Agreement between the Government of the Republic of Mozambique and the Government of the Republic of Cuba on the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Mozambique and the Government of the Republic of Cuba,

Encouraged by the will to intensify cooperation relations between the States;

Recognizing that the reciprocal promotion and protection of these investments through an agreement may contribute to stimulate the economic initiative and increase the welfare of both peoples.

Have agreed between themselves, as Contracting Parties, the following:

Article 1.

For the purposes of this Agreement:

1. The term "investments" covers all kinds of assets used in the conduct of economic transactions, in the territory of any of the Contracting Parties, and in particular, but not exclusively, includes:

(a) ownership of movable and immovable property, as well as other rights in rem, such as: mortgages and rights of guarantee on the property of others;

(b) interests in companies, such as stocks, shares and bonds;

(c) Financial claims or any other right, obligations or services corresponding to a contract with economic value relating to an investment;

(d) Intellectual property rights, such as: copyrights, industrial property rights, trademarks and trade names, know-how and goodwill;

(e) The commercial value of concessions granted and materialized by law or by contract, including concessions for research, prospecting, extraction or exploitation of natural resources.

The change in the form in which assets have been invested shall not affect their quality as capital investments:

2. The term "income" refers to the amounts generated by an investment and, in particular, but not exclusively, to profits, interest, capital income, dividends, royalties and fees.

3. The term "nationals" means:

(a) With respect to the Republic of Mozambique, any Mozambican citizen under the terms of the Constitution and the Nationality Law in force in the Republic of Mozambique;

b) with respect to the Republic of Cuba, natural persons who are citizens of that State in accordance with its laws and who have their permanent residence in its national territory.

4. The term "company" means

(a) with respect to the Republic of Mozambique, any legal person, having legal personality, with its head office in Mozambican territory, whose activity is either profit-making or non-profit-making;

(b) with regard to the Republic of Cuba, any legal entity incorporated in its territory and recognized by it, such as public entities, companies, corporations, foundations and associations, regardless of whether its liability is limited or not.

5. The term "territory" means

(a) with respect to the Republic of Mozambique, the entire land surface the maritime zone and airspace bounded by national borders and defined in accordance with the law;

(b) For the Republic of Cuba, in addition to the areas within its terrestrial limits, the maritime areas shall also be included. These include marine and submarine areas over which the Cuban State has sovereignty and, in accordance with international law, exercises sovereign rights and jurisdiction.

Article 2.

1. Both Contracting Parties shall, to the best of their ability, promote and allow investments by nationals or companies of the other Contracting Party in their territories, in accordance with their respective existing legal provisions. In all cases, fair and equitable treatment shall be ensured and accorded to such investments.

2. Only those investments authorized in accordance with the respective legal provisions governing foreign investment applicable in the territory of either Contracting Party, and within the scope of this Agreement, shall enjoy full protection and security under this Agreement.

3. Neither Contracting Party shall restrict in any way the administration, utilisation and use or enjoyment of investments by nationals or companies of the other Contracting Party in its territory by arbitrary or discriminatory measures.

Article 3.

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

2. Neither Contracting Party shall accord to nationals or companies of the other Contracting Party, in respect of the management, maintenance, use, enjoyment or disposal of investments made in its territory, less favourable treatment than that it accords to its own nationals and companies or to nationals and companies of third States.

3. For the avoidance of doubt, it is confirmed that the investments of nationals or companies referred to in paragraphs (1) and (2) above, are those governed by the national legislation governing foreign investment, and that the treatment stipulated under paragraphs (1) and (2) above is applicable to the provisions of Articles 1 to 10 of this Agreement.

4. This treatment shall not extend to the privileges accorded by either Contracting Party to nationals or companies of third States by virtue of their membership in, or otherwise being bound by, a customs or economic union, a common market or a free trade area.

5. The treatment agreed to in this article shall not include the benefits accruing to nationals or companies of third States by either Contracting Party as a result of any double taxation agreement or other tax arrangements.

Article 4.

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

2. Investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party may not be expropriated, nationalised or otherwise made subject to measures having effects equivalent to expropriation or nationalisation, except on grounds of public utility, social interest or public policy on a non-discriminatory basis and upon payment of prompt, adequate and effective compensation. The compensation must correspond to the actual market value of the expropriated investment immediately prior to the expropriation or the imminent expropriation becoming publicly known, whichever is earlier. The compensation shall be effectively realisable and transferable in the freely convertible currency in which the investment was made or in which the Parties agree.In determining the market value, account shall be taken of the factors that may have affected the value of the investment before the expropriation was publicly announced.In the event that no market exists as a basis for determining the value of the investment, compensation shall be calculated on the basis of a fair assessment of the value of the investment, taking into account all relevant factors. The national or company concerned shall be entitled, in accordance with the law of the Contracting Party owning it, to a prompt review by a judicial or independent authority of that Party of the valuation of its investment in accordance with the principles set forth in this paragraph.

3. Nationals or companies of either Contracting Party who have suffered losses on their investments in the territory of the other Contracting Party by reason of war or other armed conflict, state of national emergency or uprising, shall not receive less favourable treatment from that Contracting Party in the matter of restitution, compensation, indemnity or other relief than that accorded by it to its own nationals or companies, such as payments, which shall be freely transferable.

4. In respect of the matters governed by this Article, nationals or companies of the Contracting Parties shall, within the territory of the other Contracting Party, be accorded treatment no less favourable than that accorded to nationals and companies of third States.

Article 5.

Both Contracting Parties shall guarantee to the nationals or companies of the other Contracting Party the free transfer of income and other values related to their respective investments, after the payment of the corresponding taxes

taxes. Such transfers shall be made without delay, in the convertible currency in which the capital was originally invested or in any other convertible currency agreed upon by the national or company and the Contracting Party concerned.

Unless the national or the company have agreed otherwise, transfers shall be made at the official exchange rate applicable on the date of the transfer in accordance with the legal provisions in force for foreign exchange operations and shall comprise the following

a) the capital for the realization of the investments and the amountsad1c1onaips for their maintenance or application;

b) the profits defined in no. 2 of article 1, paragraph 2, of the same article

c) The repayments of the loans;

d) The proceeds resulting from the total or partial liquidation of the investment;

(e) the indemnities provided for in Article 4.

Article 6.

If any of the Contracting Parties makes payments to its nationals or companies by virtue of any insurance guarantee against non-commercial risks in respect of any investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation of all rights of such nationals or companies to the first Contracting Party by operation of law and such first Contracting Party may exercise them to the same extent as the national or company making the subrogation would have done. The provisions of Article 4, paragraphs 2 and 3, as well as those of Article 5, shall apply to the transfer of amounts relating to payments to be made by virtue of subrogation.

Article 7.

1. If any general or special rules or regulations of either Contracting Party or of any obligations arising out of international law which are in force or which may come into force in the future between Contracting Parties by virtue of this Agreement provide for treatment more favourable to investments by nationals or companies of the other Contracting Party than that provided for in this Agreement, to the extent that such treatment is more favourable, those rules and regulations shall apply.

2. Both Contracting Parties shall abide by any commitments they may have entered into with respect to investments legally made by nationals or companies of the other Contracting Party in their respective territories.

Article 8.

This Agreement shall apply to investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party as from the date of its entry into force. However, it shall not apply to disputes arising prior to that date.

Article 9.

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall, so far as possible, be settled amicably and by negotiation between the Governments of the two Contracting Parties.

2. If any dispute cannot be settled in the manner referred to in the preceding paragraph, an arbitral tribunal shall be seized at the request of either Contracting Party.

3. The arbitral tribunal shall be constituted ad hoc and each of the Contracting Parties shall appoint one member. By common agreement, both members shall appoint as Chairman a national of a State other than their own and of the Contracting Parties, whom the Governments of the two Contracting Parties shall then designate to perform this function.

The members of the arbitral tribunal shall be appointed within three months and the Chairman within three months of the date on which either Contracting Party has notified the other Contracting Party of its decision to submit the case to an arbitral tribunal.

4. If the time limits referred to in paragraph 3 are not observed, each of the Contracting Parties may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either of the Contracting Parties or is prevented from doing so for any other reason, the Vice-President shall make the designations.

5 The arbitral tribunal shall decide by a majority of votes and its decisions shall be binding on both Parties. Each Contracting Party shall bear the expenses of its barrister as well as its representation in the proceedings before the tribunal; the expenses of the Chairman and other expenses shall be borne equally by both Contracting Parties. The tribunal may make different rules as to expenses. The arbitral tribunal shall determine its own rules of procedure.

Article 10.

1. Disputes arising between either Contracting Party and the national or company of the other Contracting Party concerning investments shall be settled, to the extent possible, amicably between the parties to the dispute.

2. If any dispute cannot be settled within a period of six months from the date when one of the parties to the dispute discloses the existence of the dispute to the other party, the dispute may be submitted, at the request of the national or company of the other Contracting Party, to arbitration proceedings. Both Contracting Parties hereby declare their agreement that such a procedure shall apply. Unless otherwise agreed, the provisions of Article 9, paragraphs 3 to 5, shall apply analogously, provided that the Parties to the dispute appoint the members of the arbitral tribunal in accordance with Article 9, paragraph 3. If the time limits referred to in Article 9(3) are not observed, any party to the dispute may, in the absence of another agreement to the contrary, request the President of the Arbitration Court of the International Chamber of Commerce of Paris to make the necessary appointments. The award shall be made in accordance with the national law of the Contracting Party in whose territory the investment has been executed.

3. None of the Contracting Parties involved in the dispute may, in the course of the arbitral proceedings or during the execution of the award pursuant to Article 6 of this Agreement, plead that a national or company of the other Contracting Party has already received from any insurer, if any, payment of compensation in whole or in part for damage arising out of the dispute.

Article 11.

1. For the entry into force of this Agreement, the Contracting Parties shall exchange their respective instruments of ratification within the shortest possible time.

2. This Agreement shall enter into force one month after the exchange of the instruments of ratification and shall remain in force for a period of fifteen years. At the expiration of such period, it shall be deemed to have been extended indefinitely, unless terminated in writing by either of the Contracting Parties not less than twelve (12) months' notice.After the expiration of fifteen (15) years, the Agreement may be terminated at any time by giving not less than twelve (12) months' notice.

3. For investments made before the expiration of this Agreement, the provisions of Articles 1 to 11 of this Agreement shall remain in force for an additional period of fifteen (15) years, counted from the date on which the Agreement expires.

Signed in Havana, on the second day of November 2001, in two original texts, in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government of the Republic of Mozambique.

For the Government of the Republic of Cuba.