

# Agreement on Promotion and Protection of Investments between the Republic of Portugal and the Republic of Guinea-Bissau

The Portuguese Republic and the Republic of Guinea-Bissau:

Encouraged by the desire to intensify economic cooperation between the two States;

Desiring to create favorable conditions for investment by nationals or companies of one State in the territory of the other State;

Recognizing that the promotion and protection of such investments through an agreement may serve to stimulate private economic initiative and enhance the well-being of both peoples;

Agree as follows:

## Article 1. Promotion and Admission

Both Contracting Parties shall promote, to the extent possible, the investments of nationals or companies of the other Contracting Party in their territory and shall admit such investments in accordance with their laws and regulations.

## Article 2. Definitions

For the purposes of this Agreement:

1) The term 'investments' covers all kinds of goods and rights, namely:

- a) The ownership of movable and immovable property, as well as any other real rights of enjoyment or security, inherent or not to the property of those assets, namely mortgages and pledges;
- b) Shareholdings and other forms of participation in the capital of companies and / or economic interests resulting from their activity;
- c) Credit rights in respect of cash or any other economic value;
- d) Copyright, industrial property rights (patents, technical processes, trademarks, trade names, industrial designs), know-how, firm and name of establishment and clientele (stocking);
- e) Private and public law concessions, including exploration, extraction and exploitation of natural resources;

2) The term "income" means the amounts generated by an investment in a given period, such as profits, dividends, interest, royalties or other forms of remuneration relating to the investment, including any payments for technical assistance or management.

In the event that the income from an investment in the definition given above is reinvested, the income from that reinvestment shall also be accounted for as income from the initial investment;

3) The term 'liquidation of investment' shall mean the cessation of investment, in accordance with the procedures laid down by the law in force in the country where the investment in question was effected;

4) The term 'nationals' means:

- a) With regard to the Portuguese - Portuguese Republic, as defined in the Constitution of the Portuguese Republic and in the Portuguese law governing nationality;
- b) As regards the Republic of Guinea-Bissau - Guinea, as defined in the law of nationality in force in the Republic of Gutné-

Bissau.

For the purposes of this paragraph, the possession of a passport of a national of one of the Contracting Parties duly issued by their respective authorities shall be admitted as a presumption of the nationality of the respective holder, without prejudice to either Party being able to elicit such a presumption through other procedures For the determination of the same nationality;

5) The term "companies" means any legal person, including commercial companies or other companies or associations, whether or not having legal personality, which is established, incorporated and operates under the law of either Contracting Party;

6) The term 'territory' includes not only the territory of each of the Contracting Parties, as defined in the respective fundamental laws, but also the exclusive economic zone and continental shelf areas of each of them, provided that international law permits To the Contracting Party concerned the exercise of sovereign rights or jurisdiction over such areas.

### **Article 3. Protection**

Both Contracting Parties shall accord full protection and security to the investments made in their territory by nationals and companies of the other Contracting Party and shall not impede by unjustified or discriminatory measures the management, the use, the use and the fruition, the exploitation, the extension, the sale And, where appropriate, the liquidation of such investments.

### **Article 4. Treatment**

1. Both Contracting Parties shall ensure on their territory fair and equitable treatment of the investments of nationals or companies of the other Contracting Party.

2. Neither Contracting Party shall accord to investments in its territory owned or controlled by nationals or companies of the other Contracting Party less favorable treatment than that accorded to the investments of its own nationals and companies or to the investments of nationals and Companies of third States.

3. Neither Contracting Party shall accord to nationals or companies of the other Contracting Party, in respect of the activity which they carry out in their territory in connection with investments therein, a treatment less favorable than that accorded to their own nationals and companies or To nationals and companies of third States.

4. For the purposes of this Agreement, any discrimination in respect of the purchase of raw materials and auxiliaries, energy and fuel or other means of production and operation of any kind or relating to the sale of products shall be understood as a less favorable treatment Within the country and abroad, as well as any other measures having similar effects.

### **Article 5. Exceptions**

The provisions of the previous article do not cover:

a) Any privileges or benefits which one of the Contracting Parties grants to nationals or companies of third States on the grounds that they are associated with or are members of a customs or economic union, a common market or a free trade area or as a result of Double taxation or other agreements on tax matters;

b) Any advantages, exemptions or tax reductions which, under the tax laws of one of the Contracting Parties, are granted only to natural persons or companies resident in its territory.

### **Article 6. Requirements**

The Contracting Parties shall, within the framework of their internal legal provisions, treat favorably with applications for entry and stay in the territory and authorization to work or exercise paid work presented to them by nationals of the other Contracting Party in connection with an investment.

### **Article 7. Transfers**

Both Contracting Parties shall guarantee to nationals and companies of the other Contracting Party the free transfer of all sums relating to investments made pursuant to this Agreement, in particular:

- a) Of the capital and of any additional amounts intended for the maintenance or extension of the investment;
- b) Income as defined in Article 2 (2) of this Agreement;
- c) The amounts necessary for the servicing, repayment and repayment of loans;
- d) De royalties or other remunerations relating to the rights referred to in Article 2 (1) (d) of this Agreement;
- e) Of the proceeds resulting from the liquidation or total or partial disposition of the investment;
- f) The allowances and other payments provided for in Article 10 of this Agreement;
- g) Of any payments to be made pursuant to the subrogation provided for in Article 11 of this Agreement.

## **Article 8. Exchange Rates**

1- The transfers referred to in the previous article shall be made without delay and at the exchange rate in force on the date of their respective execution.

2 - For Guinea-Bissau, the exchange rate referred to in the preceding paragraph shall be in accordance with the cross-rate resulting from the exchange rates that the International Monetary Fund would on that date be based on the exchange of the respective currency in special sake.

3. For the purposes of this Article, a transfer shall be deemed to have taken place 'without delay' where it is effected within the period normally necessary for completion of the requisite formalities, which can not, in any event, Exceed 90 days from the date of submission of the transfer request.

## **Article 9. Transportation**

Without prejudice to rules deriving from international conventions or agreements to which either Contracting Party subscribes, neither Party shall exclude or impede the use of transport undertakings of the other Contracting Party, granting, where necessary, all authorizations for their use, in Transport of:

- a) Goods directly intended for investments covered by this Agreement or acquired in the territory of one of the Contracting Parties or of a third State by an enterprise or on behalf of an enterprise in which an investment has been made within the scope of this Agreement;
- b) Persons traveling in connection with investments under this Agreement.

## **Article 10. Expropriation / Nationalization**

1. The investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party may not be expropriated, nationalized or subjected to other measures having equivalent effect to expropriation or nationalization, except for reasons of public utility and compensation. The compensation shall correspond to the value that the expropriated investment had at the time of the expropriation, nationalization or equivalent measure. The indemnity shall be paid without delay, shall bear interest at the usual bank rate up to the date of its liquidation and shall be freely transferable. Appropriate arrangements shall be made for fixing the amount and the form of payment of the compensation at the latest at the time of expropriation, nationalization or equivalent measure. The legality of the expropriation, nationalization or equivalent measure and the amount of compensation must be verifiable in normal court proceedings.

2. In the case of State intervention in the company which is the subject of the investment, compensation shall also be paid in the same manner as in the preceding paragraph in such a way as to seriously and definitively jeopardize the economic situation of the enterprise.

3. Nationals or companies of one Contracting Party which suffer loss of investment in the territory of the other Contracting Party by reason of war or other armed conflict, revolution, state of national emergency or revolt shall not receive less favorable treatment from that Contracting Party, In respect of restitution, compensation, compensation or other consideration, than that accorded to its own nationals or companies. Such payments shall be freely transferable.

4. In respect of matters governed by this Article, nationals and companies of either Contracting Party shall enjoy the most favored nation treatment in the territory of the other Contracting Party.

## **Article 11. Subrogation**

In the event that one of the Contracting Parties makes any payments to one of its nationals or companies by virtue of a guarantee provided for an investment carried out in the territory of the other Contracting Party, it shall be for that reason subrogated to the rights and actions of that national or company, Being able to exercise them in the same terms and conditions as the original owner.

## **Article 12. More Favorable Conditions**

1. If the legal provisions in force in the territory of one of the Contracting Parties or of the obligations under international law that may exist or will exist in future between the Contracting Parties together with this Agreement result in a general or special regulation in which it is granted to investments of Nationals or companies of the other Contracting Party more favorable treatment than provided for in this Agreement, such rules shall prevail in so far as it is more favorable.
2. Conditions more favorable than those resulting from this Agreement which have been agreed upon by either Contracting Party with nationals or companies of the other Contracting Party shall remain valid and shall not be affected by the entry into force of this Agreement.

## **Article 13. Previous Investments**

The provisions of this Agreement shall also apply to investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party in accordance with their respective legal provisions and which took place before the entry into force of this Agreement.

## **Article 14. Disputes Concerning the Interpretation / Application of this Agreement**

- 1- Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiation between the Governments of the two Contracting Parties.
2. If a dispute can not be settled in this way, it shall be referred to an arbitral tribunal at the request of either Contracting Party.
3. The arbitral tribunal shall be composed of three members, two members and one president, each of the Contracting Parties appointing one member; By common accord, the two members shall designate a national of a third State to perform the duties of President, who shall be appointed by the Governments of the two Contracting Parties.  
  
Vowels must be appointed within two months and the President within three months, in both cases from the date on which one of the Contracting Parties has notified the other that wishes to submit the dispute to an arbitral tribunal.
4. If the time limits set out in the preceding paragraph are not fulfilled, either Contracting Party may, in the absence of agreement, request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or is otherwise impeded, the Vice-President shall be responsible for appointments. If the Vice-President is also a national of one of the Contracting Parties or is otherwise impeded, appointments shall be made to the member of the Tribunal who is in the hierarchy and is not a national of either Contracting Party.
5. The arbitral tribunal shall decide by majority vote, and its decisions shall be binding. Each Contracting Party shall bear the expenses of its member, as well as those of its representation in the proceedings before the arbitral tribunal; Both Contracting Parties shall bear the costs of the President and the other expenses in equal parts. The arbitral tribunal may adopt a different regulation on costs and define its own rules of procedure.
6. In the event that both Contracting Parties become members of the Convention on the Settlement of Disputes between States and Nationals of Other States Relating to Investments of 18 March 1965, Article 27, paragraph 1, Of the said Convention, to the above arbitral tribunal, since between the national or the company of one of the Contracting Parties and the other Contracting Party there exists the agreement referred to in Article 25 of the same Convention. The possibility of recourse to the aforementioned Tribunal in case of failure to comply with a decision of the arbitral tribunal established under Article 27 of the said Convention and in the case of transfer of rights by virtue of the subrogation under Article 11, Of this Agreement.

## **Article 15. Disputes Regarding Investments**

- 1- Disputes arising between one of the Contracting Parties and a national or company of the other Contracting Party in

respect of investments shall, as far as possible, be settled amicably between the parties to the dispute.

2. If the dispute can not be settled within a period of six months from the date on which one of the parties lodged it, it shall, at the request of the national or company concerned, submit to an arbitral proceeding. By this Agreement, both Contracting Parties declare their agreement to such a proceeding. Unless otherwise agreed, the provisions of Article 14 (3) to (5) shall apply by analogy, provided that the disputing parties appoint the members of the arbitral tribunal in accordance with paragraph 3 Of the same article and, failing which, in the absence of other agreements, each of them may, in the absence of other agreements, invite the chairman 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 the national law of the country where the dispute arose.

3. In the event that both Contracting Parties become members of the Convention on the Settlement of Disputes between States and Nationals of Other States Relating to Investments of 18 March 1965, disputes between the Parties referred to in this article shall be submitted to Accordance with the said Convention, unless the Contracting Parties mutually agree on a different solution.

## **Article 16. Continued Application In Case of Conflict**

This Agreement shall remain in force even in the event of conflict between the Contracting Parties, without prejudice to the right to provisional measures, provided they are accepted by the general rules of international law. Such provisional measures shall be repealed at the latest when the conflict ceases, irrespective of the existence or not of diplomatic relations.

## **Article 17. Entry Into Force, Renewal, Termination**

1. Each Contracting Party shall communicate in writing to the other Contracting Party that its constitutional formalities regarding the entry into force of this Agreement have been completed.

2- This Agreement shall enter into force on the date of receipt of the last of said communications and shall remain in force for 10 years. Upon expiry of that period, it shall be deemed to be extended indefinitely, unless one of the Contracting Parties denounces it in writing at any time with 12 months' notice.

3. For investments made up to the date of termination of this Agreement, the provisions of Articles 1 to 16 shall remain in force for 20 years from the date of such termination.

Done at Lisbon, on 24 June 1991, in duplicate in the Portuguese language, both texts being equally authentic.