



Bilateral Investment Treaty between Mozambique and Indonesia

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

This document was downloaded from ASEAN Briefing (www.aseanbriefing.com) and was compiled by the tax experts at Dezan Shira & Associates (www.dezshira.com).

Dezan Shira & Associates is a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.

AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC
OF INDONESIA AND
THE GOVERNMENT OF THE REPUBLIC
OF MOZAMBIQUE
FOR THE PROMOTION AND PROTECTION
OF INVESTMENTS

The Government of the Republic of Indonesia and the Government of the Republic of Mozambique (hereinafter referred to as "Contracting Parties");

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

DESIRING to create favourable conditions for greater flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party on the basis of sovereign equality and mutual benefit;

Recognising that the encouragement and reciprocal protection of such investments will lend greater stimulation to the development of business initiatives and will increase prosperity in the territories of both Contracting Parties;

HAVE agreed as follows :

ARTICLE I
Definitions

For the purpose of this Agreement :

1. "Investments" means every kind of asset admissible under relevant legal provisions of the Contracting Party in whose territory the respective business undertaking is made, and in particular, though not exclusively, includes:
 - a. movable and immovable property as well as other rights such as mortgages, liens or pledges;

- b. shares, debentures and any other form of participation in a company;
 - c. claims to money or to any performance under contract having an economic value;
 - d. industrial and intellectual property rights, in particular copyrights, patents, designs, trade-marks, trade-names, technical processes, know-how and goodwill;
 - e. economic value of concessions rights or permits conferred in accordance with the law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;
2. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees;
3. "Investor" means in respect to either Contracting Party :
- a. the "national", that is natural person deriving his or her status as national of that Contracting Party from the relevant laws of that such contracting party, and investing in the territory of the other Contracting Party;
 - b. the "company" that is a legal persons, such as a corporation, firm or association, incorporated or constituted in accordance with the law of that Contracting Party who invest in the territory of the other Contracting Party;
4. "Territory" means :
- a. in respect of the Republic of Indonesia :
the territory of the Republic of Indonesia as defined in its laws.
 - b. in respect of the Republic of Mozambique :
the territory of the Republic of Mozambique as defined in its laws.
5. Any change in the form in which assets are or have been invested does not affect their character as investments, provided that such chance has also been approved or admitted under Article II.

ARTICLE II

Promotion of Investment

1. Either Contracting Party shall encourage and create favourable condition for investors of the other Contracting Party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.
2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

ARTICLE III

Treatment of Investments

1. Investment and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable nor discriminatory measures the management, maintenance, use enjoyment of disposal of investments in its territory by investors of the other Contracting Party.
2. Each Contracting Party shall in its territory accord to investors and investments returns of the other Contracting Party treatment no less favourable than that which it accords to investments and returns of investment of any third state.
3. The provisions of paragraph (2) shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
 - a. any existing or future customs union, free trade area, common market or any similar international agreement or interim agreement or interim arrangement leading up to such customs union, free trade area or common market of which either of the Contracting Party is a member;
 - b. any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

ARTICLE IV Expropriation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be determined in accordance with internationally acknowledge practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Parties hereto, and it shall be freely transferable in freely convertible currencies from the Contracting Party.
2. The investor affected by the expropriation shall have a right, under the law of the expropriating Contracting Party to prompt review, by court of law of that Contracting Party of the expropriation case and of the valuation of the investment in accordance with the principles referred to in paragraph (1).

ARTICLE V Compensation for Losses

1. Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the latter Contracting Party accords to of any third State.
2. Without prejudice to the paragraph of this article, investors of either one Contracting Party who, in any of the event referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- a. requisitioning of their property by the forces or authorities of the latter Contracting Party, acting under and within the scope of the legal provisions relating to their competencies, duties and command structures; or
- b. destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

Shall be accorded restitution or adequate compensation, not less favourable than that such latter Contracting Party accord to its own investors or to investors of any third State.

ARTICLE VI Transfer of Investment Capital and Returns

1. Either Contracting Party shall guarantee within the scope of its laws and regulations in respect to investments by investors of the other Contracting Party grant to those investors without delay, the transfer of :
 - a. profits, interests, dividends and other current income;
 - b. funds necessary
 - i for the acquisition of raw or auxiliary materials, semi fabricated or finished products, or
 - ii to replace capital assets in order to safeguard the continuity of an investment;
 - c. additional funds necessary for the development of an investment;
 - d. funds in repayment of loans;

- e. royalties or fees;
 - f. earnings of natural persons;
 - g. the proceeds of sale or liquidation of the investment;
 - h. compensation for losses;
 - i. compensation for expropriation.
2. All transfer shall be effected without delay in any convertible at the market rate of exchange applicable on the date of transfer. In the absence of a market exchange rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies in special Drawing Rights, whichever is more favourable to the investor.
3. Transfers shall be done in accordance with the relevant laws pertaining thereto. Such laws shall not. However, regarding either requirements or the application thereof, impair or derogate from the investor's rights as provided in paragraph (1) and of this article.

ARTICLE VII

Settlement of Disputes between An Investor and the Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party, concerning an investment of the latter in the territory of the former, be settled amicably through consultations and negotiations.
2. If such a dispute cannot be settled within a period of six months from the date of a written notification either party requested amicable settlement, the dispute shall, at the request of the investor concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.

3. Where the dispute is to be referred to international arbitration, the investor and the Contracting Party involved in the dispute may agree to refer the dispute either to:

- a. the International Center for Settlement of Investment Disputes (ICSID) under the rules of the International 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, when such Contracting Party has become a party to the said Convention.

As long as this requirement is not met each Contracting Party agrees that the dispute may be settled under the rules of the Additional Facility of the Administration of proceedings by the Secretariat of ICSID.

- b. an ad hoc tribunal to be established under the arbitration rules of the United Nations Commissions on International Trade Law (UNCITRAL).

ARTICLE VIII

Disputes between the Contracting Parties

1. Any disputes between the Contracting Parties concerning the interpretation or application of this agreement should, if possible, be settled through negotiations between the governments of the two Contracting Parties.
2. If the dispute cannot thus be settled within a period of six months, following the date on which such negotiations were requested by either Contracting Party it may upon the request of either Contracting Party be submitted to any arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member for the tribunal. Those two members shall then select a national of a third State who, upon approval by the

two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods 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 any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function. The Vice-President is a national of either Contracting Party or if he/she too is prevented from discharging the said function, the member of the International Court of Justice next in Seniority who is not a national of either Contracting Party and not prevented from discharging such function shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member to 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. The tribunal may, however, in its decisions direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on and executed by both Contracting Parties. The tribunal shall determine its own procedure.

ARTICLE IX

Subrogation

If the investments of a investors of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided, however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

ARTICLE X
Application of other Rules

1. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that is provided for by the present Agreement such rules shall to the extent that they are more favourable prevail over the present Agreement.
2. Each Contracting Party shall, however, honor any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE XI
Scope of the Agreement

1. This Agreement shall apply:
 - a) in the case of the Republic of Indonesia, to investments by investors of the Republic of Mozambique in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the Law No. 1 of 1967 concerning Foreign Investment and any law amending or replacing it.
 - b) in the case of the Republic of Mozambique, to all investments made whether before or after the entry into force of this Agreements in conformity with the Law no. 4/84 of the August 18th 1984 or under the Investment Law no 3/93 of the June 24th 1993, or under any other subsequent legislation in force in investments in the Republic of Mozambique; and

2. This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

ARTICLE XII

Consultation and Amendment

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.
2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties.

ARTICLE XIII

Entry into Force, Duration and Termination


1. The present Agreement shall enter into force on the thirtieth day after the date of the latest notification by which Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for similar period unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement one year before its expiration.
3. With respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date termination.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, by their respective Governments, have signed this Agreement.

DONE in duplicate at Maputo on this twenty sixth days of March of the year of nineteen ninety nine in duplicate and in Indonesian, Portuguese and English languages both texts being equally authentic.

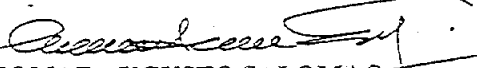
In the case of any divergence concerning the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF INDONESIA



ALI ALATAS
Minister of Foreign Affairs

FOR THE GOVERNMENT OF
THE REPUBLIC OF MOZAMBIQUE



TOMAZ AUGUSTO SALOMAO
Minister of Planning & Finance