

# Agreement between the Swiss Confederation and the Republic of Zaire on the protection and encouragement of Investments

The Government of the Swiss Confederation

and

the Government of the Republic of Zaire,

anxious to develop economic cooperation between the two States,

desiring to create favorable conditions for capital investments by nationals and companies of one of the two States in the territory of the other State and

Recognizing that treaty protection of such investments is likely to stimulate private or public economic initiative and to increase the prosperity of both nations,

Have agreed as follows:

## Article 1.

Under the terms of this Agreement, "investments" means contributions in cash or kind made by nationals or companies of one of the Contracting Parties in the territory of the other, in accordance with the respective legislation of the Contracting Parties applicable to investments, with a view either to establishing a new production capacity for goods or services or to rationalizing production methods or improving their quality

The word "nationals" means natural persons who, according to the legislation of each of the Contracting States, have the nationality of that State.

The word "companies" means commercial companies (corporations, general partnerships, limited partnerships), corporations, establishments or foundations in which nationals of the territory of one of the two Contracting Parties have a predominant interest.

## Article 2.

Investments, property, rights and interests belonging to nationals or companies of one of the Contracting Parties in the territory of the other shall be accorded fair and equitable treatment.

Such treatment shall be at least equal to that accorded by each Party to its nationals or, if more favorable, to the treatment accorded to nationals or companies of the most favored nation.

## Article 3.

Each Contracting Party undertakes to authorize the transfer of the proceeds of the work or activity carried on in its territory by the nationals or companies of the other Party, as well as the transfer of profits, interest, dividends, royalties and other income, depreciation and, in the event of partial or total liquidation, the proceeds thereof.

The technical formalities of the transfer shall be carried out in accordance with the existing legislation on the subject.

## Article 4.

In the event of expropriation, nationalization or dispossession by one of the Contracting Parties of property, rights or interests belonging to nationals or companies of the other Contracting Party, it shall pay to such nationals or companies

effective and equitable compensation in accordance with the law of nations.

Measures of expropriation, nationalization or dispossession shall not be discriminatory or contrary to any specific undertaking.

The amount of the compensation, which shall be fixed at the time of the expropriation, nationalization or dispossession, shall be settled in a convertible currency and paid within a reasonable time to the entitled person, irrespective of his place of residence or headquarters.

## **Article 5.**

This Agreement shall also apply to investments made by nationals or companies of each Contracting Party in the territory of the other Contracting Party prior to the entry into force of this Agreement, provided that such investments have been approved in writing in accordance with the laws and regulations in force with respect to investments in the territory in which they were made.

## **Article 6.**

If a dispute arises between the Contracting Parties concerning the interpretation or execution of this Agreement and such dispute cannot be settled satisfactorily through diplomatic channels within six months, it shall be submitted, at the request of either Party, to an arbitral tribunal of three members. Each Party shall appoint one arbitrator. The two arbitrators appointed shall appoint a referee who shall be a national of a third State.

If one of the Parties has not appointed its arbitrator and has not complied with the invitation of the other Party to do so within two months, the arbitrator shall be appointed, at the request of the latter Party, by the President of the International Court of Justice.

If the two arbitrators cannot agree within two months of their appointment on the choice of a referee, the referee shall be appointed by the President of the International Court of Justice at the request of one of the Parties.

If, in the cases provided for in paragraphs 2 and 3 of this article, the President of the International Court of Justice is unable to act or if he is a national of one of the Parties, the appointments shall be made by the Vice-President. If the Vice-President is unable to act or if he or she is a national of one of the Parties, the appointments shall be made by the most senior member of the Court who is not a national of either Party.

Unless the Parties otherwise agree, the Tribunal shall determine the procedure itself.

The decisions of the Tribunal shall be binding on the Parties.

## **Article 7.**

A joint commission, made up of representatives of the Contracting Parties to this Agreement, shall meet either in Berne or in Kinshasa at the request of one of the Contracting Parties to examine the results obtained as a result of this Agreement as well as the possible means to be implemented in order to promote investments of one of the Contracting Parties in the territory of the other.

## **Article 8.**

This Agreement, which shall apply provisionally upon signature, shall enter into force when each of the Contracting Parties has notified the other that it has complied with its constitutional requirements for the conclusion and entry into force of international agreements.

This Agreement shall remain in force for five years. It shall be renewed by tacit agreement for successive periods of two years, unless either Contracting Party denounces it in writing with six months' notice before its expiration.

In the event of denunciation, the provisions of this Agreement shall continue to apply for a period of five years to investments made before the date of expiry.

Done at Kinshasa, this 10th day of March 1972 in two originals in the French language.

For the Government of the Swiss Confederation:

E. Moser

For the Government of the of the Republic of Zaire:

Eketebi Moyidiba Mondjolomba