

No. 30509

**SWITZERLAND
and
CAPE VERDE**

**Agreement on the reciprocal promotion and protection of
investments. Signed at Berne on 28 October 1991**

Authentic texts: French and Portuguese.

Registered by Switzerland on 24 November 1993.

**SUISSE
et
CAP-VERT**

**Accord concernant la promotion et la protection réciproque
des investissements. Signé à Berne le 28 octobre 1991**

Textes authentiques : français et portugais.

Enregistré par la Suisse le 24 novembre 1993.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE SWISS CONFEDERATION AND
THE REPUBLIC OF CAPE VERDE ON THE RECIPROCAL PRO-
MOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Swiss Federal Council and the Government of the Republic of Cape Verde,
With the intention of creating and maintaining favourable conditions for invest-
ments by investors of one Contracting Party in the territory of the other Contracting
Party,

Recognizing the need to encourage and protect foreign investments with a view
to promoting the economic prosperity of the two States,

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement:

1. The term “investor” means, with respect to each Contracting Party:

(a) Individuals who, under the laws of that Contracting Party, are considered
nationals thereof;

(b) Legal entities, including companies, corporations, associations or other
organizations, incorporated or otherwise organized in accordance with the laws of
that Contracting Party, which have their head office, as well as real financial activ-
ities, in the territory of the same Contracting Party;

(c) Legal entities established according to the laws of any country, which are
controlled, directly or indirectly by nationals of that Contracting Party or by legal
entities which have their head office, as well as real financial activities, in the territory
of that Contracting Party.

2. The term “investments” covers all types of assets, in particular:

(a) Movable and immovable property, as well as any other rights *in rem*, such
as easements, land charges, landed security and pledges of movables;

(b) Shares, company shares and other kinds of interest in companies;

(c) Titles to money and to any benefit having economic value;

(d) Copyrights, industrial property rights (such as patents for inventions, regis-
tered designs, industrial drawings or designs, trademarks, trade brands, quality guar-
antees, business names, indications of source, know-how and goodwill);

¹ Came into force on 6 May 1992, the date on which the Parties notified each other (on 29 January and 6 May 1992) of the completion of the required constitutional procedures, in accordance with article 12 (1).

(e) Concessions, including concessions to search for, extract or exploit natural resources, as well as any other right bestowed by law, by contract or by decision of an authority in application of the law.

3. The term “territory” includes the maritime areas adjacent to the coastal State which may exercise sovereignty or jurisdiction over them under international law.

Article 2

PROMOTION AND ADMISSION

1. Each Contracting Party shall promote, as far as possible, investments made in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. When a Contracting Party has admitted an investment into its territory, it shall grant whatever permits are necessary for that investment, including for the execution of licensing contracts and of contracts for technical, commercial or administrative assistance. Each Contracting Party shall endeavour to grant, whenever necessary, the required permits for the activities of consultants or other qualified persons of foreign nationality.

Article 3

PROTECTION AND TREATMENT

1. Each Contracting Party shall protect its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, extension, sale and, if necessary, liquidation of such investments. In particular, each Contracting Party shall grant the permits referred to in article 2, paragraph 2, of this Agreement.

2. Each Contracting Party shall ensure fair and equitable treatment in its territory for the investments of investors of the other Contracting Party. This treatment shall be no less favourable than that granted by each Contracting Party to investments made in its territory by its own investors or than that granted by each Contracting Party to investments made in its territory by investors of the most favoured nation, if the latter treatment is more favourable.

3. Most-favoured-nation treatment shall not apply to the privileges which either Contracting Party accords to investments of a third State by virtue of its membership in, or association with, a free-trade area, a customs union or a common market.

Article 4

FREE TRANSFER

Each Contracting Party whose territory investors of the other Contracting Party have made investments shall grant those investors free transfer of any payments relating to those investments, in particular:

- (a) Interest, dividends, profits and other current income;
- (b) Loan repayments;

(c) Amounts assigned to cover expenses relating to the management of investments;

(d) Royalties and other payments deriving from the rights listed in article 1, paragraph 2, subparagraphs (c), (d) and (e) of this Agreement;

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

(f) Proceeds from the sale or partial or total liquidation of an investment, including any capital appreciation.

Article 5

EXPROPRIATION AND COMPENSATION

1. Neither Contracting Party shall take, directly or indirectly, expropriation or nationalization measures or any other measures of the same nature or having the same effect against the investments of investors of the other Contracting Party, except in the public interest and provided that the measures are not discriminatory, are in accordance with the law and are followed by the payment of effective and adequate compensation. The amount of compensation, including interest, shall be fixed in the currency of the country of origin of the investment and shall be paid without delay to the person or company entitled to it, regardless of where his domicile or its head office is located.

2. Investors of either Contracting Party whose investments have suffered losses owing to war or any other armed conflict, revolution, state of emergency or rebellion occurring in the territory of the other Contracting Party shall be accorded, by the latter, treatment in accordance with article 3, paragraph 2, of this Agreement. In any case, they shall receive compensation.

Article 6

INVESTMENTS WHICH PREDATE THE AGREEMENT

This Agreement shall also apply to investments made in the territory of one Contracting Party, in accordance with its laws and regulations, by investors of the other Contracting Party before the entry into force of this Agreement.

Article 7

MORE FAVOURABLE CONDITIONS

Notwithstanding the conditions laid down by this Agreement, more favourable conditions which have been or which may be agreed upon between one of the Contracting Party and investors of the other Contracting Party shall apply.

Article 8

SUBROGATION

Where one Contracting Party has granted a financial guarantee of any kind against non-commercial risks in respect of an investment made by one of its inves-

tors in the territory of the other Contracting Party, the second Contracting Party shall, according to the principle of subrogation, recognize the rights of the first Contracting Party in the rights of the investor if a payment has been made by the first Contracting Party by virtue of this guarantee.

Article 9

DISPUTES BETWEEN ONE CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. Without prejudice to article 10 of this Agreement (Disputes between Contracting Parties), the settlement of investment disputes between one Contracting Party and an investor of the other Contracting Party shall be sought through consultations between the parties concerned.

2. If such consultations fail to produce a settlement within six months from the date on which the dispute was raised, the dispute shall be submitted, at the request of the investor, to an arbitral tribunal.

3. The arbitral tribunal referred to in paragraph 2 of this article shall be established on a case-by-case basis, as follows:

(a) Unless the parties to the dispute arrange otherwise, each of them shall appoint an arbitrator and these two arbitrators shall appoint a national of a third State as chairman. The arbitrators shall be appointed within two months of receipt of the request to submit the dispute to arbitration and the chairman shall be appointed within the following two months.

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

(c) If, in the cases referred to in subparagraph (b) of this article, the Chairman of the International Court of Arbitration of the International Chamber of Commerce in Paris is prevented from carrying out his function or if he is a national of either Contracting Party, the appointments shall be made by the Vice-Chairman and, if the latter is prevented or if he is a national of either Contracting Party, they shall be made by the most senior judge of the Court who is not a national of either Contracting Party.

(d) Each Contracting Party shall recognize and enforce the arbitral award.

4. Neither Contracting Party shall pursue through the diplomatic channel a dispute submitted to arbitration under this article, unless the other Contracting Party fails to abide by the award of an arbitral tribunal.

5. If the two Contracting Parties have acceded to the Convention of 18 March 1965 on the settlement of investment disputes between States and nationals of other States,¹ the dispute shall be submitted, at the request of the investor, to the International Centre for the Settlement of Investment Disputes (ICSID), in place of the procedure provided for in paragraph 3 of this article.

¹United Nations, *Treaty Series*, vol. 575, p. 159.

6. The Contracting State that is a party to the dispute may not, at any time during the settlement procedure or the enforcement of an award, invoke the fact that the investor has received, under an insurance policy, compensation covering all or part of the damage caused.

Article 10

DISPUTES BETWEEN CONTRACTING PARTIES

1. Disputes between Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channel.

2. If the two Contracting Parties fail to reach a settlement within 12 months from the start of the dispute, the dispute shall, at the request of either Contracting Party, be submitted to an arbitral tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator and these two arbitrators shall appoint a chairman who shall be a national of a third State.

3. If either Contracting Party has not appointed its arbitrator and has not acted on the invitation from the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed, at the request of the latter Contracting Party, by the President of the International Court of Justice.

4. If the two arbitrators cannot agree on the choice of a chairman within two months of their appointment, the chairman shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

5. If, in the cases referred to in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out his function or is a national of either Contracting Party, the provisions of article 9, paragraph 3, subparagraph (c), of this Agreement shall apply *mutatis mutandis*.

6. Unless the Contracting Parties arrange otherwise, the tribunal shall determine its own procedures.

7. The decisions of the tribunal shall be final and binding on each Contracting Party.

Article 11

RESPECT FOR COMMITMENTS

Each Contracting Party shall, at all times, respect the commitments it has made with regard to investments by investors of the other Contracting Party.

Article 12

FINAL PROVISIONS

1. This Agreement shall enter into force on the day by which both Governments have notified each other that the constitutional formalities for the conclusion and entry into force of international agreements have been completed; it shall remain in force for a period of 10 years. Unless it is denounced in writing six months before the expiry of that period, it shall be considered to have been renewed under

the same conditions for a period of five years, and this renewal procedure shall continue.

2. In the event of denunciation, the provisions of articles 1 to 11 of this Agreement shall continue to apply for a period of 10 years to investments made before such denunciation.

DONE at Bern, on 28 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 Cape Verde:

JORGE CARLOS A. FONSECA
