with the law. Before making its decision, it may, at any stage of the proceedings, propose to the Parties an amicable settlement of the dispute. The foregoing provisions do not affect the Tribunal's jurisdiction to decide the dispute ex aequo et bono if the Parties agree.

7. The Tribunal shall determine its own procedure, unless the Parties agree otherwise.

8. The Tribunal shall make its decision by majority vote. Its decision shall be final and binding on the Parties.

9. Each Contracting Party shall bear the costs of its arbitrator and his representation in the arbitration proceedings. The costs of the Chairman and other costs shall be borne equally by the Contracting Parties.

Article 13.

1. Disputes between one of the Contracting Parties and a national of the other Contracting Party relating to investments shall, as far as possible, be settled amicably by the parties to the dispute.

2. If a dispute cannot be settled within six months of the date on which one of the parties to the dispute made a request for an amicable settlement, it shall, at the request of the national of the other Contracting Party, be submitted to an arbitral tribunal. By this Agreement, the Contracting Parties declare their agreement to such a procedure. Unless the Parties decide otherwise, the provisions of Article 12, paragraphs 2, 3, 5, 6, 7, 8 and 9 shall be applied by analogy, provided that the parties to the dispute appoint the members of the arbitral tribunal in accordance with the provisions of Article 12 and, if the time limits indicated in paragraphs 3 and 4 of Article 12 have not been observed, that each of them may, in the absence of other agreements, invite the President 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 national law.

3. The Contracting Party involved in the dispute shall not allege, during arbitration proceedings or the enforcement of the arbitration award, that the national of the other Contracting Party has received compensation from an insurer for part or all of the damages.

4. If the Contracting Parties have both become members of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on March 18, 1965, disputes between the parties to which this Article refers shall be submitted to an arbitral tribunal in accordance with the above Convention, unless the Contracting Parties decide otherwise; by this Agreement, the Contracting Parties consent to such a procedure.

Article 14.

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that the formalities required by the Constitution in their respective countries have been completed. The Agreement shall remain in force for a period of fifteen years.

2. Unless one of the Contracting Parties denounces the Agreement at least six months before its expiry, it shall be tacitly extended for a further period of ten years, the Contracting Parties reserving the right to denounce the Agreement by notification at least six months before the expiry of the current period of validity.

3. With respect to investments made prior to the date of expiration of this Agreement, the foregoing articles shall remain in force for a period of fifteen years from the date of expiration.

4. Taking into account the time limits referred to in paragraph 2 of this Article, the Government of the Kingdom of the Netherlands may separately terminate the application of this Agreement with respect to any part of the Kingdom.

IN WITNESS WHEREOF the undersigned representatives, duly authorized to that effect, have signed this Agreement.

DONE at The Hague, this 11th day of November 1991, in two copies, in the French language.

For the Government of the Kingdom of the Netherlands

(s.) Y. VAN ROOY

For the Government of the Republic of Cabo Verde

(s.) JORGE CARLOS A. FONSECA