

RESOLUTION No. 2/2004

of 28 January 2004

**APPROVAL OF THE AGREEMENT BETWEEN
THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND
THE PORTUGUESE REPUBLIC
ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

Animated by the desire to intensify economic cooperation between the two States,

Desiring to create favorable conditions for investment by investors of one Party in the territory of the other Party on the basis of equality and mutual benefit.

Recognizing that the promotion and reciprocal protection of investments under this Agreement will help to stimulate private initiative.

Considering the purposes expressed in the General Cooperation Agreement.

The Government hereby resolves, in accordance with paragraphs e), f), n) and o) of number 1 of article 115 and paragraph d) of article 116 of the Constitution of the Republic, the following:

1. To approve the Agreement between the Democratic Republic of Timor-Leste and the Portuguese Republic on the reciprocal promotion and protection of investments, signed in Dili on 20 May 2002, the text of which is annexed to this Resolution, of which it forms an integral part.

2. That this Resolution takes effect on 20 May 2002.

Approved by the Council of Ministers on 15 September 2003.

Be it published.

Prime Minister

Mari Bim Amude Alkatiri

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THE PORTUGUESE REPUBLIC
ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Portuguese Republic and the Democratic Republic of Timor-Leste, hereinafter referred to as the Parties,

Encouraged by the desire to intensify economic cooperation between the two States,

Desiring to create conditions for investment by investors of one Party in the territory of the other Party on the basis of equality and mutual benefit,

Recognizing that the reciprocal promotion and protection of investments under this Agreement will help to stimulate private initiative.

Agree as follows:

**CHAPTER I
SCOPE AND PURPOSE**

**Article 1
Definitions**

1. The term "investments" includes all kinds of assets and rights invested by investors of one Party in the territory of another Party in accordance with the law of the latter, including in particular but not limited to:
 - a) ownership of movable and immovable property as well as any other rights in rem such as mortgages, guarantees, pledges and similar rights;
 - b) shares, quotas or other equity interests representing the capital of companies or any other form of participation and/or economic interest resulting from their activity.
 - c) credit rights or any other rights with economic value;
 - d) intellectual property rights such as copyrights, patents, utility models and industrial designs, trademarks, trade names, trade and industrial secrets, technical processes, know-how and clientele (goodwill);
 - e) concessions granted by law, pursuant to a contract or administrative act by a competent public authority, including concessions for prospecting, exploration and exploitation of natural resources;
 - f) goods which, within the framework of, and in accordance with the law and the terms of leases made available to a lessor in the territory of a Party, in accordance with its legislation.
2. The term 'income' means income generated by investments in a given period, including in particular, but not limited to, profits, dividends, interest, royalties, payments on account of technical assistance or other forms of earnings related to the investment.

If the income from investments as defined above is reinvested, the income resulting from such reinvestment shall also be reinvested as income from the first investment.

Income from investments shall enjoy the same protection as that granted to investments.

3. The term 'investors' means:

- a) natural persons having the nationality of either Party in accordance with its legislation; and
- b) legal persons, including companies or firms or other firms or associations having their head office in the territory of one of the Parties, being incorporated and operating under the law of that Party.

4. The term "territory" means the territory of each Party, its internal waters, the territorial sea or any other area over which the Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2

Scope

This Agreement shall apply to all investments made by investors of one Party in the territory of the other Party before and after the entry into force of this Agreement in accordance with their respective legal provisions, with the exception of investment disputes arising before the entry into force of this Agreement.

CHAPTER II GENERAL PROVISIONS

Article 3

Investment Promotion and Protection

1. Both Parties shall promote and encourage, to the extent possible, investments by investors of the other Party in their territory, and admit such investments in accordance with their legislation. In any case, they shall accord fair and equitable treatment to investments.
2. Investments made by investors of one Party in the territory of the other Party in accordance with the legal provisions in force in that territory shall enjoy full protection and security in the territory of the other Party.
3. The Parties shall not subject the management, maintenance, use, enjoyment or disposition of investments made in their territory by investors of another Party to unjustified, arbitrary or discriminatory measures.

Article 4

National and Most Favored Nation Treatment

1. Investments made by investors of one Party in the territory of the other Party, and income derived therefrom, shall be accorded fair and equitable treatment no less favorable than that accorded by the latter Party to its own investors or to investors of third States.
2. Both Parties shall accord to investors of the other Party, in respect of the management, maintenance, use, enjoyment or disposition of investments made within their territory, fair and equitable treatment no less favorable than that accorded to their own investors or to investors of third States.
3. The provisions of this Article shall not entail the granting of preferential or privileged treatment by one Party to investors of the other Party which could be granted by virtue of:

- a) participation in free trade areas, customs unions, existing or future common markets and other similar international agreements, including other forms of economic cooperation, to which either Party has acceded or will accede; and
 - b) bilateral, multilateral agreements, whether of a regional or nonregional nature, of a fiscal nature or in part.
4. The Parties consider that the provisions of this Article are without prejudice to the right of either Party to apply the relevant provisions of its tax legislation which they may lay down in accordance with their respective legislation, a distinction between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where the capital is invested.

Article 5

Application of other rules

1. If, in addition to this Agreement, the provisions of the domestic law of one Party or obligations arising under international law in force or existing between the two Parties provide for a regime, general or special, which confirms more favorable treatment for investments made by investors of the other Party than that provided for in this Agreement, the more favorable regime shall prevail over this Agreement.
2. Each Party shall fulfil any obligations, not included in this Agreement, with respect to investments made by investors of the other Party in its territory.

Article 6

Expropriation

1. Investments made by investors of one Party in the territory of the other Party shall not be expropriated, nationalized or subject to other measures having equivalent effect to expropriation or nationalization (hereinafter referred to as "expropriation") except by law, in the public interest, without discrimination and with prompt compensation.
2. The compensation shall correspond to the market value that the expropriated investments had at the immediate preceding date of the expropriation or the time when the future expropriation is publicly known, whichever is the earliest. The compensation shall be paid without delay and shall bear interest at the usual bank rate from the date of expropriation until the date of settlement and shall be prompt, effective, adequate and freely transferable.
3. The investor whose investments have been expropriated shall have the right, according to the legislation of the Party in whose territory the property has been expropriated, to prompt review of his case, in judicial or other proceedings, and to evaluate his investments in accordance with the principles defined in this Article.

Article 7

Compensation for losses

1. Investors of one Party who suffer losses in investments in the territory of the other Party as a result of war or other armed conflict, revolution or national emergency, or other events deemed equivalent by international law, shall receive from that Party treatment no less favorable than that accorded by that Party to investments of its own investors or investors of third States, whichever is the better, with respect to restitution, compensation or other relevant factors.
2. The compensation provided for in the preceding paragraph shall be freely transferable without delay in convertible currency.

Article 8
Transfers

1. Each Party shall, in accordance with its laws, guarantee to the investments of the other Party the free transfer of the sums related to the investments, in particular, but not limited to:
 - a) the capital and added amounts necessary to maintain or apply investments;
 - b) income as defined in Article 1(2) of this Agreement;
 - c) the sums required for servicing, repayment and amortization of loans recognized by both Parties as investments;
 - d) the proceeds arising from the sale or liquidation of all or part of the investments;
 - e) indemnities or other payments provided for in Articles 4 and 5 of this Agreement;
 - f) any preliminary payments that may have been made on behalf of the investor in accordance with Article 9 of this Agreement;
 - g) the salaries of foreign workers, authorized to work, in connection with the investment, in the territory of the other Party.
2. The transfers referred to in this Article shall be made without delay, in convertible currency, at the exchange rate applicable on the date of transfer.
3. For the purposes of this article, a transfer is understood to have taken place "without delay" when it is carried out within the normal time necessary for completion of the necessary formalities, which may in no case exceed thirty (30) days from the date of submission of the request for transfer.

Article 9
Subrogation

Where a Party or the agency designated by it makes payments to one of its investors by virtue of a guarantee for an investment made in the territory of the other Party, it shall be subrogated to the rights and shares of that investor and may exercise them on the same terms and conditions as the original holder.

Article 10
Disputes between the Parties

1. Any dispute arising between the Parties concerning the interpretation or application of this Agreement shall, to the extent possible, be settled by negotiation through diplomatic channels.
2. If the Parties do not reach an agreement within six (6) months after the start of the negotiations, the dispute shall, at the request of either Party, be submitted to an arbitral tribunal to be established in accordance with the following Articles.
3. The Arbitral Tribunal shall be constituted ad hoc as follows:
 - a) Each Party shall appoint one member and both members shall propose one national of a third State as its Chairman who shall be appointed by both Parties;
 - b) Members shall be appointed within two (2) months and the President within three (3) months from the date on which either party has notified the other of its intention to submit the dispute to an Arbitration Tribunal.

- c) The President of the Arbitral Tribunal must be a national of a State with which both parties maintain diplomatic relations.
- 4. If the time limits laid down in paragraph 3 of this Article are not observed, either Party may, in the absence of another agreement, request the President of the International Court of Justice to make the necessary appointments.
- 5. If the Chairperson is prevented from attending or is a national of one of the Parties, the appointments shall be made by the Vice Chairperson. If he is also prevented from attending or is a national of one of the Parties, the appointments shall be made by the member of the Court next in rank, provided that such member is not a national of either Party.
- 6. The arbitral tribunal shall decide by majority vote. Its decisions shall be final and binding on both Parties.
- 7. Each Party shall bear the expenses of the respective arbitrator as well as his/her representation in the proceedings before the Arbitral Tribunal. Both Parties shall bear their own costs and pay those of the President in equal shares.
- 8. The arbitral tribunal may adopt different rules concerning costs. In all other matters, the arbitral tribunal shall determine its own rules of procedure.

Article 11

Disputes between a Party and an investor of the other Party

- 1. Disputes between an investor of one Party and the other Party relating to the former's investment in the territory of the latter shall be settled amicably through negotiations.
- 2. If the disputes cannot be settled in accordance with the provisions of paragraph 1, the investor of the other Party shall be informed in writing.
 - a) the competent courts of the Party in whose territory the investment is located; or
 - b) the International Centre for Settlement of Investment Disputes for Conciliation or Arbitration under the terms of the Dispute Settlement between States and Nationals of Other States, concluded in Washington D.C, on 18 March 1965; or
 - c) to an ad hoc Arbitral Tribunal established under the rules of arbitration of the United Nations Commission on Trade and Development (UNCTAD).
- 3. The decision to submit the dispute to one of the procedures referred to in the preceding paragraph is irreversible.
- 4. The judgment shall be binding on both Parties and shall not be the subject of any remedy other than those provided for under national law in the case of subparagraph (a) of the preceding paragraph or under such Conventions. The judgment shall be binding in accordance with the internal law of the Party in whose territory the investment concerned is located.
- 5. After the conclusion of the judicial or arbitral proceedings and in the event of non-compliance with the award rendered pursuant to this Article, the Parties may, exceptionally, have recourse to diplomatic channels with a view to securing the enforcement of such award.

CHAPTER III
Final provisions

Article 12
Consultations

The representatives of the Parties shall, where necessary, hold consultations on any matter related to the interpretation and implementation of this Agreement. These consultations shall be held on a proposal from either Party, which may, if necessary, propose meetings at a time and place to be agreed through diplomatic channels.

Article 13
Entry into force

This Agreement shall enter into force thirty (30) days after the date of (receipt) of the last notification in writing and through diplomatic channels that all constitutional and/or legal formalities required by both Parties have been complied with.

Article 14
Duration

This Agreement shall remain in force for a period of ten (10) years, which shall be extended for equal periods.

Article 15
Termination

1. This Agreement may be terminated by either Party by written notice and through diplomatic channels, terminating twelve (12) months after the date of receipt of such notification by the other Party.
2. The provisions of Articles 1 to 12 shall remain in force for a period of ten (10) years from the date of termination of this Agreement for investments made.

Done in duplicate, in Dili, on the 20th day of May of the year two thousand and two, in the Portuguese language, both texts being equally authentic.

For the Democratic Republic of Timor-Leste

Dr. José M. Ramos Horta

For the Portuguese Republic

Dr. António Martins da Cruz