Agreement Between the Government of the Republic of Cabo Verde and the Government of the Republic of Guinea-Bissau on the Reciprocal Promotion and Protection of Investments

The Government of the Republic of Cabo Verde and the Government of the Republic of Guinea-Bissau, hereinafter referred to as the “Contracting Parties”;

Desiring to strengthen their economic cooperation by creating favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion of such investments may serve as a stimulus to the economic initiative of operators in both countries and, consequently, to the increase of employment and the well-being of their peoples.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term “investment” includes all types of assets and rights, namely:

a) The acquisition of movable and immovable property situated in the national territory and any other real rights, such as easements, land charges, mortgages, and pledges;

b) The acquisition of an interest in the capital of companies or groups of companies, whether new or existing, in whatever form;

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

d) The establishment and expansion of branches or other forms of corporate representation of foreign companies, or of new companies wholly owned by the investor or forming part of existing companies or groups of companies;

e) Copyrights and industrial property rights;

f) Concessions for the conduct of activities involving the research, extraction, or exploitation of natural resources, as well as any other rights conferred by law, by contract, or by a decision of the competent authority in application of the law.

2. The term “investor” means, with respect to each Contracting Party, in particular:

a) Natural persons who, in accordance with the legislation of that Contracting Party, are considered its nationals;

b) Legal entities, including companies, whether or not owned by the State, and organizations established or otherwise organized in accordance with the laws of that Contracting Party and having their headquarters as well as effective economic activity within the territory of that same Contracting Party.

3. The term “income” means amounts derived from investments, such as profits, dividends, interest, royalties, or any other legal income.

4. The term “territory” means the land area and territorial sea of each Contracting Party, as well as the Exclusive Economic Zone and the Continental Shelf over which the State, in accordance with international law, exercises sovereignty or jurisdiction for the purposes of exploiting and preserving natural resources.

Article 2. Facilitation of Investments

Each Contracting Party shall adopt a series of measures aimed at enabling the realization of investments by investors of the other Party in its territory and shall admit such investments in accordance with this Agreement and the relevant legislation

in force.

Article 3. Admission

Whenever an investment is admitted into its territory, each Contracting Party shall ensure the issuance of all authorizations and licenses deemed necessary for such investment, in accordance with this Agreement and the applicable laws of each Contracting Party.

Article 4. Protection and Treatment

1. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not, through unjustified or discriminatory measures, hinder the management, maintenance, use, enjoyment, expansion, sale, and, where applicable, liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment within its territory for investments made by investors of the other Contracting Party.

3. The provisions of this Article do not apply to privileges that a Contracting Party grants to investments from a third State by virtue of its participation in or association with a free trade area, a customs union, or a common market.

Article 5. Free Transfer

1. Without prejudice to the provisions of paragraph 2 of this Article, each Contracting Party in whose territory investors of the other Contracting Party have made investments shall allow such investors, in accordance with its laws, the free transfer of payments relating to the investments in question, namely:

a) Dividends, profits, and other current income;

b) Repayments of loans;

c) Amounts intended to cover expenses arising from the management of the investments;

d) Additional capital contributions necessary for the maintenance or development of the 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 subparagraphs (c), (e), and (f) of paragraph 1 of Article 1 of this Agreement.

2. A Contracting Party may prevent a transfer through the equitable and non-discriminatory application of its laws regarding:

a) Bankruptcy, insolvency, or other legal proceedings to protect the rights of creditors;

b) The issuance of shares, trade, or the handling of insurance;

c) Ensuring compliance with decisions in administrative proceedings

Article 6. Expropriation and Compensation

1. Neither Contracting Party shall, directly or indirectly, take measures of expropriation, nationalization, or any other similar forms or measures having equivalent effect against investors of the other Contracting Party, except for reasons of public interest and provided that such measures are not discriminatory, are in accordance with legal provisions, and provide for the payment of effective and adequate compensation. The amount of compensation, including interest, shall be calculated in accordance with the laws in force in each Contracting Party and shall be denominated in freely convertible currency and paid without delay to the creditor, regardless of their domicile or registered office.

2. Investors of one Contracting Party who suffer investment losses in the territory of the other Contracting Party as a result of war, armed conflict, revolution, a state of national emergency, or insurrection shall not be treated by that Contracting Party less favorably, in terms of restrictions, compensation, indemnification, or other remedies, than its own investors. Such payments shall be freely transferable.

Article 7. Investments Made Prior to the Agreement

The provisions of this Agreement shall also apply to investments made in the territory of one Contracting Party, in accordance with its laws and regulations, by investors of the other Contracting Party, prior to the entry into force of this Agreement.

Article 8. More Favorable Conditions

Without prejudice to the conditions set forth in this Agreement, any more favorable conditions that have been or may be agreed upon by each Contracting Party with investors of the other Party shall apply.

Article 9. Subrogation

1. If one Contracting Party has issued any financial guarantee against non-commercial risks of an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the former Contracting Party, in accordance with the principle of subrogation to the investor's rights, if the former has made any payment under such guarantees.

2. With regard to rights of ownership, usufruct, or any other real right, subrogation may only take effect with the prior authorization of the competent authorities, in accordance with the applicable laws of the Contracting Party where the investment is made.

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

1. With the aim of resolving investment-related disputes between a Contracting Party and an Investor of the other Contracting Party, and without prejudice to the provisions of Article 11 of this Agreement, consultations shall take place between the Parties concerned.

2. If such consultations do not lead to a solution within six months from the date the dispute arises, the dispute shall be submitted to an arbitral tribunal 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 disputing Parties decide otherwise, each Party shall appoint one arbitrator, and the two appointed arbitrators shall appoint a chairperson who must be a national of a third State. The arbitrators shall be appointed within two months of receipt of the request to submit the dispute to arbitration, and the chairperson shall be appointed within the following 60 working days;

b) If the time limits mentioned 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 Court of the International Chamber of Commerce in Paris to make the necessary appointments;

c) In the cases provided for in subparagraph (b) of this Article, if the President of the Court of the International Chamber of Commerce in Paris is unable to perform his duties or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President; and if the Vice-President is unable to perform his duties or is a national of one of the Contracting Parties, the appointments shall be made by the most senior member of the Court who is not a national of any of the Contracting Parties;

d) The tribunal shall render its award by majority vote, which shall be final and binding on the Parties to the dispute.

4. If both Parties are Parties to the Convention of March 18, 1965, on the Settlement of Investment Disputes between States and Nationals of Other States, the dispute shall, at the investor's request, be submitted to the International Centre for Settlement of Investment Disputes (ICSID) for adjudication, in lieu of the procedure set forth in paragraph 3 of this Article.

5. A Contracting Party that is a party to the dispute may not, at any stage of the dispute resolution process or the enforcement of an award, invoke the fact 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. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement

shall be resolved through negotiation.

2. If the two Contracting Parties fail to reach a solution within 12 months of the dispute arising, it shall be submitted, at the request of either Contracting Party, to an Arbitral Tribunal composed of three members. Each Contracting Party shall appoint an arbitrator, who in turn shall 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 does not comply with the invitation made by the other Contracting Party to proceed with such appointment within two months, the arbitrator shall be appointed, at the request of that Contracting Party, by the President of the International Court of Justice.

4. If the two arbitrators are unable to agree on the choice of the President within two months of their appointment, the President shall be appointed, at the request of either Contracting Party, by the President of the International 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 unable to perform his duties or is a national of one of the Contracting Parties, the provisions of Article 10, paragraph 3(c) of this Agreement shall apply mutatis mutandis.

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

7. Decisions shall be final and binding on the Contracting Parties.

Article 12. Final Provisions

1. This Agreement shall remain in force for a period of five years and shall enter into force on the date of the last notification by which the Contracting Parties inform each other of the fulfillment of the requirements under their respective legal systems for the conclusion of international agreements and conventions.

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

3. This Agreement shall be deemed extended, under the same conditions, for successive periods of five (5) years.

4. In the event of termination, the provisions set forth in Articles 5, 6, and 11 of this Agreement shall continue to apply for a period of 10 years with respect to investments made prior to termination.

Signed in the city of Praia on January 29, 2015, in two original copies in the Portuguese language.

FOR THE GOVERNMENT OF CAPE VERDE

Maria de Jesus Veiga Miranda

Secretary of State for Foreign Affairs

FOR THE GOVERNMENT OF GUINEA-BISSAU

Idelfrides Gomes Fernandes

Secretary of State for International Cooperation and Communities