Agreement between the Swiss Confederation and the Republic of Cabo Verde on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of the Republic of Cabo Verde

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

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) the term "investor" means in respect of either Contracting Party,

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies registered partnerships, corporations or other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities established in accordance with the law of any country, which are directly or indirectly controlled by nationals of that Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party.

(2) 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;

(b) Shares, and other forms of participation shares in companies;

(c) Monetary claims and rights to any performance having an economic value;

(d) Copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indication of origin), know-how and goodwill;

(e) The concessions, including extract concessions to search for or exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

(3) The term "territory" includes the maritime areas adjacent to the coastal State may exercise of their sovereignty or jurisdiction in accordance with international law.

Article 2. Encouragement , 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 the required authorisations in

connection with such investments and with the carrying out of licensing agreements, technical, commercial or administrative assistance. each Contracting Party shall, whenever necessary, issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 3. Protection , 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 hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale and, where appropriate, the liquidation of such investments. in particular, each Contracting Party shall issue the authorisations referred to in article 2, paragraph (2) of this Agreement.

(2) Each Contracting Party shall in its territory fair and equitable treatment to investments of investors of the other contracting party. this treatment shall not be less favourable than that granted by each contracting party to investments made within its territory or by its own investors than that granted by each contracting party to investments made in its territory by investors of the most favoured nation treatment, if the latter is more favourable.

(3) The most-favoured-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union or common market.

Article 4. Free Transfer

Each Contracting Party in whose territory of investors of the other Contracting Party has made investments, to grant those investors the free transfer of payments related to these investments, including:

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

(b) Such as loans;

(c) The amounts to be used to cover expenses relating to the management of the investment;

(d) Royalties and other payments arising from the rights listed in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;

(e) Additional contributions of capital necessary for the maintenance or development of the investments;

(f) The proceeds of the sale of or the partial or total liquidation of an investment including capital gains.

Article 5. Dispossession , 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 provide for payment of adequate and effective compensation. the amount of compensation shall include interest, shall be paid in the currency of the country of origin of the investment and shall be paid without delay to the person entitled thereto without regard to its residence or its headquarters.

(2) Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, rebellion or state of emergency, which took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with Article 3, paragraph (2) of this Agreement. in any event, they shall be compensated.

Article 6. Investments Made Prior to the Agreement

This Agreement shall also apply to investments in the territory of a 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 7. More Favourable Terms

Notwithstanding the conditions laid down in this Agreement, the more favourable conditions which have been or will be agreed by one of the Contracting Parties with investors of the other Contracting Party shall apply.

Article 8. Subrogation

Where a Contracting Party has provided any financial guarantee against non-commercial risks with regard 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 the provisions of article 10 of this Agreement (disputes between contracting parties), consultations will take place between the parties concerned.

(2) If these consultations do not solution within six months from the date on which the dispute has been raised, the dispute shall be submitted, at the request of the investor, to an arbitral tribunal.

(3) The arbitral tribunal in accordance with subparagraph (2) of this article shall be set up from case to case, as follows:

(a) Unless the parties to the dispute decide otherwise, each party shall appoint one arbitrator and these two arbitrators shall nominate a Chairman who shall be a national of a third State. the arbitrators shall be appointed within two months from the receipt of the request to submit the dispute to arbitration and the Chairman shall be appointed within two months.

(b) If the time limits referred to in subparagraph (a) of this article have not been observed, each Party to the dispute may, in the absence of any other agreement, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments.

(c) If in the cases specified under subparagraph (b) of this article, the President of the Court of Arbitration of the International Chamber of Commerce in Paris is prevented from exercising his mandate 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.

(d) Each Contracting Party shall ensure the recognition and enforcement of the arbitral award.

(4) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to arbitration under this section unless the other contracting party does not comply with the award rendered by an arbitral tribunal.

(5) If both parties are contracting parties to the Convention of 18 March 19651 for the Settlement of Investment Disputes between States and Nationals of Other States, the dispute shall, at the request of the investor submitted to the International Centre for Settlement of Investment Disputes (c.i.r.d.i.) in lieu of the procedure referred to in paragraph (3) of this article.1 for the Settlement of Investment Disputes between States and Nationals of Other States, the dispute shall, at the request of the investor submitted to the International Centre for Settlement of Investment Disputes (c.i.r.d.i.) in lieu of the procedure referred to in paragraph (3) of this article.

(6) The Contracting State that is a party to the dispute may, at any stage of the proceedings or enforcement of an award, enforce the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage.

Article 10. Disputes between Contracting Parties

(1) Disputes between contracting parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within 12 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 one of the Contracting Parties 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 under paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from exercising his mandate or if he is a national of either Contracting Party, the provisions of article 9, paragraph (2), letter (c) of this Agreement shall apply mutatis mutandis.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

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

Article 11. Compliance

Each Contracting Party shall at all times compliance with the obligations assumed by it in respect of investments of 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 that have notified the constitutional formalities required for the conclusion and entry into force of international agreements have been completed; it shall remain valid for a period of ten years. if it is not denounced in writing six months before the expiry of this period, there shall be considered on the same terms as renewed for a period of five (5) years and so on.

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

Done at Bern, this 28th day of October 1991, in four originals, two in French and two in Portuguese, each text being equally authentic.

For the Swiss Federal Council:

Franz Blankart

For the Government of the Republic of Cabo Verde:

Jorge Carlos A. Fonseca