Agreement between the Government of the People's Democratic Republic of Algeria and the Government of the Republic of Mozambique concerning the reciprocal promotion and protection of investments

The Government of the People's Democratic Republic of Algeria and the Government of the Republic of Mozambique, hereinafter referred to as the "Contracting Parties";

Desiring to enhance economic cooperation between the two States and to create favourable conditions for greater investments made by companies and nationals of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection of such investments will stimulate economic initiative of nationals and companies and increase in particular the transfer of capital and technology between the contracting parties, in the mutual interest of their economic development;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means assets, such as property rights of all kinds and any asset in connection with an economic activity and particularly but not limited to:

a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, bonds, usufructs and similar rights;

b) Stocks, shares, debentures and any other forms of participation in a company;

c) Claims and rights to any contractual performance having economic value;

d) Royalties, copyrights, industrial property rights, such as patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how;

e) Concessions granted by law or under contract, including concessions to search for, extract or exploit natural resources.

1.1 Such investments shall be those made in accordance with its legislation in the territory of one of the Contracting Parties ;

1.2. Investments by nationals or companies of a Contracting Party carried out in the territory of the other Contracting Party, prior to the entry into force of the this Agreement, shall not benefit from the provisions of that after they have been brought into compliance with the foreign investment legislation of the last contracting party, in force on the date of signature of this agreement.

Any alteration of the form of investment shall not affect their classification as investment, provided that such change is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

2. The term "income" means all amounts produced for a specified period in respect of an investment interests, such as profits, dividends, royalties and other fees.

3. The term "National" means natural persons having the nationality of either Contracting Party, in accordance with its law.

4. The term "company" means any legal person as well as any commercial or other company, constituted in the territory of one of the Contracting Parties in accordance with the law in force in that Contracting Party and having its seat in the territory of that Party.

5. -The term "investor" means nationals and companies of a Contracting Party, which make investments in the territory of the other Contracting Party.

6. The term "territory" means, in addition to areas delimited by land borders, those maritime areas over which the Contracting Parties exercise, in accordance with international law, sovereign rights and/or jurisdiction.

Article 2. Promotion of Investments

1. Each Contracting Party recognizes and encourages, in accordance with its laws relating to foreign investment, investments of nationals and companies of the other contracting party in its territory, create favourable conditions for investments and grant a fair and equitable treatment.

2. Neither Contracting Party shall in any way hinder by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of the investment made in its territory by nationals or companies of the other Contracting Party.

3. Each Contracting Party reserves the right to determine the sectors and areas of activity in which the foreign investment will be excluded or limited in accordance with its laws and other laws and regulations.

Article 3. National Treatment and Most-favoured-nation Treatment

1. Each Contracting Party shall accord to investments in its territory of nationals and companies of the other Contracting Party treatment no less favourable than that accorded to investments of its own nationals or companies or to those of third States.

2. - Each Contracting Party shall accord in its territory to nationals and companies of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded to its own nationals and companies of third States.

3. It shall be regarded as "less favourable treatment" within the meaning of this article 3 inter alia: restrictions on supplies of raw materials, supplies and consumables in energy and fuel, interference with the marketing of products inside and outside the country and as well as any other measures having similar effect. Any measures taken as a result of the security and public order, public health or morals is not "less favourable treatment".

4. Such treatment does not extend to the privileges granted by either contracting party to nationals of a third State because of its membership in or association with a free trade area, customs or economic union, a common market or any other form of regional or sub-regional economic organization.

5. The provisions of this Article 3 shall not apply to advantages accorded by a Contracting Party to nationals or companies of third States by virtue of a double taxation agreement or any other arrangement relating to taxation.

Article 4. Investment Protection

1. Investments of nationals and companies of one Contracting Party shall enjoy in the territory of the other Contracting Party of a full protection and security.

2. Neither Contracting Party shall take measures of expropriation or nationalisation or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Contracting Party of investments belonging to them in its territory.

3. If requirements of public utility or national interest justify a derogation from paragraph 2 of this Article, the following conditions must be fulfilled:

a) The measures are taken under due process;

b) They are not discriminatory;

c) They are accompanied by provisions for the payment of prompt, effective and adequate compensation.

4. The compensation shall correspond to the value of the expropriated investment on the day before the day on which the expropriation, nationalisation or similar measure, whether effective or decided, was taken or made public. It shall be settled in a freely convertible currency, denominated at the rate of exchange applied in accordance with the exchange regulations of the Contracting Party responsible for payment of such compensation. The compensation shall be freely transferable.

5. The transfer shall be effected within three (3) months from the date of the filing of a complete application for compensation pursuant to the laws of the currency of the Contracting Party having made the expropriation. In case of delay in payment of compensation shall include interest at the rate of the special drawing rights as determined by the International Monetary Fund.

6. In case of a disagreement on the valuation of the amount of compensation, the national or company affected shall have a right, under the law in force of the Contracting Party which has expropriated, to appeal for its case and the valuation of its investment should be reviewed by a competent authority or a judicial authority of that Party in accordance with the principles set out in this article.

7. Nationals or companies of either Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party, shall be accorded by the latter, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that accorded to its own nationals or companies or to nationals and companies of any third State.

The legality of expropriation, nationalization or similar measure and the amount of compensation may be reviewed by a judicial proceedings.

Article 5. Transfer of Investment Income

1. Each Contracting Party shall guarantee to nationals and companies of the other Contracting Party, which carry out investments in its territory, after fulfilment of all their tax obligations, the free transfer in particular:

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

b) Royalties intangible rights referred to in paragraph 1, letters "d" and "e" of Article 1;

c) Payments made for the reimbursement of loans regularly contracted for the financing of investments;

d) The proceeds of the sale of or the partial or total liquidation of the investment, including the most values of the capital invested;

e) Compensation for expropriation or losses provided for in article 4 (3) and (7) above, as well as the payments due by virtue of subrogation stipulated in article 6 of this Agreement.

2. Nationals of one of the Contracting Parties who have been authorised to work in the territory of the other Contracting Party in respect of an authorised investment shall also be authorised to transfer to their country of origin an appropriate proportion of their remuneration.

3. Transfers referred to in paragraphs 1 and 2 of this article shall be carried out at the official exchange rate applicable on the date of the latter and in accordance with the foreign exchange regulations in force of the Contracting Party in whose territory the investment has been made, in a freely convertible currency to be mutually agreed upon, or alternatively in the currency in which the investment has been made.

4. In the absence of a market for foreign exchange, the exchange rate to be used will be the most recent exchange rate applied to domestic investment, or the most recent exchange rate for conversion of currencies into special drawing rights if it is more favourable to the investor.

Article 6. Subrogation

1. If one of the Contracting Parties or the body designated by that Party ("the first Contracting Party") makes a payment to its own investor as security for an investment made in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall, without prejudice to the rights of the first Contracting Party, recognise :

a) the assignment in favour of the first Contracting Party by law or by a legal act of all rights and claims of nationals and companies of the first Contracting Party ;

b) The right of the former Contracting Party to be entered into those rights and claims as well as to exercise the rights and assert the claims to the same extent as nationals and companies of the first Contracting Party.

2. The first Contracting Party shall be entitled in all circumstances to:

a) To the same treatment in respect of the rights and claims by acquired it by virtue of the assignment; and

b) any payments received in respect of such rights and claims which nationals and companies of the first Contracting Party were entitled to receive under this Agreement in respect of the investment concerned and the income therefrom.

Article 7. Investment Guarantee

1. - In accordance with its legislation and administrative procedures, either Contracting Party may give guarantees against risks of investments and to its own nationals and companies in the territory of the other Contracting Party for which the first Contracting Party may deem appropriate.

2. - Each Contracting Party shall observe any other obligation it will be agreed on investments of nationals or companies of the other Contracting Party in its territory.

Article 8. Investments Covered by a Specific Commitment

Investments covered by a specific commitment concluded between a Contracting Party or companies and nationals of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that particular commitment though it contains provisions which are more favourable than those laid down in this Agreement.

However, each Contracting Party shall observe any commitment in respect of investments of investors of the other Contracting Party.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute concerning an investment between one of the Contracting Parties and an investor of the other Contracting Party shall as far as possible, be settled amicably between the parties to the dispute.

2. If the dispute has not been settled amicably within a period of six (6) months from the date when it was raised by one of the Parties to the dispute shall be submitted, at the request of the investor, either to the competent court of the Contracting Party involved in the dispute, or to international arbitration. The choice of one of these procedures is final.

3. Where a dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute to one of the following procedures:

a) Either to the International Centre for Settlement of Investment Disputes (taking into account, where appropriate, the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington D.C. on 18 March 1965 and the additional facility for the administration of conciliation, arbitration and investigation);

b) Either to an *ad hoc* arbitral tribunal constituted for each individual case in the following way: each party to the dispute shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State, who shall be Chairman of the Tribunal. The two arbitrators shall be appointed within two months (2) and the Chairman within three (3) months from the date on which the investor has notified to the Contracting Party concerned its intention to resort to arbitration. In the event that the time limits set out above are not respected, each Party to the dispute may request the President of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

The *ad hoc* Tribunal shall establish its own rules of procedure, taking into account the terms of the Arbitration Rules of the United Nations Commission on International Trade Law that the parties to the dispute may agree in writing to modify.

4. The dispute shall be settled by the arbitral tribunal on the basis of the national law of the Contracting Party in whose territory the investment concerned is located (including its rules on the Conflict of Laws) and the rules of international law (including the provisions of this Agreement), as the case may be appropriate.

Article 10. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this agreement should, as far as possible, be settled through diplomatic channels.

2. If within six (6) months from the date when it was raised by either Contracting Party, the dispute is not settled, it shall be submitted, at request of either of the Contracting Parties to an arbitral tribunal.

3. The arbitral tribunal shall be constituted for each individual case in the following way:

Each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be Chairman appointed by both contracting parties. the two members shall be appointed within two months and the Chairman within three months from the date one Contracting Party has informed the other Contracting Party of its intention to submit the dispute to arbitration.

4. If within the period 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 the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Vice-President who is not a national of either Contracting Party, shall make the necessary appointments if he is also prevented from exercising its functions, the member of the Court next in seniority who is not a national of either of the Contracting Parties and which is not prevented from exercising this function, shall be invited to make the necessary appointments.

5. The Tribunal shall determine its own procedure. It shall take decisions by a majority of votes, its decisions shall be final and enforceable automatically to the Contracting Parties. Unless the Tribunal provides otherwise, in light of the particular circumstances, each Contracting Party shall bear the costs of its appointed arbitrator 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.

Article 11. Entry Into Force - Amendments - Denunciation

Each Contracting Party shall notify the other Contracting Party, of the completion of the constitutional procedures required for the entry into force of this Agreement, which shall begin on the day after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten (10) years, it shall remain in force after the term unless one of the Contracting Parties denounces it by written notice of twelve (12) months.

On expiry of the period of validity of this Agreement, the provisions of articles 1 to 10 above, shall continue to apply for a further period of ten years from the date of expiration, to investments within the framework of this Agreement.

Both Contracting Parties may agree to undertake modifications and / or amendments to the provisions of this Agreement. These changes and / or amendments shall enter into force in accordance with the terms and conditions provided for in this article.

Done at Algiers on 12 December 1998, in two (2) originals, each in Arabic and Portuguese languages, both texts being equally authentic.

For the Government of the People's Democratic Republic of Algeria,

Ahmed ATTAF

Minister of Foreign Affairs

For the Government of the Republic of Mozambique

Leonardo Santos SIMAO

Minister for Foreign Affairs and Cooperation