

# Agreement between the Swiss Confederation and the Republic of Mozambique on the Promotion and Reciprocal Protection of Investments

The Swiss Confederation and the Republic of Mozambique,

hereinafter the "Contracting Parties",

Desiring to intensify economic co-operation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising the need to promote and protect foreign investments with the aim of stimulating the flow of private capital and thus contributing to the economic prosperity in both States,

Convinced that these objectives can be achieved without relaxing health, safety and environmental measures of general application,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" includes all categories of assets and in particular:

- (a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges, usufruits;
- (b) The actions, and other forms of participation shares in companies;
- (c) Monetary claims and rights to any performance having economic value;
- (d) Intellectual property rights, technical processes, trade names, know-how and goodwill;
- (e) For the purpose of economic concessions conferred by law, by an administrative decision or by contract, including concessions to search for, extract, develop or exploit natural resources.

Any later change in the form in which assets are invested or reinvested shall not affect their character as investments.

(2) The term means investor in respect of either Contracting Party,

- (a) Natural persons who are nationals of that Contracting Party;
- (b) Legal entities which are constituted in accordance with the law of that Contracting Party;
- (c) Legal persons who are not established in accordance with the law of that Contracting Party but which are controlled directly or indirectly by persons natural or juridical persons respectively, in accordance with subparagraph (a) and (b).

(3) The term means the returns derived from an investment amounts and includes in particular, though not exclusively, profits, dividends, interests, capital gains, royalties and other fees.

(4) The term shall mean territory in respect of either Contracting Party, the land territory and the maritime areas including the exclusive economic zone, the seabed and subsoil, over which the Contracting Party concerned exercises, in accordance with international law, sovereign rights or jurisdiction.

## **Article 2. Scope**

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party, before or after its entry into force. It shall not, however, apply to claims or disputes arising out of events which occurred prior to its entry into force.

## **Article 3. Encouragement and Admission**

(1) Each Contracting Party shall promote as far as possible investments by investors of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment in its territory, each Contracting Party shall issue, in accordance with its laws and regulations, all the necessary permits in connection with such investments and with the carrying out of licensing agreements, commercial, administrative or technical assistance and those required for the activities of managers and specialists chosen by the investor, regardless of nationality.

## **Article 4. The Treatment and Protection**

(1) Returns of investments and investors of each Contracting Party shall accord at all times fair and equitable treatment and shall enjoy protection and security in the territory of the other contracting party. No Contracting Party shall in any way hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increased or disposal of such investments.

(2) Each Contracting Party shall accord in its territory to returns of investments and investors of the other contracting party treatment no less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State, more favourable treatment to the investor concerned is crucial.

(3) Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that it accords to its own investors or of any third State, more favourable treatment to the investor concerned is crucial.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a Free Trade Area (libre-échange, customs union or common market or by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other contracting party.

## **Article 5. Transfers**

(1) Each Contracting Party shall accord to investors of the other contracting party without delay the transfer in a freely convertible currency, amounts relating to an investment, including:

(a) Income;

(b) Payments or other obligations relating to loans for investment;

(c) Proceeds from the sale or the total or partial liquidation of an investment including the appreciation thereof;

(d) Other earnings and remuneration of personnel engaged from abroad in connection with the investment;

(e) The initial capital and additional contributions of capital necessary for the maintenance or development of the investment.

(2) The transfers referred to in this Agreement shall be made at the rate of exchange prevailing on the market on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to domestic investments or the most recent exchange rate for conversion of currencies into special drawing rights, the rate (whichever is more favourable to the investor).

## **Article 6. Expropriation and Compensation**

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other contracting party except

for reasons of public interest and provided that such measures are not discriminatory, that they comply with the legal requirements and that they shall be subject to the payment of prompt, effective and adequate compensation. the compensation shall amount to the market value of the expropriated investment immediately before the expropriation was taken or they are known to the public, the first of those events in determining. the amount of compensation shall include interest at a normal commercial rate from the date of dispossession until the date of payment, shall be settled in a freely convertible currency and paid without delay and be freely transferable. the Investor affected shall have a right, under the law of the contracting party making the expropriation to seek a prompt review by a judicial or other independent authority of that Contracting Party of its case and of the valuation of its investment in accordance with the principles set out in the present subparagraph.

(2) If a Contracting Party expropriating the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other contracting party possè-dent shares, it shall ensure, to the extent necessary and in accordance with its laws, that the compensation referred to in paragraph (1) of this article is paid to those investors.

## **Article 7. Compensation for Losses**

Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency, revolt, civil disturbance or other similar events that took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with article 4 of this Agreement as regards restitution, indemnification, compensation or other settlement.

## **Article 8. Principle of Subrogation**

Where a Contracting Party has provided any financial guarantee against non-commercial risks to an investment by one of its investors in the territory of the other contracting party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation to the rights of the investor if payment has been made under this first guaranteed by the contracting party.

## **Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party**

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other contracting party and without prejudice to article 10 of this Agreement (settlement of disputes between the contracting parties), consultations will take place between the parties concerned.

(2) If these consultations do not solution within six months from the date of the written request, to initiate the investor may submit the dispute to the courts or administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. in the latter case, the investor shall have the choice between:

(a) The arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the ICSID Convention); 1 "ou1; or

(b) Conciliation or arbitration under the rules governing the additional facility of the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention; or

(c) An ad hoc arbitral tribunal which unless the parties to the dispute decide otherwise, is to be established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party gives its consent to the submission to international arbitration to any dispute concerning an investment.

(4) A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and which, before the birth of diffé-rend, was controlled by investors of the other Contracting Party, shall be treated as defined in article 25 (2) (b) of the ICSID Convention, as a company of the other contracting party.

(5) The Contracting Party which is a party to the dispute may, at any stage of the proceedings, assert its immunity or the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage incurred.

(6) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration

unless the other contracting party does not comply with the arbitral award.

(7) The arbitral award shall be final and binding upon the parties to the dispute and shall be executed without delay according to the legislation of the Contracting Party concerned.

## **Article 10. Disputes between the Contracting Parties**

(1) Disputes between the contracting parties relating to the interpretation or application of the provisions of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within six months from the date on which the dispute has arisen, the latter 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. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State.

(3) If a Contracting Party has not appointed its arbitrator and has not followed the invitation of the other contracting party to make such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party by the President of the International Court of Justice.

(4) If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If in the cases specified in paragraph (3) and (4) of this article, the President of the International Court of Justice is prevented from carrying out this function or if he is a national of either Contracting Party, the appointment shall be made by the vice-president, and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own rules of procedure. each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties unless the arbitral tribunal decides otherwise.

(7) The decisions of the Tribunal shall be final and binding on the contracting parties.

## **Article 11. Other Commitments**

(1) If the provisions of law of either Contracting Party or obligations under international law to accord investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement, the latter shall prevail to the extent that they are more favourable.

(2) Each Contracting Party shall comply with all of its obligations in respect of investments made in its territory by investors of the other contracting party.

## **Article 12. Final Provisions**

(1) This Agreement shall enter into force on the day on which the two Governments have notified each other that the legal requirements for the entry into force of international agreements have been completed; it shall be valid for a period of 20 years. it shall remain in force after this date until the expiration of twelve months from the date on which either Contracting Party has denounced in writing.

(2) In the event of termination, the provisions of articles 1 to 11 of this Agreement shall continue to apply for a further period of twenty years for the investments made prior to the termination of the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate, at Maputo on 29.11.2002, in the Portuguese, French and English languages, each text equally authentic. In case of divergencies the English text shall prevail.