

# **AGREEMENT BETWEEN THE REPUBLIC OF THE CONGO AND THE KINGDOM OF SPAIN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Republic of Congo and the Kingdom of Spain, hereinafter referred to as "the Contracting Parties",

Desiring to enhance economic cooperation and development to promote the mutual benefit of the two countries;

In order to create favourable conditions for investments by investors of one Contracting Party in the territory of the other party;

Recognizing that the reciprocal promotion and protection of investments in conformity with this Agreement is likely to stimulate initiatives in this field and contribute to economic prosperity of both States;

Recognizing that these objectives can be achieved without prejudice to measures of general application in health, safety and environment.

Have agreed as follows:

## **Article 1. Definitions**

The terms of this Agreement, the term "investor," means any national or company of a Contracting Party making investments in the territory of the other Contracting Party:

a) The term "national" means natural persons having the nationality of either Contracting Party in accordance with its laws;

b) "company" means any legal person or any other legal entity duly constituted or organized under the laws of the Contracting Party in question and having its registered office in the territory of that same Contracting Party, such as companies, corporations, business associations, economic interest groups, individual companies and civil societies.

2. The term "investment" means every asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter and shall include in particular, though not exclusively:

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

b) Shares, securities, bonds and any other form of participation in companies;

c) Rights to contributions in monetary values and to any other contractual benefits before economic value and associated with an investment

d) Industrial and intellectual property rights, such as copyrights, patents, trade secrets, trademarks, industrial processes, designs, technical know-how, know-how and goodwill;

e) Rights to undertake economic and commercial activities conferred by law or under a contract or concession, including concessions to prospecting, extraction, culture, the exploitation of natural resources. changes in the form of assets invested or reinvested shall not affect their classification as investment provided that such alteration is not contrary to the laws and regulations of the Contracting Party in whose territory the investment is made.

3. The term means all amounts yielded returns by an investment and in particular, though not exclusively, profits, dividends, interests, capital gains, royalties and fees.

4. The term territory means the land territory internal waters and territorial waters of each Contracting Party as well as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the

Contracting Parties and on which they are or may exercise, in accordance with international law, sovereign rights and jurisdiction.

## **Article 2. Encouragement, Admission and Promotion of Investments**

1. Each Contracting Party shall promote and admit on its territory, within the framework of its laws and regulations, the investments of investors of the other contracting party.

2. When one Contracting Party shall have admitted an investment in its territory, it shall grant, in accordance with its laws, the required authorisations for the realisation of the investment and licensing contracts for commercial, administrative or technical assistance. Each Contracting Party shall endeavour to accord, whenever necessary, relevant licenses for the activities of consultants and other qualified staff, regardless of their nationality.

## **Article 3. Protection of Investments**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, will receive fair and equitable treatment and shall enjoy full protection and security in accordance with international law.

2. Neither of the contracting parties does not hinder Discriminatory Measures Arbitrary or by the management, maintenance, use, enjoyment or disposal of investments. each Contracting Party shall observe at all its obligations in respect of investments made in its territory by investors of the other Contracting Party.

## **Article 4. National Treatment and Most-favoured-nation Clause**

1. Each Contracting Party shall accord to investments made by investors of the other Contracting Party in its territory treatment no less favourable than that accorded to investments of its own to investors or investments of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of investments in its territory treatment no less favourable than that accorded to its own investors to investors or of any third State, whichever is more favourable.

3. The treatment granted under paragraphs 1 and 2 of this article shall not require the contracting parties to accord to investors of the other contracting party and to their investments, the benefit of any treatment, preference or privilege resulting from:

a) The association or its participation in any existing or future free trade area, customs union, economic or monetary or any kind of regional economic organization or similar international agreement;

b) Any international agreement or arrangement relating wholly or mainly to taxation measure, the agreements for the avoidance of double taxation or of any provision and domestic legislation relating wholly or mainly to taxation.

4. The provisions of article 4 shall be interpreted without prejudice to the right of the Parties to apply different tax treatment to various taxpayers according to their residence for tax purposes.

## **Article 5. Nationalisation or Expropriation**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized or expropriated or subjected to any other measures having equivalent effect (hereinafter referred to as "expropriation"). except for a public purpose or social interest and in accordance with due process of law, and provided that such measures are not discriminatory and are accompanied by the payment of prompt, effective and adequate compensation.

2. The compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or before its publicly known is imminent, whichever is the earlier (hereinafter referred to as the "valuation date").

3. The market value shall be calculated in a freely convertible currency at the rate of exchange in effect on the market for that currency on the valuation date. the compensation shall include commercial interest at a rate established on a basis for the currency market from the date of expropriation until the date of payment; compensation will be built without delay, be effectively realizable and freely transferable.

The affected investor shall have a right under the law of the contracting party making the expropriation, to prompt review of its case by a judicial or other competent and independent authority of that Contracting Party to determine whether the expropriation and the valuation of the investment has been made in accordance with the principles set out in this article.

## **Article 6. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other contracting party have suffered losses due to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or any other similar event shall enjoy in restitution, compensation, compensation or other settlement, a treatment no less favourable than that which the latter Contracting Party accords to its own investors investors or of any third State, whichever is more favourable. Resulting payments shall be freely transferable.

2. Without prejudice to the provisions of paragraph 1 of this article, investors of a Contracting Party who has suffered losses in any of the situations referred to in that subparagraph in the territory of the other Contracting Party resulting from:

- a) The requisitioning of their investments or one of them by the authorities or forces of the latter Contracting Party; or
- b) The destruction, not required by the necessity of the situation of their investment or part thereof by the authorities or forces of the latter Contracting Party, shall be entitled to a refund or prompt, adequate and effective compensation on the part of the latter Contracting Party. Such payments shall be made without delay and shall be freely transferable.

## **Article 7. Transfer and Returns of Investments**

1. Each Contracting Party shall accord to investors of the other Contracting Party the free transfer of all payments relating to their investments and in particular, though not exclusively, that:

- a) The initial capital and additional funds necessary for the maintenance and development of the investment;
- b) Income, as defined in article 1;
- c) Funds in repayment of loans related to investments;
- d) Compensation and compensation under articles 5 and 6;
- e) The proceeds of the sale of or the partial or total liquidation of the investment;
- f) Other earnings and remuneration of personnel engaged from abroad in connection with an investment;
- g) Payments arising out of the settlement of disputes.

2. The transfers referred to in this article will be made without delay in a freely convertible currency at the official exchange rate applicable on the date of transfer.

3. Notwithstanding the provisions of this article, either Contracting Party may, by a fair, non-discriminatory and in good faith to its legislation, delay or prevent a transfer in order to protect the rights of creditors or to ensure the execution of criminal offences and judgements or orders in administrative and judicial matters.

## **Article 8. Application of other Provisions**

1. If the consequence of legal measures of either Contracting Party or obligations between the contracting parties from the current or future International Law in the margins of this Agreement, any general or special regulations under which should be accorded to investments made by investors of the other contracting party to more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this Agreement.

2. Investments in respect of a particular undertaking of either Contracting Party to investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment, insofar as it contains provisions which are more favourable than those provided for in this Agreement.

3. Nothing in this Agreement shall affect the provisions of international treaties regulating the rights of intellectual and industrial property in force at the time of its signature.

## **Article 9. Subrogation**

1. If one of the Contracting Parties, its representative or its designated agency, made a payment under an indemnity guarantee, or an insurance contract awarded against non-commercial risks relating to an investment by one of its investors in the territory of the other contracting party, the latter Contracting Party shall recognize:

a) The subrogation of any right or title in respect of the investor, first of the contracting party of his or its designated agency; and

b) The first transfer to the contracting party, of his or its designated agency of all rights and claims of the investors, by virtue of subrogation, by law or contract.

The subrogation will contribute to the first Contracting Party or its designated agency by it to benefit directly from any kind of payments of compensation or compensation which the original investor would have been entitled.

## **Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any investment dispute arising between an investor and a contracting party of the other Contracting Party with respect to matters governed by this Agreement shall be notified in writing, including detailed information by the investor to the Contracting Party recipient of the investment. To the extent possible, the disputing parties settle the dispute amicably.

2. If the dispute cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor:

a) The competent courts of the Contracting Party in whose territory the investment has been made; or

b) To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

c) The International Centre for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965, when each State Party to this agreement would have adhered to the said Convention. If one of the contracting parties is not a Contracting State to the Convention mentioned, the dispute may be settled under the Additional Facility Rules and its findings of fact, conciliation and arbitration by the Secretariat of ICSID.

3. The arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment has received, including the rules relating to conflicts of law, and the applicable rules and principles of international law.

4. The Contracting Party is a party to the dispute shall not raise the defence the fact that the investor has received or will receive under a contract of guarantee or insurance, compensation or other compensation for losses or part thereof.

5. The arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the award according to its national law.

## **Article 11. Settlement of Disputes between the Contracting Parties**

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

2. If the dispute cannot be settled in this way within six months after the beginning of negotiations, it shall be submitted upon request of either of the contracting parties to an arbitral tribunal.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the arbitrators select a national of a third State as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute to an arbitral tribunal.

4. If within the period specified in paragraph 3 of this article the necessary appointments had 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 of the International Court of Justice might exercise the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the appointments. If the Vice-President said might exercise the function or is a national of either Contracting Party, the designations shall be made by the most senior member of the Court referred to is a national of one of the Contracting Parties.

5. The arbitral tribunal shall issue its opinion on the basis of the provisions of this Agreement and the applicable rules and principles of international law.
6. Unless the Contracting Parties decide otherwise, the Tribunal shall establish its own procedure.
7. The tribunal shall take its decision by a majority of votes, and shall be final and binding on the contracting parties.
8. Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The other costs, including those of the Chairman shall be provided in equal parts by the contracting parties.

## **Article 12. Implementation of the Agreement**

This Agreement shall apply to investments made before or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legal provisions of this Agreement. However, this Agreement shall not apply to disputes that may arise before its entry into force.

## **Article 13. Revision or Amendment**

This Agreement may be subject to revision or amendment by written agreement between the Contracting Parties. The amendments shall be confirmed by an exchange of Notes through diplomatic channels and return into force under the same conditions as those provided for in article 14 of this Agreement.

## **Article 14. Entry Into Force, Duration and Termination**

1. 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. The Agreement shall enter into force one month after the date of receipt of the latter of the two notifications.
2. This Agreement is concluded for an initial period of ten years. After the term, it shall remain in force unless tacitly renewed or denounced in writing by either Contracting Party through a written notice to the other Contracting Party. The termination of the Agreement shall take effect one year after the notification is received by the other Contracting Party.
3. In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of articles 1 to 14 of this Agreement shall remain in force for a further period of ten years.

In WITNESS WHEREOF, the respective Plenipotentiaries have signed this Agreement.

Done at Madrid on 18 December 2008, each in two originals in the English and Spanish languages, both texts being equally authentic.

For the Republic of the Congo,

Basile Ikouebe

Minister for Foreign Affairs and Francophonie

For the Kingdom of Spain,

Miguel Angel Moratinos Cuyaubé

Minister for Foreign Affairs and Cooperation