

A g r e e m e n t

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:

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Article 1

Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset and in particular:
 - (a) Movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges and usufructs;
 - (b) shares, stocks and any other form of participation in companies;
 - (c) titles to money or to any performance having an economic value;
 - (d) intellectual property rights, technical processes, trade names, know how and goodwill;
 - (e) business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

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

2. The term "investor" means with regard to either Contracting Party:
 - (a) Natural persons having the nationality of that Contracting Party;
 - (b) legal persons constituted under the law of that Contracting Party;
 - (c) legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (a) or by legal persons as defined in (b).
3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, dividends, capital gains, royalties and other fees.
4. The term "territory" means with respect to each Contracting Party the land territory as well as 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 of application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It shall however not be applicable to claims or disputes arising out of events which occurred prior to its entry into force.

Article 3

Promotion and admission

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
2. When a Contracting Party shall have admitted an investment on its territory, it shall provide, in accordance with its laws and regulations, all necessary permits in connection with such investment including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance as well as authorisation required for the activities of managerial and technical personnel of the investor's choice, regardless of nationality.

Article 4

Treatment and protection

1. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.



2. Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.
3. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.
4. If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on 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 grant investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:
 - (a) Returns;
 - (b) payments relating to loans incurred, or other contractual obligations undertaken, for the investment;
 - (c) proceeds of the partial or total sale or liquidation of the investment, including possible increment values;
 - (d) earnings and other remuneration of personnel engaged from abroad in connection with the investment;
 - (e) the initial capital and additional amounts to maintain or increase the investment.



2. Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing 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 rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

Article 6

Expropriation and compensation

1. Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalisation or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law, and provided that provisions be made for prompt, effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. 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, be 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 prompt review, by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of his investment in accordance with the principles set out in this paragraph.
2. Where a Contracting Party expropriates 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 own shares, it shall, to the extent necessary and subject to its laws, ensure, that compensation according to paragraph (1) of this Article will be made available to such investors.



Article 7

Compensation for losses

The investors of one Contracting Party whose investments have suffered losses due to war or to any other armed conflict, revolution, state of emergency, rebellion, civil disturbance, or any other similar event in the territory of the other Contracting Party shall 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 one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognise the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first 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 (Disputes between the Contracting Parties), consultations will take place between the parties concerned.
2. If these consultations do not result in a solution within six months from the date of the written request for consultations, the investor may submit the dispute either to the courts or the administrative tribunals of the Contracting Party in whose territory the investment



has been made or to international arbitration. In the latter event the investor has the choice between any of the following:

- (a) Arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965 (hereinafter the "ICSID Convention"); or
 - (b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (ICSID) provided for by the "ICSID Convention"; or
 - (c) an ad hoc-arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration.
 4. A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which before a dispute arises was under the control of investors of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the "ICSID Convention", be treated as a company of the other Contracting Party.
 5. The Contracting Party which is party to the dispute shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.
 6. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.
 7. The arbitral award shall be final and binding for the parties to the dispute and shall be executed without delay according to the law of the Contracting Party concerned.



Article 10

Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall if possible be settled through diplomatic channels.
2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate 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 that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.
4. If both 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 carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.
6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure. Each Contracting Party shall bear the cost of its own member of the tribunal 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, unless the arbitral tribunal decides otherwise.
7. The decisions of the tribunal are final and binding for each Contracting Party.



Article 11

Other commitments

1. If provisions in the legislation of either Contracting Party or obligations under international law entitle investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions or obligations shall to the extent that they are more favourable prevail over this Agreement.
2. Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 12

Final provisions

1. This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the legal requirements for the entry into force of international agreements, and shall remain binding for a period of twenty years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.
2. In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of twenty years for investments made before official notice was given.



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 being equally authentic. In case of divergencies the English text shall prevail.

For the Swiss Confederation

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a vertical stroke.

For the Republic of Mozambique

A handwritten signature in black ink, appearing to read 'Luís Gas Roso' in a cursive script.