

AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Italian Republic and the Government of the Republic of Mozambique (hereinafter referred to as the Contracting Parties);

Desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially in relation to investments by investors of either Contracting Party in the territory of the other Contracting Party;

And,

Acknowledging that offering encouragement and reciprocal protection to such investment based on international agreements will contribute to stimulating business ventures and fostering the prosperity of both Contracting Parties.

Hereby agree as follows:

Article 1. Definitions

For the purpose of this Agreement:

1 . The term "investment" shall be construed to mean any investment effected by a legal or a natural person of a Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the Contracting Parties.

The term "Investment" comprises in particular, but not exclusively:

- a) Movable and immovable property and the ownership rights in rem; in rem;
- b) Shares, debentures, equity holdings or any other instruments of credit, as well as Government and public securities;
- c) Credits for sums of money or any performance having economic value connected with an investment, as well as reinvested incomes and capital gains;
- d) Copyrights, commercial trade marks, patents, industrial designs, intellectual and industrial property rights, know-how, trade names and goodwill connected with an investment;
- e) Capital expenditures effectively made under licence and franchising in accordance with the law, including those expenditures connected with the right to search for, extract and exploit natural resources;
- f) Any increases in value of the original investment.

Any modification in the form of the investment does not imply a change in the nature of the investment thereof.

2 . The term "investor" shall mean any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party as well as the foreign subsidiaries, affiliates and branches controlled by the above natural and legal persons.

3 . The term "natural person", in reference to either Contracting Party, shall mean any natural person holding the nationality of that State in accordance with its laws.

4 . The term "legal person" in reference to either Contracting Party, shall mean any entity having its head office in the territory of such Contracting Party and recognised by it, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

5 . The term "income" shall mean the money accruing to an investment, including in particular profits, interest income,

capital gains, dividends, royalties or payments for technical services and any other form of payment both in money or in kind.

6 . The term "territory" shall mean, in addition to the zones contained within the boundaries of the country of each Contracting Party, the maritime zones. The latter also comprise the marine and submarine zones over which the Contracting Parties exercise sovereignty and sovereign or jurisdictional rights, according to the international law.

7 . "Investment agreement" means an agreement between a Party (or its Agencies or Instrumentalities) and an Investor of the other Party concerning an investment.

8 . "Non-discriminatory treatment" means treatment that is at least as favourable as the better of national treatment or most-favoured-nation treatment.

Article 2. Promotion and Protection of Investments

1 . Either Contracting Party shall encourage investors of the other Contracting Party to invest in its territory.

2 . Investors of either Contracting Party shall have the right to carry out investment activities in the territory of the other Contracting Party in conformity with the laws and regulations of each Contracting Party and International Conventions relevant in this matter existing on the date of the entry into force of this Agreement.

3 . Either Contracting Party shall at all times ensure just and fair treatment of the investments of investors of the other Contracting Party. Either Contracting Party shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments effected in its territory by investors of the other Contracting Party, as well as companies and enterprises in which these investments have been effected, shall, in no way, be subject to unjustified or discriminatory measures.

4 . Each Contracting Party shall create and maintain, in its territory a legal framework apt to guarantee to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

Article 3. National Treatment and the Most Favoured Nation Clause

1 . Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States.

2 . In case, from the legislation of one of the Contracting Parties, or from the international obligations in force or that may come into force for the future for one of the Contracting Parties, should come out a legal framework according to which the investors of the other Contracting Party would be granted a more favourable treatment than the one foreseen in this Agreement, that more favourable treatment will apply also for the outstanding relationships.

3 . The provisions under point 1 and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to investors of third States by virtue of their membership of a Customs or Economic Union, of a Common Market, of a Free Trade Area, of a regional or sub-regional Agreement, of an international multilateral economic Agreement or under Agreements signed in order to prevent double taxation or to facilitate cross border trade.

Article 4. Compensation for Damages or Losses

Should investors of either Contracting Party incur losses or damages on their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected shall offer at all events a compensation no less favourable than the one granted to investors of third States, in respect of losses or damages thereof. Compensation payments shall be freely transferable without undue delay.

Article 5. Nationalisation or Expropriation

1 . The investments to which this Agreement relates shall not be subject to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, save where specifically provided by current national or local legislation or regulations and orders handed down by Courts or Tribunals having jurisdiction in the territory of a Contracting Party.

2 . Investments of investors of either Contracting Party shall not be "de jure" or "de facto", directly or indirectly nationalised, expropriated, requisitioned or subjected to any measures having an equivalent effect in the territory of the other Contracting Party, except for public purposes or national interest and in exchange for immediate, full and effective compensation and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3 . The just compensation shall be established on the basis of real market value immediately prior to the moment in which the decision to nationalise or expropriate is announced or made public.

In the absence of an understanding between the host Contracting Party and the investor during the nationalisation or expropriation process, compensation shall be based on the currency in which the investment was made and on the documented reference parameters adopted or taken into account in the constitution of the investment.

The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the nationalisation or expropriation has been announced or made public.

Without restricting the scope of the present Article, in case that the object of one of the measures referred to in paragraph 2 of this article is a legal person jointly created by Italian and Mozambican investors, the evaluation of the share of the investors will be, in the currency of the investment, not lower than the starting value, increased proportionally by capital increases and revaluation of capital, undistributed profits and reserve funds, and diminished proportionally by the value of the losses.

4 . Compensation will be considered as actual if it will have been paid in the same currency in which the investment was made.

5 . Compensation will be considered as timely if it takes place without undue delay and, in any case, within one month.

6 . Compensation shall include interests calculated on six months LIBOR basis from the date of nationalisation or expropriation to the date of payment.

7 . A national or company of either Contracting Party that asserts that all or part of his or its investments has been expropriated shall have the right to prompt review by the appropriate judicial or administrative authorities of the other Contracting Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation thereof, conforms to the principles of international law and to decide all other matters relating thereto.

8 . In the absence of an agreement between the investor and the responsible authority, the amount of compensation will be established according to the procedures for disputes resolution as per Article 9 of this Agreement. The compensation proceeds shall be freely transferable.

9 . The provisions of paragraph 2 of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

10 . If after the dispossession the place, business or assets, partially or wholly expropriated for a specific purpose of public utility nature, such place, business or assets have not, for a maximum period of five years, been actually utilised or maintained the fulfilment of such purpose, the former owner shall have the preferential right, being all terms offered equal, to acquire or to resume the said place, business or assets.

Article 6. Repatriation of Capital, Profits and Income

1 . Either Contracting Party shall guarantee that the investors of the other Contracting Party may transfer abroad, without undue delay, in convertible currency, the following:

- a) Capital and additional capital including reinvested income;
- b) The net income, dividends, royalties, payments for assistance and technical services;
- c) Income deriving from the total or partial sale or the total or partial liquidation of an investment;
- d) Funds to repay loans connected to an investment and the payment of the related interest;
- e) Remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner prescribed by the national legislation and regulations in force.

2 . Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article the same favourable treatment that is accorded to investments effected by investors of third State, in case it is more favourable.

Article 7. Subrogation

In the event that either Contracting Party (or an Institution thereof) has provided a guarantee in respect of non-commercial risks for investments effected by one of its investors in the territory of the other Contracting Party, and has effected payments to said investor on the basis of that guarantee, the other Contracting Party shall recognise the assignment of the rights of the investor to the former Contracting Party (or its Institution). In relation to the transfer of payments to the Contracting Party (or its Institution) by virtue of this assignment, the provisions of Article 4, 5 and 6 of this Agreement shall apply.

Article 8. Transfer Procedures

1 . The transfers referred to in Article 4, 5, 6 and 7 shall be effected in convertible currency without undue delay and within six months after fiscal obligations have been met. The transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, except for the provisions under point 3 of Article 5 concerning the exchange rate applicable in case of nationalisation or expropriation.

2 . The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been made.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1 . Disputes which may arise between either Contracting Party and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.

2 . In case an investor or entity of one of the Contracting Parties have stipulated an investment agreement in accordance with the relevant applicable laws in force, the procedure foreseen in such investment agreement shall apply.

3 . In the event that a dispute cannot be settled amicably within six months from the date of the written application for settlement, the investor or entity in question may submit at their choice the dispute for settlement to:

a) The Contracting Party's Court having territorial jurisdiction;

b) An ad hoc Arbitration Tribunal, in compliance with the arbitration regulation of the United Nations Commission on the International Trade Law (UNCITRAL), the host Contracting Party undertaking hereby to accept the reference to said arbitration;

c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedures under the Washington Convention of 18th March, 1965, on the settlement of investment disputes between States and nationals of other States, if or as soon as both the Contracting Parties have acceded to it;

d) Other international arbitration arrangements, mechanisms or instruments adhered to and ratified by both Contracting Parties;

4 . Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedures already underway until these procedures have been concluded, and either Contracting Party has failed to comply with the ruling of the Arbitration Tribunal or the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the international or domestic law provisions which can be applied to the case.

Article 10. Settlement of Disputes between the Contracting Parties

1 . Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2 . In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of either Contracting Party, be laid before an ad hoc Arbitration Tribunal as provided in the following paragraphs of this Article.

3 . The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The two members shall then choose a national of a third State to serve as a President. The President shall be appointed within three months from the date on which the other two members are appointed.

4 . If within the period specified in paragraph 3 of this Article, the appointments have not been made, each of the two Contracting Parties can, in default of other arrangement, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the appointment shall be made by the Vice President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5 . The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitration and of their representative at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties. The Arbitration Tribunal shall lay down its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

Article 12. Application of other Provisions

1 . If a matter is governed both by this Agreement and by another international agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied in either Contracting Party to the investors of the other Contracting Party.

2 . Whenever the treatment accorded by either Contracting Party to the investors of the other Contracting Party, according to its relevant applicable laws and regulations or other provisions or specific contracts or investment authorisations or agreements is more favourable than that provided under this agreement, the most favourable treatment shall apply.

In case the host Contracting Party has not applied such treatment, in conformity with the above, and the investor suffers a damage as a consequence thereof, the investors shall be entitled to a compensation of such damages in conformity with Article 4.

3 . Whenever, after the date when the investment has been made, a modification should take place in laws, regulations, acts or measures of economic policies governing directly or indirectly the investment, the same treatment shall apply upon request of the investor that was applicable to it at the moment when the investment was agreed upon to be carried out.

Article 13. Applicability of this Agreement

The provisions of this Agreement shall apply to any future investments made by investors of one Contracting Party in the territory of the other Contracting Party. It will also apply to the already existing investments made after 18.8.1984, when in accordance with the relevant investment laws in force in the Contracting Parties Countries on the date of the entry into force of this Agreement.

Article 14. Entry Into Force

This Agreement shall become effective as from the date of the second of the two notifications with which the two Contracting Parties shall communicate officially each other that their respective ratification procedures have been completed.

Article 15. Duration and Expiry

1 . This Agreement shall remain effective for a period of 10 years from the date of the notification under Article 14 and shall remain in force for further periods of 5 years thereafter, unless one of the Contracting Parties withdraws in writing by not later than one year notice before the expiry date.

2 . In the case of investments effected prior to the expiry dates, as provided under paragraph 1 of this Article, the provisions

of Articles 1 to 13 shall remain effective for a further five years period.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

Done in Maputo on December 14th, 1998, in two originals, each in the Italian, English and Portuguese languages, all texts being equally authentic.

In case of any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE