

# **Agreement between the Government of the French Republic and the Government of the Republic of Mozambique on the reciprocal encouragement and protection of investments**

The Government of the French Republic and the Government of the Republic of Mozambique, hereinafter referred to as "the Contracting Parties";

Desiring to enhance economic cooperation between the two States and to create favourable conditions for French investment in Mozambique and Mozambique investment in France;

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the interest of their economic development;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property rights and interests of any kind and, in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits, deposits and similar rights;
- b) Shares, stocks and other forms of participation, including indirect minority, or to companies established in the territory of one of the Contracting Parties;
- c) The obligations, rights and legitimate claims to any performance having economic value;
- d) Intellectual property rights, commercial and industrial such as copyrights, patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources, including those located in the maritime zone of the Contracting Parties.

In respect of investments in the territory or maritime zones of France, it is understood that such investment must be or have been made before or after the entry into force of this Agreement in accordance with the legislation of the Contracting Party in the territory or maritime area in which the investment is made.

In respect of investments in the territory or maritime zones of Mozambique, it is understood that such investment must be or have been made before or after the entry into force of this Agreement in accordance with the Investment Laws No 4/84 of 18 August 1984 and No. 3/93 of 24 June 1993, or any act which would replace the supplement or amend them.

Any alteration of the form of investment of assets does not affect their character as investments provided that such change is not contrary to the legislation of the Contracting Party in the territory or maritime area in which the investment is made.

2. The term "national" means natural persons having the nationality of either of the Contracting Parties.

3. The term "company" juridical means any person in the territory of one of the Contracting Parties in accordance with its law and having its registered office or directly or indirectly controlled by nationals of either Contracting Party, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

4. The term "returns" means all amounts yielded by an investment such as profits, royalties and interests, during a period of

time.

Investment income and in the case of reinvestment of returns reinvested shall enjoy the same protection as the investment.

5. This Agreement shall apply to the entire territory of each of the Contracting Parties, as well as the economic zone and the continental shelf with respect to which either Contracting Party exercises sovereign rights in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982.

6. No provision of this Agreement shall be construed as preventing a Contracting Party from taking any action to regulate the investment of foreign companies and the terms and conditions of employment of those companies in the framework of policies designed to preserve and promote cultural and linguistic diversity.

7. For the purposes of this Agreement, it is understood that the Contracting Parties are responsible for acts or omissions committed by their territorial authorities, including, but not limited to, regions, local authorities or any other entities over which they exercise control, representation or responsibility for international affairs and sovereignty in accordance with their domestic legislation.

## **Article 2. Promotion and Admission of Investments**

Each Contracting Party recognizes and encourages on its territory and its maritime area in accordance with its laws and the provisions of this Agreement, the investments made by nationals or companies of the other Contracting Party.

## **Article 3. Fair and Equitable Treatment**

Each Contracting Party shall, within its territory and maritime zone, accord to nationals and companies fair and equitable treatment, in accordance with the principles of international law, to investments of nationals and companies of the other Contracting Party and shall ensure that the exercise of the right so recognized is not hindered either in law or in fact.

## **Article 4. National Treatment and Most-favoured-nation Treatment**

Each Contracting Party shall, in its territory and in the maritime area to nationals and companies of the other Contracting Party as regards their investments and activities associated with such investments, treatment no less favourable than that accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation, whichever is more favourable. In this connection, nationals who are authorised to work in the Territory and in the maritime area of either Contracting Party shall be entitled to the material facilities appropriate to their business activities.

This treatment does not extend to the privileges which one of the Contracting Parties accords to nationals or companies of any third State by virtue of its association or participation in a free trade area, customs union, common market or any other form of regional economic organization.

The provisions of this Article shall not apply to tax matters.

## **Article 5. Expropriation and Compensation**

1. Investments made by companies or nationals of either Contracting Party shall enjoy full protection and security in the territory and in the maritime zones of the other Contracting Party.

2. Neither Contracting Party shall take any measure of expropriation or nationalization or any other measure the effect of which is to dispossess, directly or indirectly, the nationals or companies of the other Party of investments belonging to them in their territory and in their maritime zone, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

All dispossession measures be taken that might give rise to payment of prompt and adequate compensation equal to the real value of the investment concerned and evaluated against a normal economic situation prevailing prior to the measures taken or became public knowledge.

Such compensation, its amount and has no later than the date of dispossession. the compensation shall be paid without delay, and effectively realisable freely transferable. It produces until the date of payment, shall include interest at the market rate of interest.

3. Companies or nationals of either Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory or maritime zones of the other

Contracting Party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

## **Article 6. Free Transfer**

Each of the Contracting Parties, in the territory or maritime area in which the investments were made by nationals or companies of the other Contracting Party, shall guarantee the free transfer nationals or companies:

- a) Profits, dividends, interests and other current income;
- b) Royalties arising out of intangible rights referred to in paragraph 1 (d) of article 1, and if they are permitted by national legislation, royalties arising out of intangible rights referred to in paragraph 1 (e) of article 1;
- c) Such as loans contracted regularly;
- d) The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) Compensation of dispossession or losses referred to in paragraphs 2 and 3 of Article 5.

The nationals of either Contracting Party who have been authorised to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

The transfers referred to in the preceding paragraphs shall be effected without delay in the official rate of exchange applicable on the date of transfer.

If, in exceptional circumstances, the movement of capital to or from third countries cause or threaten to cause serious balance of its balance of payments, either Contracting Party may apply to transfers temporary safeguard measures, provided that such measures are strictly necessary, are imposed in a manner that is fair, non-discriminatory and in good faith, and do not exceed a period of six months.

## **Article 7. Guarantees and Subrogation**

1. If one of the Contracting Parties has established a guarantee scheme for investments abroad, it may be granted after a case-by-case review, to investments made by companies or nationals of that Party in the territory or maritime zones of the other party.
2. Companies and nationals of either Contracting Party may obtain the security referred to in the preceding paragraph for investments made in the territory or maritime zones of the other Contracting Party if such investment has previously obtained the authorisation of the latter party.
3. If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment in the territory or maritime zones of the other Contracting Party makes payment to its nationals or companies, it is thereby entered into the rights and claims of the national or company.
4. Such payments shall not affect the right of the beneficiary of the guarantee to resort to the International Centre for Settlement of Investment Disputes or to carry out the measures introduced to until the end of the procedure.

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

Any investment dispute between a Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties concerned.

If the dispute has not been settled within a period of six months from the date when it was raised by either party to the dispute shall be submitted, at the request of either party to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965.

If the dispute is likely to involve the responsibility for acts or omissions by local governments of the Contracting Parties, as defined in paragraph 7 of Article 1 of this Agreement, the territorial authorities shall give their unconditional consent to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), as defined in article 25 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on

18 March 1965.

## **Article 9. Specific Commitments**

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals or companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of the undertaking if it contains provisions which are more favourable than those provided for in this Agreement.

## **Article 10. Settlement of Disputes between Contracting Parties**

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.
2. If the dispute cannot be settled within six months from the date when it was raised by either Contracting Party, it may be submitted at the request of either Contracting Party to an arbitral tribunal.
3. The arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint by mutual agreement, a national of a third State who shall be appointed Chairman of the Tribunal by both Contracting Parties. All arbitrators shall be appointed within two months from the date on which either Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.
4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary General of the United Nations to proceed with the necessary nominations of Arbitrators of the ad hoc arbitration tribunal. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the most senior Under-Secretary-General that follows the Secretary-General and who is not a national of either Contracting Party shall make the necessary appointments.
5. The tribunal shall reach its decisions by a majority of votes. such decisions shall be final and enforceable automatically to the Contracting Parties.

The tribunal shall determine its own rules of procedure. It shall interpret its decision at the request of either Contracting Party. Unless the Tribunal provides otherwise, in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally by the Contracting Parties.

## **Article 11. Entry Into Force and Termination**

Each Party shall notify the other of the completion of the constitutional procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This Agreement is concluded for an initial period of fifteen years. it shall remain in force after the term unless one of the Parties denounces it in writing through diplomatic channels by giving notice of one year.

On expiry of the period of validity of the present Agreement investments over which it was in force continue to benefit from the protection of its provisions for a further period of ten years.

Done at Maputo, this 15th day of November 2002 in two originals, one in the French language and one in the Portuguese language, both texts being equally authentic.

For the Government of the French Republic:

Bernadette Lefort

Ambassador of France

For the Government of the Republic of Mozambique:

Luisa Dias Diogo

Minister of Finance and Planning

## Protocol

At the time of the signature, on the same date, by the Government of the French Republic and the Government of the Republic of Mozambique, of the Agreement on the Reciprocal Encouragement and Protection of Investments, the Contracting Parties also agreed on the following provisions, which shall be considered an integral part of the said Agreement

1) with regard to paragraph 1, letter b ), of Article 1 of the Agreement: It is understood that other forms of participation include participations in third companies.

(2) with regard to Article 3 of the Agreement:

(a) The contracting parties shall consider as de jure or de facto impediments to fair and equitable treatment, any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuels, and means of production and operation of any kind, any impediment to the sale or transportation of products within the country and abroad, and any other measures having a similar effect.

(b) The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to stay, work and travel submitted by nationals of one of the Contracting Parties in connection with an investment made in the territory or maritime area of the other Contracting Party.

3) With regard to Article 4 of the Agreement:

The special incentives granted by the Republic of Mozambique to its nationals for the development of small and medium-sized national enterprises shall not be considered as more favorable treatment, provided that the right to fair and equitable treatment is assured to the nationals and companies of the other Contracting Party, that the economic nature of their investments and related activities is not affected and that fair competition prevails.

Done at Maputo, this 15th day of November 2002, in two originals, each in the French and Portuguese languages, both texts being equally authentic

For the Government of the French Republic:

Bernadette Lefort

Ambassador of France

For the Government of the Republic of Mozambique:

Luisa Dias Diogo

Minister of Finance and Planning