

**AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF
MOZAMBIQUE ON THE PROMOTION AND RECIPROCAL PROTECTION
OF INVESTMENTS**

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AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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of China**

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the Republic of Mozambique (hereinafter referred to as the "Contracting Parties");

Desiring to create favorable conditions for greater flow of investments made by investors of one Contracting Party in the territory of the other Contracting Party; and

Recognizing that the encouragement and reciprocal protection of such investments will stimulate the development of business initiatives and will increase prosperity in the territories of both Countries;

Have agreed as follows:

Article 1. Definitions

1. In this Agreement,

(a) "investment" means every kind of asset invested according to the laws and regulations of the Contracting Party in whose territory the respective business undertaking is made, and in particular, though not exclusively, includes:

(i) Movable and immovable property as well as other rights in rem such as mortgages, liens or pledges;

(ii) Shares, debentures, stock and any other form of participation in a company;

(iii) Claims to money, or to any performance having an economic value associated with an investment;

(iv) industrial and intellectual property rights, in particular copyrights, patents, trade-marks, trade-names, business secrets, technical processes, know-how, and goodwill;

(v) Business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and other legitimate income;

(c) "investors" means in respect to either Contracting Party;

(i) Natural persons who have nationality of either Contracting Party in accordance with the laws of that Contracting Party;

(ii) Economic entities, including companies, corporations, associations, partnerships and other organizations, incorporated and constituted under the laws and regulations of either Contracting Party and domiciled in that Contracting Party, irrespective of whether or not for profit and whether their liabilities are limited or not.

2. Any change in the form in which assets are or have been invested does not affect their character as investments for the purposes of this Agreement.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Investments of the investors of either Contracting Party shall enjoy the constant protection and security in the territory of the other Contracting Party.

3. Without prejudice to its laws and regulations, neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party.

4. Subject to its laws and regulations, one Contracting Party shall provide assistance in and facilities for obtaining visas and working permit to nationals of the other Contracting Party engaged in activities associated with investments made in the territory of that Contracting Party.

Article 3. Treatment of Investments

1. Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment.

2. Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and returns from such investments by the investors of the other Contracting Party treatment not less favourable than that it accords to the investments and returns of its own investors.

3. Neither Contracting Party shall subject investments and returns from such investments by the investors of the other Contracting Party to treatment less favourable than that it accords to the investments and returns of the investors of any third State.

4. The provisions of Paragraph 2 and Paragraph 3 shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area or common market of which either the Contracting Party is a member;

(b) Any international agreement or arrangement relating wholly or mainly to the taxation or any domestic legislation relating wholly or mainly to taxation;

(c) Any international agreement or arrangement for facilitating frontier trade.

Article 4. Expropriation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation except for public purposes, under domestic legal procedures, on a non-discriminatory basis and against compensation. Such compensation shall be equal at least to the market value of the investment expropriated immediately before the

expropriation became public knowledge. The compensation shall include interest at a normal market rate until the date of payment, be made without delay, and be effectively realizable.

2. The investor affected by the expropriation shall have a right, under the law of the expropriating Contracting Party to prompt review, by a court of law or other independent and impartial forum of that the investment in accordance with the principle referred to in Paragraph 1.

Article 5. Compensation for Losses

1. Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the latter Contracting Party accords to its own investors or investors of any third State.

2. Without derogating from the provisions of Paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by the forces or authorities of the latter Contracting Party, acting under and within the scope of the legal provisions relating to their competencies, duties and command structures; or

(b) Destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

Shall be accorded restitution or compensation, not less favorable than that such latter Contracting Party accords to its own investors or to investors of any third State.

Article 6. Transfer of Investment and Returns

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to the investors of the other Contracting Party the transfer of their investments and returns held in its territory, including:

(a) Profits, dividends, interests and other legitimate income;

(b) Proceeds obtained from the total or partial sale or liquidation of investments;

(c) Payments pursuant to a loan agreement in connection with investments;

(d) Royalties in relation to the matters in Paragraph 1 (a).(iv) of Article 1;

(e) Payments of technical assistance or technical service fee, management fee;

(f) Payments in connection with contracting projects;

(g) Earnings of nationals of the other Contracting Party who work in connection with an investment in its territory.

2. Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement.

3. The transfer mentioned above shall be made in freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.

Article 7. Settlement of Disputes

Between An Investor and A Contracting Party

1. Any legal dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either Party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. Any dispute, if unable to settled within six months after resort to negotiations as specified in Paragraph 1 of this Article,

shall be submitted at the request of either Party to

(a) International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18, 1965; or

(b) An ad hoc arbitral tribunal

Provided that the Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic administrative review procedure specified by the laws and regulations of that Contracting Party before submission of the dispute to the aforementioned arbitration procedure.

However, if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article, the provisions of this Paragraph shall not apply.

4. Without prejudice to Paragraph 3 of this Article, the ad hoc arbitral tribunal referred to in Paragraph 3.(b) shall be constituted for each individual case in the following way: Each Party to the dispute shall appoint one arbitrator, and these two shall select a national of a third State which has diplomatic relations with both Contracting Parties as the Chairman. The first two arbitrators shall be appointed within two months from the date either Party to the dispute notifying the other Party of the request of arbitration in writing and the Chairman shall be selected within four months. If, within the period specified above, the tribunal has not been constituted, either Party to the dispute may invite the Secretary General of the International Center for Settlement of Investment Disputes to make the necessary appointments.

5. The ad hoc arbitral tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

6. The tribunal referred to in Paragraph 3 (a) and (b) of this Article shall reach its award by a majority of votes. Such award shall be final and binding upon both parties to the dispute. Both Contracting parties shall commit themselves to the enforcement of the award.

7. The tribunal referred to in Paragraph 3(a) and (b) of this Article shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the applicable principles of international law.

8. Each Party to the dispute shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the parties to the dispute.

Article 8. Dispute between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the governments of the two Contracting Parties.

2. If the dispute cannot thus be settled within a period of six months, following the date on which such negotiations were requested by either Contracting Party, it may upon the request of either Contracting Party be submitted to an ad hoc arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months from the receipt of the request for arbitration, each Contracting Party shall appoint one member for the tribunal. Those two members shall then select a national of a third State who, upon approval by the two Contracting parties, shall be appointed as Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in Paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President is a national of either the Contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party and not prevented from discharging such functions shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach each decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member to the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting

Parties, and its award shall be binding on, and executed by, both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

If one Contracting Party or its designated agency makes a payment to its investor under an indemnity given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of all the rights and claims of the indemnified investor to the former Contracting Party or its designated agency, by law or by legal transactions, and that the former Contracting Party or its designated agency is entitled to exercise by virtue of subrogation any such right to the same extent as the investor indemnified.

Article 10. Application of other Rules

1. If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments and returns of investor's of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

2. Each Contracting Party shall, however, honor any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 11.

Scope of Agreement

This Agreement shall apply:

1. In the case of People's Republic of China, to all investments made whether before or after the entry into force of this Agreement; and

2. In the case of the Republic of Mozambique, to all investments made whether before or after the entry into force of this Agreement in conformity with the law n4/84, of the 18th of August, 1984, or under the investment law n3/93 of the 24th of June, 1993, or under any other subsequent legislation in force on investments in the Republic of Mozambique.

Article 12. Relations between Contracting Parties

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 13. Consultations

1. The representatives of the Contracting Parties shall hold meetings from time to time for the purpose of:

- (a) Reviewing the implementation of this Agreement;
- (b) Exchanging legal information and investment opportunities;
- (c) Resolving disputes arising out of investments;
- (d) Forwarding proposals on promotion of investment;
- (e) Studying other issues in connection with investment.

2. Where either Contracting Party requests consultation on any matter of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternatively in Beijing and Maputo.

Article 14. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other promptly when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the day following of the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.

3. In respect of investments approved and /or made prior to the date the notice of termination of this Agreement becomes effective, the provisions of preceding Articles 1 to 13 shall remain in force with respect to such investments for a further period of ten years from that date or for any longer period as provided for or agreed upon in the relevant contract or approval granted to the investor.

In Witness Whereof the undersigned, duly authorized thereto, have signed this Agreement in Maputo on July 10, 2001 in duplicate and in the Chinese, Portuguese and English languages, all three texts being equally authentic. In case of divergence between the texts of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF THE
FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA REPUBLIC OF MOZAMBIQUE

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