

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

Preamble

The Portuguese Republic and the Republic of Angola, hereinafter referred to as "the Parties":

Desiring to create favorable conditions for enhanced cooperation between the two Parties, and in particular for investment by investors of each Party in the territory of the other Party;

Recognizing that the encouragement and reciprocal protection of such investments under international law and the domestic law of each Party will lead to the promotion and encouragement of business initiatives and will increase prosperity in the territories of the respective States;

Aware that the promotion of investment between the Parties will allow the strengthening of cooperation between the two countries;

Agree as follows:

## **Article 1. Object**

This Agreement sets out the rules and procedures to be followed by the Parties to regulate the promotion and reciprocal protection of investments that the investors of each Party undertake in the territory of the other Party.

## **Article 2. Scope of Application**

1 - This Agreement shall apply to investments of investors of one of the Parties in the territory of the other Party in accordance with their existing law, carried out after its entry into force.

2 - Investments made or authorized prior to the entry into force of this Agreement shall be governed by the provisions of the legislation and by the terms of the specific contracts under which the authorization has been granted.

## **Article 3. Definitions**

For the purposes of this Agreement:

1 — "Investor" means any natural or legal person of a Party investing in the territory of the other Party, in accordance with the law in force in the latter Party, where: "Natural person" means any natural person who is a national of one of the Parties; "Legal person" means an organization holding legal personality composed of a body of persons or a body of goods, directed to the realization of common or collective interests, having its seat in the territory of one of the Parties and Has been established under the law in force in that Party, including associations, foundations, corporations and commercial companies. "Natural person" means any natural person who has the nationality of one of the Parties in accordance with the law in force; "Legal person" means an organization which has legal personality composed of a body of persons or a body of goods, directed to the realization of common or collective interests, having its headquarters in the territory of one of the Parties and having been constituted in accordance with Party, including associations, foundations, corporations and commercial companies.

2 — "Investment" means all assets invested by the investors of one Party in the territory of the other Party under the law in force in the Party in whose territory such investment was made, including, but not limited to: ownership of movable and immovable property, Such as other real rights such as mortgages, pledges, usufruct and similar rights, Securities, shares, quotas or shares or other forms of participation in companies and / or economic interests resulting from their activity; Intellectual property rights, including copyrights, copyrights, patents, trademarks, trade names, industrial designs, technical

processes, trade secrets, know-how and clientele; Concessions with economic value, conferred by law, contract or Administrative act of a competent public authority, including concessions for Prospecting, cultivating, extracting or exploiting natural resources; Property which, in accordance with the applicable law and its leases, is made available to a lessor in the territory of a Party. Ownership of movable and immovable property, as well as other real rights such as mortgage, pledge, usufruct and similar rights; Securities, shares, quotas or shares or other forms of participation in companies and / or economic interests resulting from their activity; Credit rights or any other rights with economic value; Intellectual property rights, including copyrights, copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets, know-how and clientele; Concessions with economic value, conferred by law, contract or administrative act of a competent public authority, including concessions for exploration, cultivation, extraction or exploitation of natural resources; Goods which, under and in accordance with the applicable law and the respective lease agreements, are made available to a lessor in the territory of a Party.

Any change in the form of realization of the investment will not affect its qualification as an investment, provided that such change is made in accordance with the law in force in the territory of the Party in which the investments are made.

3 — "Returns" means the transfer of the amounts generated by the investments, including, but not limited to, profits, interest, dividends and all kinds of charges.

4 — "Territory" means the space in which the Parties exercise sovereign rights or jurisdiction, in accordance with international law and their domestic law, including land, inland water, territorial waters and airspace over them, as well as Maritime areas adjacent to the territorial sea, including the seabed, the continental shelf and the corresponding subsoil.

5 — "Freely convertible currency" means the currency used for payments of international transactions and exchanged in the main international exchange markets.

6 — "Income" means the entire amount of an investment, including, but not limited to, profits, dividends, royalties and interest and fees.

## CHAPTER II. Investment Provisions

### **Article 4. Promotion and Protection of Investments**

1 - Each Party shall encourage and create favorable conditions for investments in its territory by investors of the other Party and shall permit such investments in accordance with its prevailing law.

2 Investments made by investors of each Party shall be treated fairly and equitably and shall enjoy full protection and security in the territory of the other Party.

3 - Neither Party shall subject to arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Party.

4 - Each Party shall favorably consider, in accordance with the law in force, matters relating to the entry and stay in its territory of nationals of the other Party working in connection with the investment and their families.

### **Article 5. Investment Treatment**

1 - Each Party in its territory shall accord to the investments, returns and returns of investors of the other Party treatment no less favorable than that accorded to the investments, returns and returns of investors of third States.

2 - Each Party in its territory shall accord to investors of the other Party, with respect to the management, maintenance, use, enjoyment or disposal of its investments, treatment no less favorable than that accorded to its investors or investors of third States .

3 - The treatment referred to in paragraphs 1 and 2 of this Article shall not apply to the privileges which either Party grants to investors of other States by virtue of participation in free trade areas, customs unions, existing common markets or And in any international conventions constituting similar institutions, including other forms of economic co-operation to which either party is a party or becomes a Party.

4 - The provisions of paragraphs 1 and 2 of this Article shall not be interpreted as obliging a Party to extend to investors of the other Party the benefit of any treatment, preference or privilege resulting from any international agreement conferring special advantages on institutions Financial development.

5 - The provisions of this article do not imply the granting of preferential treatment or privilege by one Party to investors of

the other Party that may be granted under bilateral or multilateral regional or non-regional agreements of a wholly or partly fiscal nature .

6 - This Agreement is without prejudice to the right of either Party to apply the relevant provisions of its tax law which distinguish between taxpayers who are not in the same situation as regards their place of residence, place of residence or place in which capital is invested.

7 - If the treatment to be given by one Party to the investors of the other Party under its existing law is more favorable than the treatment to be given by this Agreement, the most favorable treatment shall be given.

8 - Each Party shall observe any other obligation it has assumed in respect of investments made by investors of the other Party in its territory.

9 - It is the responsibility of each Party to determine, in accordance with its domestic law, the economic areas of retention where the activities of investors will be excluded or restricted.

10 - The determination referred to in the preceding paragraph when applied to investments already made shall be without prejudice to the mechanism provided for in Article 7.

## **Article 6. Compensation for Losses**

1 - Investors of one Party whose investments suffer in the territory of the other Party losses due to war or other armed conflict, a state of national emergency, revolt, insurrection, or other situations considered similar by international law, shall be granted by this Party restitution, compensation, compensation or other forms of reparation on terms no less favorable than those which this Party gives to its own investors or investors from third States.

2 - Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from their investments requesting their investments or destruction of their investments by their authorities which have not been caused by a combat action or have not been repaired by the necessity of the situation, shall be granted by that Party restitution, compensation, compensation or other remedies in no less favorable terms than those that this Party gives to its own investors or investors from third States.

## **Article 7. Expropriation**

1 - Investments of investors of one Party shall not be nationalized, expropriated or otherwise subject to any other measure having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party, except for public interest and against prompt, adequate and effective compensation. Expropriation will be made on a non-discriminatory basis and in accordance with legal procedures.

2 - Investors of a Party whose investments have been expropriated shall be entitled to prompt review of their case and to the assessment of their investments in judicial or other proceedings by a judicial or other independent entity of the other Party in accordance with the principles and in accordance with the law in force in the territory in which the investments have been expropriated.

3 - The compensation must have the actual market value of the expropriated investments, at the date immediately prior to the expropriation or at the date on which it becomes public domain, counting for the purpose the first of the dates, and regardless of what the previous value of investment. The compensation shall include interest at the commercial rate, applicable from the date of expropriation until the date of payment, and shall be effectively realizable. In both expropriation and compensation, treatment shall be given no less favorable than that which the Party gives to its own investors or to investors of any other State.

4 - If a Party expropriates the assets of a company incorporated or incorporated in accordance with its prevailing law and in which the investors of the other Party hold assets, liabilities or other forms of participation, the provisions of this Article shall apply.

## **Article 8. Downloads**

1 - Each Party shall guarantee to the investors of the other Party, after fulfilling the fiscal obligations, the free transfer of the amounts related to its investments. Such transfers shall include, in particular, but not exclusively:

a) Profits, capital gains, dividends, interest, charges and any other income that results from investments;

- b) Income from the sale or total or partial liquidation of investments;
- c) Investment repayment funds for investments;
- d) Income of nationals of the other Party who are authorized to work in connection with investments made in their territory;
- e) Initial capital amounts and additional funds required for the maintenance or development of existing investments;
- f) Amounts spent on the management of investments in the territory of the other Party or of a third State;
- g) Any preliminary payments which may have been made on behalf of the investors in accordance with Article 9;
- h) Compensation or other payments arising under Articles 6 and 7 of this Agreement.

2 - All transfers under this Agreement shall be made in a freely convertible currency at the prevailing market exchange rate on the date of transfer in the territory of the Party where the investment is made.

3 - Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Party may prevent a transfer through the fair, non-discriminatory and good faith application of its existing law on:

- a) Bankruptcy, insolvency or other legal proceedings to protect the rights of creditors;
- b) Issue of shares, trade or insurance treatment;
- c) Criminal or administrative violations;
- d) Ensuring compliance with decisions resulting from administrative procedures.

## **Article 9. Subrogation**

In the case of one of the Parties 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 Party, it shall be for that reason undecided in the rights and shares of that investor, and may exercise them in the same terms and conditions as the original holder.

CHAPTER III. Interpretation and application of the Agreement

## **Article 10. Settlement of Disputes between the Parties**

1 - Any disputes arising between the Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiations through diplomatic channels.

2 - If the dispute can not be resolved within six months of the beginning of the negotiations, it shall be submitted, at the request of either Party, to an ad hoc arbitral tribunal in accordance with the provisions of this Article.

3 - The arbitral tribunal shall consist of three arbitrators, designated as follows:

- a) Within two months of receipt of the written notification requesting arbitration, each Party shall appoint an arbitrator;
- b) The two arbitrators so nominated shall indicate, jointly and within three months, a national of a third State, with whom both Parties maintain diplomatic relations, who shall be appointed chairman of the arbitral tribunal by both Parties.

4 - If, during the periods specified in paragraph 3 of this Article, the necessary appointments have not taken place, either Party may request the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice is a national of one of the Parties or is otherwise unable to perform such a function, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is also a national of either Party or is prevented from performing such a function, the member of the International Court of Justice who is a senior citizen who is not a national of both Parties shall be invited to make appointments.

5 - The arbitral tribunal shall determine its rules of procedure and issue decisions in accordance with the provisions of this Agreement and applicable international law.

6 - The arbitral tribunal decides by majority vote. Its decisions shall be final and binding on both Parties. The arbitral tribunal shall base the decisions taken at the request of either Party.

7 - Each Party shall bear the costs of its own arbitrator and of its representation in the arbitral proceedings. The costs relating to the President, as well as other costs, shall be borne equally by both Parties.

## **Article 11. Settlement of Investment Disputes between One Party and an Investor of the other Party**

1 - Disputes between an investor of one Party and the other Party relating to an investment of the former in the territory of the second Party shall, as far as possible, be settled amicably through negotiation between the Parties to the dispute.

2 - If the dispute can not be settled in accordance with paragraph 1 of this Article, within six months of the date on which a dispute has been raised by one of the parties to the dispute, the investor may, at his request, Submit the dispute:

- a) The competent courts of the Party in whose territory the investment is located; or
- b) To an ad hoc arbitral tribunal established by special agreement between the Parties or in accordance with the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL); or
- c) The International Center for Settlement of Investment Disputes (ICSID) 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; or
- d) If one of the Parties is not a member of the Convention referred to in subparagraph (c), using the rules of the Additional Mechanism for the Administration of Procedures by the CIRDI Secretariat; or
- e) To any other arbitration institution or in accordance with any other arbitration rules.

3 - The decision to submit the dispute to one of the procedures referred to in the previous number is irreversible.

4 - The Party which is a party to the dispute may not at any time assert that the investor has received, under an insurance contract, an indemnity covering all or part of any damage caused.

5 - Judgments issued by an ad hoc court shall be final and binding. Judgments issued under the procedures provided for in the Convention referred to in paragraph 2 (c) of this Article shall be binding and may be the subject of an appeal or other proceedings only under the terms of the Convention.

6 - Neither Party may use diplomatic channels to resolve any matter relating to arbitration unless the proceeding is completed and the Party has not complied with or complied with the decision.

7 - Judgments shall be recognized and enforced in accordance with applicable national law and international law.

## **Article 12. Application of other Rules**

If the domestic law of one of the Parties or existing international law or in force between the two Parties establishes a legal regime conferring on investments by investors of the other Party more favorable treatment than provided for in this Agreement, it shall prevail over This is the most favorable regime.

## **Article 13. Inquiries**

The Parties, where necessary, shall consult each other on any matter relating to the application of this Agreement, in a place and date to be agreed through diplomatic channels.

CHAPTER IV. Final dispositions

## **Article 14. Implementation**

This Agreement shall enter into force on the thirtieth day after the date of receipt of the last written notification through diplomatic channels that all the requirements of domestic law of both Parties necessary for that purpose have been met.

## **Article 15. Review**

1 - This Agreement may be revised at the request of either Party.

2 - Amendments shall enter into force in accordance with Article 14.

## **Article 16. Duration and Termination**

1 - This Agreement shall remain in force for successive periods of 10 years, automatically renewable.

2 - Either Party may denounce this Agreement by notifying the other Party of its intention in writing and through diplomatic channels at least one year in advance of the end of the current period of validity .

3 - Denunciation shall take effect on the first day following the expiry of the current period of validity.

4 - The provisions of Articles 1 to 13 shall remain in force for a period of 10 years from the date on which the denunciation of this Agreement becomes effective in respect of investments made before the date of termination.

5 Investments made by investors after the date of receipt of the notice of termination or of the intention to terminate the Agreement at the end of their duration shall not be deemed to be based on this Agreement.

## **Article 17. Registration**

The Party in whose territory this Agreement is signed shall submit it for registration to the Secretariat of the United Nations as soon as possible after its entry into force in accordance with Article 102 of the Charter of the United Nations, , Also notify the other Party of the completion of this procedure and indicate the registration number assigned to it.

In witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

Done in Luanda on 22 February 2008, in two original copies, in the Portuguese language, both texts being equally authentic.

For the Portuguese Republic: Luís Amado, Minister of State and Foreign Affairs.

For the Republic of Angola: João Bernardo de Miranda, Minister of Foreign Relations.