

# **AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF MOZAMBIQUE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Portuguese Republic and the Government of the Republic of Mozambique hereinafter referred to as the Contracting Parties.

Encouraged by the desire to intensify relations of economic cooperation between the two States,

Desiring to create favorable conditions for investment by investors of either Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognizing that the promotion and reciprocal pledge of investments under this Agreement will contribute to stimulating private initiative and enhancing the well-being of both peoples.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement.

1. The term "investments" shall comprise all kinds of assets and rights invested in undertakings of economic activities by investors of either Contracting Party in the territory of the other Contracting Party, in accordance with the relevant legislation applicable in that respect, including in particular:

- a) Movable and immovable property, as well as any other rights in rem, such as mortgages and pledges;
- b) Shares, shares or other corporate shares representing the capital of companies or any other forms of participation and / or economic interests resulting from their activity,
- c) Credit rights or any other rights with economic value:
- d) Industrial and intellectual property rights such as copyright patents utility models and industrial designs, trademarks, trade names, trade and industrial secrets, technical processes, know-how, and clientele;
- e) Acquisition and development of concessions granted under the law, including concessions for exploration, research and exploitation of natural resources;
- f) Property which in the field and in accordance with the law and its lease contracts are made available to a lessor in the territory of any Contracting Party in accordance with its laws and regulations.

Any change in the form of realization of investments shall not affect their qualification as investments, provided that such change is made in accordance with the laws and regulations of the Contracting Party in whose territory the investments are made.

2. The term "income" shall mean income or capital gains generated by or in connection with investments in a particular period, including profits, dividends, interest, royalties, payments for technical or managerial assistance and other related income With investments.

In the event that the investment income in the above definition is reinvested, the income from such reinvestment shall also be treated as income under this Agreement.

3. The term "investors" means:

- a) Individuals, with the nationality of either Contracting Party, in accordance with the respective Constitution or Law, and

b) Shall be incorporated and shall operate in accordance with the law of that Contracting Party.

4. The term "territory" shall comprise the territory of each Contracting Party, as defined in the respective laws, including the territorial sea, and any other area over which the Contracting Party in question exercises, in accordance with international law, sovereignty, Sovereign rights or jurisdiction.

## **Article 2. Promotion and Protection of Investments**

1. Either Contracting Party shall promote and encourage, as far as possible, investments by investors of the other Contracting Party in its territory, admitting such investments in accordance with the respective laws and regulations applicable thereto. In any case, they will grant investments fair and equitable treatment.

2. Investments made by investors of either Contracting Party in the territory of the Contracting Party in accordance with their respective legal provisions applicable in that territory shall enjoy full protection and security in the territory of the other Contracting Party.

3. No Contracting Party shall subject to the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of another Contracting Party to unjustified, arbitrary or discriminatory measures.

## **Article 3. Equality of Treatment**

1. Investments made by investors of any Contracting Party in the territory of another Contracting Party and their income shall be treated fairly and equitably and no less favorable than that granted by the latter Contracting Party to its own investors or investors of third parties States.

2. Both Contracting Parties shall grant to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposition of the investments made in their territory, a fair and equitable treatment and no less favorable than that accorded to their own investors or To investors from third States.

3. The legal provisions of this Article do not imply the granting of preferential treatment or privilege by one of the Contracting Parties to investors of the other Contracting Party that may be granted by virtue of;

a) Participation in free trade areas, customs unions, common or existing common markets, and other similar international agreements, including other forms of economic cooperation, to which any of the Contracting Parties has acceded or acceded to, and

b) Bilateral or multilateral agreements, whether regional or not, of fiscal nexus.

## **Article 4. Expropriation**

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party may not be expropriated, nationalized or subject to other measures having equivalent effect to the expropriation or nationalization, hereinafter referred to as expropriation, except by law, to the public interest, Without discrimination and with prompt compensation.

2. Indemnification shall correspond to the market value that the expropriated investments had at the date immediately prior to the time the expropriation became public knowledge. The compensation shall be paid without delay, shall bear interest at the LIBOR rate up to the time of its liquidation and shall be prompt, effective, adequate and freely transferable. Appropriate arrangements should be made for fixing the amount and method of payment of the compensation, at the latest at the time of expropriation.

3. An investor whose investments have been expropriated shall have the right, in accordance with the law of the Contracting Party in whose territory the property was expropriated, to review the case, the judicial or other proceedings, and to evaluate its investments in accordance with The principles defined in this Article.

## **Article 5. Compensation for Losses**

Investors of either Contracting Party who suffer loss of investment in the territory of the other Contracting Party as a result of war or other armed conflicts, revolution, national state of emergency and other events considered equivalent by international law shall not receive from this Contracting Party Treatment less favorable than that accorded to its own investors or to investors from third States, whichever is the more favorable, in respect of restitution, compensation or other

relevant measures. The resulting compensation shall be transferable freely and without delay in convertible currency.

## **Article 6. Transfers**

1. Each Contracting Party shall, in accordance with its applicable legislation, guarantee to the investors of the other Contracting Party the free transfer of the amounts related to the investments, namely:

- a) Of the capital and additional amounts necessary to maintain or expand the investments;
- b) Of income under the definition of paragraph 2 of Article 1 of this Agreement;
- c) Of the amounts required for the servicing, repayment and repayment of loans;
- d) Of the proceeds from the sale or total or partial liquidation of the investments;
- e) Indemnities or other payments provided for in Articles 4 and 5 of this Agreement; or
- f) Of any preliminary payments that may have been made on behalf of the investor in accordance with Article 7 of this Agreement.

2. The transfers referred to in this Article shall be made without delay, in convertible currency, at the exchange rate applicable on the date of transfer.

3. For the purposes of this Article, a transfer is deemed to have taken place "without delay" when it is effected within the period normally required for completion of the indispensable formalities, which may not exceed 60 days from the date Submission of the transfer application.

## **Article 7. Subrogation**

In the case of either Contracting Party or the agency designated by it to make payments to one of its investors by virtue of a guarantee given to an investment made in the territory of the other Contracting Party, it shall be subrogated to that investor's rights and actions, Being able to exercise them in the same terms and conditions as the original owner.

## **Article 8. Disputes between the Contracting Parties**

1. Disputes arising between the Contracting Parties on the interpretation or application of this Agreement shall, as far as possible, be resolved by negotiation through diplomatic channels.

2. If the Contracting Parties fail to reach agreement within six (6) months after the start of negotiations, the dispute shall be referred to an arbitral tribunal at the request of either Contracting Party.

3. The Arbitral Tribunal shall be constituted ad hoc, as follows: each Contracting Party shall designate one member and both members shall nominate a national of a third State as president, who shall be appointed by the two Contracting Parties. Members shall be appointed within two (2) months and the president within three (3) months of the date on which one of the Contracting Parties has notified the other of the intention to submit the dispute to an arbitral tribunal.

4. If the time limits laid down in paragraph 3 of this Article are not observed, any 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 is prevented or a national of one of the Contracting Parties, the appointments shall be made by the Vice-President.

If he is also prevented from serving as a national of one of the Contracting Parties, appointments shall be made to the member of the Tribunal in the hierarchy, provided that such member is not a national of either Contracting Party.

5. The chairman of the arbitral tribunal shall be a national of a State with which both Contracting Parties establish diplomatic relations.

6. The arbitral tribunal shall decide by majority of votes. Its decisions shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the expenses of the respective arbitrator, as well as of the respective representation in the case 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. The arbitral tribunal shall define its own rules of procedure.

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

1. Emerging disputes between an investor of one Contracting Party and the other Contracting Party relating to an investment of the former in the territory of the second shall be settled amicably through negotiations between the parties to the dispute
2. If disputes cannot be settled in accordance with the provisions of paragraph 1 of this Article within six (6) months from the date on which one of the parties lodged it, either party may refer the dispute to the International Center For the Settlement of Investment Disputes for Conciliation or Arbitration under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington DC on 18 March 1965.
3. Neither Contracting Party shall have recourse to diplomatic channels to resolve any matter relating to arbitration unless the proceeding has been completed and the Contracting Party has not complied with or complied with the decision of the International Center for Settlement of Investment Disputes.
4. The judgment shall be binding on both parties and shall not be subject to any remedy other than that provided for in the said Convention. The judgment shall be binding in accordance with the domestic law of the Contracting Party in whose territory the investment in question is situated.

## **Article 10. Application of other Rules**

1. If, in addition to this Agreement, the provisions of the domestic law of one of the Contracting Parties or the obligations under international law in force or which may come into force between the Contracting Parties establish a general or special regime, which confers on the investments made by investors Other Contracting Party more favorable treatment than that provided for in this Agreement, shall prevail over it under more favorable arrangements.
2. Each Contracting Party shall comply with its obligations with respect to investments made by investors of the other Contracting Party in its territory.

## **Article 11. Application of the Agreement**

This Agreement shall also apply to investments made before their entry into force by investors of either Contracting Party in the territory of the other Contracting Party in accordance with their respective legislation and regulations on investment matters, in particular:

- a) In the case of the Portuguese Republic, to investments made there by investors of the other Contracting Party under the legislation applicable on the date on which the investment was made,
- b) In the case of the Republic of Mozambique, to investments made there by investors of the other Contracting Party under Law 4/84 of 18 August or Law No. 3/93 of 24 June and its regulations, including the code on Tax benefits for investments.

## **Article 12. Inquiries**

The representatives of the Contracting Parties shall, whenever necessary, consult on any matter relating to the implementation of this Agreement. These consultations shall be held on the proposal of either Contracting Party and may, if necessary, propose to hold meetings at a place and date to be agreed through diplomatic channels.

## **Article 13. Entry Into Force and Duration**

1. This Agreement shall enter into force thirty (30) days after the date on which both Contracting Parties have notified each other in writing of the completion of their respective domestic constitutional or legal procedures required for this purpose.
2. This Agreement shall remain in force for a period of ten (10) years, which shall be renewable for equal periods unless the Agreement is terminated in writing by either Contracting Party twelve (12) months before the end of the Ten years in progress.
3. Upon termination of this Agreement in accordance with the preceding paragraph and for investments already made, the provisions of Articles 1 to 12 shall remain in force for a further period of ten (10) years from the date of termination of the Agreement .

Done in duplicate, in Maputo, on the 1st of the month of September in the year 1996, in two original copies in the Portuguese language, each copy being for each Contracting Party and both copies being equally authentic.

For the Government of the Portuguese Republic

Luis Palha, Secretary of State of Commerce

For the Government of the Republic of Mozambique

Luisa Dias-Diogo, Vice-Minister of Plannification and Finance