

AGREEMENT BETWEEN THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO (DRC) AND THE GOVERNMENT OF THE REPUBLIC OF RWANDA ON INVESTMENT PROMOTION AND PROTECTION

PREAMBLE

The Government of the Democratic Republic of Congo and the Government of the Republic of Rwanda hereinafter referred to as the "Contracting Parties";

Wishing to strengthen the bonds of friendship and co-operation existing between the Parties;

Recognising the important contribution that such investments can make to the sustainable development of the Parties, including poverty reduction, increased productive capacity, economic growth, technology transfer and the promotion of human rights and human development;

Desire to promote, encourage and enhance investment opportunities that strengthen sustainable development in the Parties' territories;

Recognising that sustainable development requires the realisation of the economic, social and environmental pillars embedded in the concept;

Reaffirming the right of Parties to regulate and introduce new measures relating to an investment in their territories in order to meet national policy objectives and - by taking into account any asymmetry in the measures put in place - in particular, the need for developing countries to exercise this right;

Considering the Pan-African Investment Code of the African Union as well as the COMESA Common Investment Area Agreement, "ZICC" in short;

Aware that the reciprocal encouragement, promotion and protection of investments on the basis of the principle of equality and mutual benefit is likely to stimulate the commercial initiatives of investors and to increase the prosperity of both States

Have agreed as follows:

Chapter One. COMMON PROVISIONS

Article 1. Objective

The main purpose of this Agreement is the reciprocal encouragement, enhancement, promotion and protection of investments made by investors of one contracting party in the territory of the other contracting party which support the sustainable development of each Party and, in particular, the host State where the investment is located.

This Agreement shall apply to all investments made by investors of one of the Contracting Parties in the territory of the other Party after its entry into force. However, this Agreement shall not have retroactive effect with respect to investment disputes arising before its entry into force.

Article 2. Definitions

Enterprise means any entity formed or organized in accordance with applicable law, whether for profit or not, and whether state-owned or privately controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar body; and a branch of an enterprise.

State of origin means, with respect to

- (a) a natural person, the Party of nationality or principal residence of the investor, in accordance with the laws of that Party
- (b) a legal person, the Party of incorporation or registration of the investor and the place of development of its activities.

Host State refers to the Party where the investment is made

ICSID refers to the International Centre for Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Investment means an enterprise in the territory of a Party established, created or developed by an investor of the other Party, including the establishment, maintenance or acquisition of a juridical person or the acquisition of shares, bonds or other equity securities of such an enterprise, provided that the enterprise is established or acquired and is administered in accordance with the laws of the host State. An enterprise may own assets such as:

- (a) shares, capital, unsecured bonds and other equity instruments of the company or of another company
- (b) a debt instrument from another undertaking
- (c) loans granted to a company
- (d) movable or immovable property and other property rights such as mortgages, liens or pledges
- (e) pecuniary claims or other benefits performed under contract with a financial value
- (f) copyright, know-how, goodwill and industrial property rights such as patents, trademarks, industrial designs and trade names, insofar as they are recognised under the law of the host State
- (g) rights granted by law or under contract, including licences to cultivate, extract or exploit natural resources.

It is understood that the investment does not include:

- (a) debt securities issued by or loans to a government
- (b) portfolio investments
- (c) claims arising solely from commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of another Party, or (extension of credit in connection with a transaction
- (b) the right to claim the payment of any commercial or other pecuniary claim which does not contain the type of interest set out in points (a) to (g) of this Article.

Investor means a natural or legal person of the home State who invests in the territory of the host State, provided that:

- a) natural persons who are nationals of either Contracting Party in accordance with its legislation
- b) the legal person is constituted in accordance with the law of the home State and carries on business in the home State and/or the State of residence and carries on business in both the home State and the State of residence

Measure means any form of legally binding legal act that directly affects an investor or his investment, and includes any law, regulation, procedure, requirement, final judicial decision or binding enforcement decision:

- (a) As regards the Republic of Rwanda, measures taken by the Central Administration or local governments or District authorities;
- (b) With regard to the Democratic Republic of Congo, measures taken by the Parliament and the National Executive, the Provincial Edits and the Provincial or Local Executives

Portfolio investment means an investment representing less than 10% of the company's shares or not giving the portfolio investor the ability to exercise effective management or influence over the management of the investment.

Party means a State which is a Party to this Agreement.

Territory means:

- (a) with regard to the Democratic Republic of Congo and the areas adjacent to its territorial waters as well as the maritime areas and airspace over which, in accordance with international law, the Democratic Republic of Congo exercises its rights sovereignty over airspace, the seabed, the subsoil and their resources natural:

(b) with regard to the Republic of Rwanda, the land, internal waters, the airspace and other contiguous areas over which the Republic of Rwanda has or may be granted sovereign rights or jurisdiction in agreement with a third country.

Fair and equitable treatment: Fair and equitable treatment implies, in particular, that investors of one contracting party would not be deliberately deprived of the right to a fair hearing by the other contracting party, or treated in a manifestly unfair manner. In this case, the court must be satisfied that it is discriminatory or arbitrary, and that it does not conform to the legal system of the host country or to the general principles of law.

Transfers refers to international payments and transactions in cash or electronic form.

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law as approved at the time of commencement of the arbitration pursuant to the submission of a notice of arbitration under these Rules, including any rules or annexes specific to arbitration processes between an investor and a State.

Article 3. Admission of Investments by Investors of the other Party

The Parties shall encourage and admit investments in accordance with their applicable laws and apply them in good faith.

Chapter II. RIGHTS OF INVESTORS AFTER ESTABLISHMENT

Article 4. Non-discrimination

Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that which it accords, in similar circumstances, to investors and investments from third States with regard to the management, administration, maintenance, use, enjoyment, sale or other disposition of investments situated in its territory.

(1) It is understood that the reference to "similar circumstances" requires a comprehensive case-by-case examination of all the circumstances of an investment, including:

- (a) its effects on third parties and the local community;
- (b) its effects on the local, regional or national environment, including the cumulative effects of all investments in the field of competence on the environment;
- (c) the sector in which the investor is located;
- (d) the objective of the measure;
- (e) the regulatory process generally applied to the measure being designed; and
- (f) other factors directly related to the Investment or the Investor in relation to the measure being measured.

The review referred to in this paragraph shall not be limited or biased by any factor.

(2) Nothing in this Article shall be construed to prevent a Party from adopting or maintaining a measure prescribing special formalities in connection with the investments of investors, such as the requirement that their investments be constituted in accordance with the law of the State Party, provided that such formalities do not materially impair the protections afforded by a Party to the investors of the other Party and their investments under this Agreement.

(3) Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to management, direction, exploitation, sale or disposal of investments.

(4) The provisions of paragraph 4 above shall not be construed to require a Party to accord to investors of the other Party and investments of investors of the other Party the benefit of any treatment, preference or privilege arising from:

- a. existing or future customs union, free trade area, free trade agreement, common market, monetary union or similar international agreement or other forms of regional cooperation to which either Party is or may become a Party; or the adoption of an agreement leading to the formation or extension of such union, area or agreement;
- b. any existing bilateral investment agreement (also known as an "investment guarantee agreement", "investment promotion and protection agreement" or "IPA") "International investment agreements");

c. any existing or future international investment agreement between or among Member States of a regional economic community, including investment agreements between members of a regional economic community and one or more third States; or

d. any arrangement with a non-Party or parties of the same geographical region designed to promote regional co-operation in the economic, social, industrial or monetary fields in the framework of specific projects.

(5) For greater certainty, paragraphs 4 and 5 shall not be construed as giving investors any dispute settlement options or procedures other than those set out in Section One (Settlement of Disputes between a Party and an Investor of the other Party) of Chapter III (Settlement of Disputes).

(6) This Article constitutes the definition and scope of all references to non-discrimination or national treatment in all respects under this Agreement. Any References to such terms elsewhere in this Agreement shall be applied and interpreted in accordance with this Article.

Article 5. Fair and Equitable Treatment

(1) Each Contracting Party shall ensure fair and equitable treatment and full protection and security for investors of the other Contracting Party and for investments made in its territory.

(2) Parties shall ensure that their administrative, legislative and judicial processes do not operate in a manner that is arbitrary or likely to deny administrative and judicial justice. procedural requirements for investors from other Parties or their investments.

(3) The Investors or their Investments, depending on the circumstances, are informed in good time of the administrative or judicial proceedings directly affecting the investment(s), unless, due to exceptional circumstances, such notification is contrary to domestic law.

(4) Administrative decision-making processes include the right of administrative review or of appeal of decisions, commensurate with the level of development and resources available to the Parties.

(5) The investor or investor must have access to the information held by the Commission shall inform the Government in good time and in accordance with national law, and subject to the limitations on access to information provided for by the applicable national law.

(6) This Article constitutes the definition and scope of all references to non-discrimination or national treatment in all respects under this Agreement. Any reference to such terms elsewhere in this Agreement shall be applied and interpreted in accordance with this Article.

(7) A claim that there has been a breach of another provision of this Agreement or of a separate international agreement does not establish a breach of this Article.

Article 6. Expropriation

(1) A Party shall not, directly or indirectly, nationalise or expropriate investments in its territory except under the following conditions:

(a) In the public interest linked to the informed internal needs of the state in question;

(b) Non-discrimination

(c) compliance with a regular and legal procedure

(d) upon payment of fair and adequate compensation within a reasonable period of time.

(2) The assessment of fair and adequate compensation shall be based on an equitable balance between the public interest and the interests of the persons concerned, taking into account all relevant circumstances and having regard to the present and past use of the property, the history of its acquisition, the fair market value of the property, the purpose of the expropriation, the extent of the previous benefits realised by the foreign investor from the investment and the duration of the investment.

(3) All payments shall be made in a freely convertible currency. The payment shall include simple interest at the commercial rate prevailing in the host State from the date of expropriation until the date of actual payment. Upon payment, the compensation shall be freely transferable.

(4) Compensation which represents a heavy burden on a host State may be paid annually over as long a period as possible as agreed by the Parties to the arbitration, subject to interest at a rate agreed upon by the Parties to the arbitration or by a court.

(5) This Article does not apply to the granting of compulsory licences based on intellectual property rights, or to the revocation, imitation or creation of rights, the granting, revocation, limitation or creation of intellectual property rights, to the extent that such granting, revocation, limitation or creation is consistent with applicable international intellectual property agreements.

(6) Subject to the requirement that such measures shall not be applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination within the meaning of Article 4 (not (b) Where a measure of a Party is designed and applied to protect or enhance legitimate public welfare objectives, such as public health, public safety, national security and the environment, it shall not constitute an indirect expropriation under this Agreement.

(7) A measure of general application shall not be deemed to be an expropriation of a debt obligation or loan covered by this Agreement solely because the measure imposes costs on the debtor which induce him not to pay his debt.

(8) The Investor affected by the expropriation shall have the right, under the law of the expropriating Party, to initiate a review by the judicial or other independent authority of that Party of the decision to proceed with the expropriation and the valuation of the expropriated investment in accordance with the principles set forth in this Article.

Article 7. Repatriation of Assets

(1) A Party must grant investors the right to:

(a) repatriate the capital invested and the return on investment;

(b) repatriate the funds to repay loans;

(c) repatriate the proceeds of the compensation after the expropriation, liquidation or sale of the investment in whole or in part, including an appreciation or increase in the value of the Investment Capital;

(d) transferring payments to maintain or develop the investment project, such as funds for the acquisition of raw or auxiliary materials, semi-finished products and replacement of fixed assets;

(e) remit the unspent income of expatriate staff from the investment project;

(f) repatriate the investor compensation paid under this Agreement; and

(g) payments arising from the settlement of a dispute by any means, including arbitration or the agreement of the Party to the dispute.

(2) Each Party shall ensure that transfers referred to in paragraph (1) of this Article are made in freely convertible currency at the market rate of exchange prevailing at the time of the transfer.

(3) Notwithstanding paragraph (1) of this Article, a country may prevent or delay a transfer by enforcing its laws and regulations concerning the transfer:

(a) bankruptcy, insolvency or protection of creditors' rights;

(b) issuance, trading or transactions in securities, financial products or services term. on options or derived products;

(c) Criminal offences and the recovery of the proceeds of crime;

(d) The financial reports or record keeping of transactions where necessary to assist the law enforcement or financial regulatory authorities;

(e) orders or judgements made in judicial or administrative proceedings;

(f) taxation;

(g) Social security schemes, public pension schemes or compulsory savings schemes;

(h) employee severance pay; and

(i) the formalities required to register and satisfy the Central Bank the other authorities of a Party.

(4) Where, in the opinion of a Party, payments and capital movements in respect of an Investor or an Investment covered by this Agreement cause or are likely to cause serious harm:

(a) difficulties for balance of payments purposes;

(b) external financial difficulties; and/or

(c) difficulties in macroeconomic management, including monetary or exchange rate policy,

the Party concerned may take provisional safeguard measures on capital movements in order to eliminate them as soon as conditions permit.

(5) Where a Party takes measures under paragraph 4 of this Article:

(a) these measures must remain in place for a maximum period of twelve months, subject to paragraph 6 of this Article; and

(b) the Party taking such measures shall enter into consultations with the other Party at its request, with a view to reviewing such measures and seeking to identify the minimum impact of such measures on an investor.

(6) If, in the opinion of a Party taking the measures, it becomes necessary to extend them for a further period following an extended period due to the extended conditions described in paragraph 4 of this Article, the Party shall offer to consult with the other Party with a view to seeking the minimum impact of such measures on an investor. Such measures shall again be taken on a temporary basis with a view to their withdrawal as soon as conditions permit and, in any event, for a period not exceeding 12 months from their renewal.

Article 8. Protection and Security

(1) In the event of war or other armed conflict, revolution, insurrection or riot within or affecting the territory of the Host State, a Party shall afford to investments of investors of the other Party protection and security no less favourable than that afforded to investments of its own investors or to investments of investors of any third State.

(2) Investors of a Party whose investments in the territory of the other Party suffer losses as a result of a breach of paragraph 1 of this Article, in particular as a result of war or any other armed conflict, revolution, insurrection or riot in the territory of the host State, shall be accorded by the host State treatment in respect of restitution, compensation, indemnification or other settlement no less favourable than that accorded by the host State to investors of a third State.

Chapter III. RIGHTS AND OBLIGATIONS OF INVESTORS AND PARTIES

Article 9. Compliance with National Laws

Investors and their investments must comply with all applicable national laws and regulations of the Host State.

Article 10. Corporate Governance Framework

(1) Investors and their investments must meet or exceed nationally and internationally accepted standards of corporate governance in their industry, including transparency and accounting practices,

(2) Investors and their Investments shall ensure that all transactions with related or affiliated companies are at arm's length or at fair market price. Investors and their Investments shall not engage in any improper transfer pricing practices with each other or with any related or affiliated companies.

Article 11. Sociopolitical Obligations

(1) Investors and their investments must comply with sociopolitical obligations, including:

(a) respect for national sovereignty and compliance with national laws, regulations and administrative practices;

(b) respect for sociocultural values;

(c) non-interference in internal political affairs; and

(d) non-interference in intergovernmental relations;

(2) Investors and their investments must not influence or attempt to influence the appointment of the person holding public office or financing political parties.

(3) Investors and their investments shall not engage in any act that is likely to be prejudicial to public policy, morality or the public interest. Investors shall not engage in restrictive practices and attempt to make gains by illegal means.

Article 12. Bribery and Corruption

(1) Investors and their Investments shall not offer, promise or give any pecuniary value or other benefit, directly or through agents, to a public official of the Host State, to a member of the family of a public official, to a business associate or to any other person closely connected with a public official, for his own account or for the account of a third party, in order that the official or third party acts or refrains from acting in the exercise of official functions to obtain a favour in relation to a proposed Investment or any other right in relation to an Investment.

(2) Investors and their investments shall not be complicit in any of the acts described in paragraph 1 of this Article, including inciting, aiding, abetting or conspiring to commit or authorise such acts.

(3) A breach of this Article by an Investor or an Investment shall be deemed to constitute a failure by the Investor to establish, acquire or undertake, as the case may be, the Investment in accordance with the laws of the Host State.

(4) The Parties to this Agreement shall, in accordance with applicable law, prosecute and, upon conviction, punish persons who have violated the applicable law in the performance of this obligation.

Article 13. Commercial Ethics and Human Rights

(1) Investors and their Investments shall comply with the UN Guiding Principles on Business and Human Rights and make modifications to them as necessary for local circumstances.

(2) Investors and their Investments shall:

(a) Support and respect the protection of internationally proclaimed human rights;

(b) Ensure that they are not complicit in human rights violations;

(c) Respect the freedom of association and the effective recognition of the right to collective bargaining;

(d) Eliminate all forms of forced or compulsory labour, including the effective abolition of child labour;

(e) Eliminate discrimination in employment and occupation;

(3) Where there is a need to prioritise actions to address actual or potential adverse effects, investors should first seek to prevent and mitigate those that are most likely to occur. More serious or where a delayed response would make them vulnerable.

Article 14. Corporate Social Responsibility

(1) Investors and their Investments must ensure that the pursuit of their economic objective does not conflict with the social and economic development of the Host State and must be sensitive to changes in the social and economic objectives of the Host State.

(2) Investors and their Investments must act in accordance with the principles of trade, marketing and advertising practices when dealing with consumers and must ensure the safety and quality of the goods and services they provide.

Article 15. Protection of the Environment and Use of Natural Resources

(1) Investors and their Investments must protect the environment during their operations and when their operations cause environmental damage; take reasonable steps to restore the environment to the extent possible; and ensure that victims of environmental damage are fairly compensated

(2) Investors and their investments must comply with the environmental and social assessment criteria and evaluation processes applicable to proposed Investments prior to their establishment, as required by the Host State's legislation for such an investment.

(3) The impact assessment reports required under paragraph 2 of this Article shall include human rights impact assessments in areas potentially affected by the investment.

(4) Investors and their investees must carry out the following environmental and social impact assessments:

(a) public accessibility; and

(b) accessibility to local communities or other areas of potential interest, effective and timely enough to allow comments to be made to the investor, the Investment and/or the government prior to the completion of the Host State's investment establishment processes.

(5) Investors, their Investments and host state authorities should apply the precautionary principle to their environmental impact assessment and decisions taken in connection with a proposed investment, including any mitigating or alternative approaches necessary to the Investment, or prohibiting the Investment if necessary. The application of the precautionary principle by investors and investors should be described in the environmental impact assessment.

Article 16. Environmental Management and Improvement

(1) Investors and their Investments shall, in accordance with good practice requirements relating to the size and nature of the Investment, and as required under the host country's national legislation, maintain an environmental management system that complies with recognised international environmental management standards and good business practices.

(2) Investors and their investments should develop, review and regularly update their plans for emergency response, response and decommissioning as part of the environmental management system process and make these plans available to the Host State and the public.

(3) Investors and their investments should establish and maintain a trust fund to ensure that resources are available to implement the decommissioning plan in line with industry best practices for such funds.

(4) Investors and their Investments should ensure that their environmental management plans include the means to ensure continuous improvement in environmental management technologies and practices throughout the life of the Investment. These improvements must be made to comply with current legislation, while striving to exceed current standards and maintain high levels of environmental performance in line with industry best practices.

Article 17. Provision of Information

(1) An investor shall provide to an actual or potential Host State such information as that Party may require concerning the Investment in question and the history and business practices of the investor, for the purpose of making a decision with respect to that Investment or for statistical purposes only.

(2) The Host State, or potential Host State, shall have the right to obtain accurate and up-to-date information in this regard. An investor shall not commit fraud or provide false or misleading information in accordance with this Article.

(3) The Host State, or potential Host State, may make this information available to the public in the location of the investment, subject to other applicable laws and the editing of confidential business information. The Host State shall protect any commercial information from any disclosure that may prejudice the position of the Investor or the Investment.

(4) Nothing in this Article shall be construed to prevent a Party from obtaining or disclosing information in the course of the fair and good faith application of its internal law or in the course of disputes between the investor and the State making the investment.

(5) A material breach of this Article by an investor or an investment shall be deemed to constitute a failure by the investor to establish, acquire or realise, as the case may be, the investment in accordance with the laws of the Host State.

Article 18. Minimum Standards on Human Rights, Environment and Labour

(1) Investors and their Investments have a duty to respect human rights in the workplace and in the performance of their duties and in the community and state in which they are located. Investors and their Investments shall not undertake or cause to be undertaken any acts that violate these human rights. Investors and their Investments shall not contribute to or be complicit in the violation of human rights by third parties in the Host State, including by public authorities or during civil unrest.

(2) Investors and their investments must act in accordance with the fundamental rules of labour rights required by the ILO

Declaration on Fundamental Principles and Rights at Work, 1998 and all other applicable ILO agreements.

(3) Investors and their Investments shall not manage or operate Investments in a manner that does not comply with the more favourable international environmental, labour and human rights obligations of the Host State or the Home State.

Article 19. Investors' Liability

(1) Investors and Investments may be subject to civil claims for liability in the judicial process of their home State for acts, decisions or omissions committed in that State in relation to the Investment.

(2) Home States shall ensure that their legal systems and rules permit, or do not prevent or unduly restrict, merits of the case before national courts in respect of the liability of Investors and Investments for damage arising out of acts done, decisions taken or failures to act on the part of Investors in relation to the Investments in the territory of the Host State.

(3) Subject to further specific instructions under this Agreement regarding the consequences of a breach of an obligation, where an Investor or its Investment is alleged by a State Party to dispute settlement proceedings under this Agreement not to have complied with its obligations under this Agreement the tribunal seized of such a dispute shall determine whether such a breach, if proven, is materially relevant to the issues before it and, if so, what mitigating or countervailing effects this might have on the merits of a claim or on the damages or interest awarded in the event of such an award.

(4) A Host State may bring a counterclaim against the Investor in any court under this Agreement for damages or other relief resulting from an alleged breach of the Agreement.

(5) In accordance with its applicable domestic law, the Host State, including its political subdivisions and their officers, private persons or private organisations, may bring a civil action in the Investor's court or against an investment in a national court for damages arising from an alleged breach of the obligations set forth in this Agreement.

(6) In accordance with the domestic law of the Home State, the Host State, including its subdivisions and their officials, natural persons or private organisations, may bring a civil action against the investor before the national courts of the home State, if such action relates to the specific conduct of the investor and if it claims damages for breach of the obligations set forth in this Agreement.

Article 20. Consequences of the Breach of Investors' Obligations

(1) Without prejudice to the other rights and remedies of a host State or its population, a host State may, in accordance with its national law, institute proceedings against an investor or his investment before the courts of the host State for failure to comply with the obligations of the Investor or the Investment under this Agreement. By specific written agreement, the Parties to the dispute may submit the dispute to an arbitral tribunal in accordance with Section I of Chapter V of this Agreement.

Article 21. Rights of States In the Field of Regulation

(1) The host State has the right to take regulatory or other measures to ensure that any development within its territory is consistent with the objectives and principles of sustainable development, as well as with other legitimate social and economic policy objectives.

(2) Except where the rights of a Host State are expressly stated as an exception to the obligations in this Agreement, the pursuit by a Host State of its right to regulate shall be understood to be in balance with the rights and obligations of investors and Host States as set forth in this Agreement.

(3) It is understood that non-discriminatory measures taken by a State Party to comply with its international obligations under other treaties do not constitute a breach of this Agreement.

Article 22. Right to Pursue Development Objectives

(1) Notwithstanding any other provision of this Agreement, a Party may grant preferential treatment in accordance with its domestic law to any enterprise which meets the requirements of its domestic law for achieving its development objectives.

2) Notwithstanding any other provision of this Agreement, a Party may:

(a) support the development of local entrepreneurs and

(b) seek to increase productive capacity, employment, human resource capabilities and training, research and development, including new technologies, technology transfer and other benefits of investments arising from the use of specific conditions imposed on investors when establishing or acquiring an investment and implemented during its operation.

Article 23. States' Environmental and Labour Standards Obligations

(1) Each Party has the right to establish its own internal environmental protection levels and development policies and priorities, as well as labour laws and standards, and to adapt or modify such rules, laws, standards and policies. In exercising this right, each Party shall endeavour to ensure that it provides for high levels of environmental and labour protection, taking into account internationally recognized standards, and shall endeavour to further improve its standards.

(2) The Parties recognise that it is not appropriate to encourage investment by relaxing environmental and labour laws. Accordingly, the Parties shall not waive or derogate from, or propose to waive or derogate from, any such legislation for the purpose of encouraging the establishment, maintenance or expansion of an investment. If a Party believes that the other Party has offered such encouragement, it may request consultations with the other Party.

(3) This Article is not subject to the dispute settlement procedure described in the process under this Agreement for the settlement of the Investor-State disputes.

Chapter IV. GENERAL PROVISIONS

Article 24. Cooperation In Investment Promotion

(1) The Parties shall co-operate in the promotion of investments of their Investors in the territory of the other Party. This cooperation may include joint investment promotion events, tours with industrialists and investors, technology promotion and other measures to promote investment.

(2) The Parties shall exchange information on investment opportunities, legislation and regulations for foreign investors in the territory.

(3) The Parties may make available to Investors facilities for financing and guaranteeing their State's investments in the territory of the other Party. Where appropriate, such facilities shall promote compliance with the obligations of the Investors, set forth in this Agreement.

Article 25. Transparency of Information on the Investments

(1) Each Party shall promptly publish or make available to the public its generally applicable laws and regulations and any international agreements which may affect the investments of the Investors of the other Party.

(2) Each Party shall endeavour to publish, as soon as practicable, or make publicly available, its policies and administrative guidelines or procedures that may affect investment under this Agreement.

(3) Nothing in this Agreement shall oblige a Party to provide or permit access to any confidential or proprietary information, including information about individual Investors or Investments, the disclosure of which would impede law enforcement or be contrary to national laws on the protection of privacy.

(4) This Article is not subject to the investor-state dispute settlement process.

Article 26. Objections

(1) Subject to the condition that such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination within the meaning of Article 4 (non-discrimination), nothing in this Agreement shall be construed as obliging a Party to pay compensation for adopting or implementing measures taken in good faith and applied to protect or preserve:

(a) public health and safety;

(b) human, animal or plant life or species;

(c) national security;

(d) living and non-living exhaustible natural resources; and

(e) the environment.

(2) For greater certainty, nothing in this Agreement shall be construed to require a Party to pay compensation for adopting or maintaining reasonable measures for prudential reasons, such as:

(a) the protection of investors, depositors, financial market participants, policyholders, insurance claimants or persons to whom a financial institution owes fiduciary duties;

(b) maintaining the safety, soundness, integrity or financial responsibility of the institutions; and

(c) ensuring the integrity and stability of a Party's financial system.

(3) Nothing in this Agreement shall apply:

(a) to fiscal measures, subject to Article 46 (expropriation by fiscal means).

(b) generally applicable non-discriminatory measures taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies, subject to the obligations under Article 7 (Repatriation of Assets).

(c) to such measures of a Party as it deems necessary to carry out its obligations with respect to the maintenance-or restoration of international peace or security, or the protection of its national security interests.

(4) Nothing in this Agreement shall oblige a Party to provide or permit access to any information, the disclosure of which it considers contrary to its national security interests.

Chapter V. SETTLEMENT OF DISPUTES

Section I. INVESTOR-STATE DISPUTE SETTLEMENT

Article 27. Scope of Application

(1) This Section shall apply to a dispute between a Party and an investor of the other Party concerning an alleged breach of an obligation under this Agreement which causes loss or damage to the investor or his investment.

(2) If an investment authorization or contract contains a forum selection clause for the resolution of a dispute relating to that investment or to the authorization or contract, the investor may not initiate arbitration under this Agreement where the measure underlying the arbitration would be covered by such forum selection clause.

Article 28. Initiation of the Arbitral Proceeding

(1) Any dispute between an investor of a Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, to the extent that possible, be resolved amicably through consultation or negotiation between the two parties the dispute.

(2) Where the dispute cannot be resolved in accordance with paragraph 1 of this Article within 6 months from the date of the written request for consultations and negotiations, unless the parties to the dispute agree otherwise, the disputing investor may submit the dispute to arbitration:

(a) under the ICSID Convention and the ICSID Arbitration Rules, has provided that both the Host State and the other Party are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that the Host State or the other Party is a Party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) The parties to the dispute may refer the matter to any other arbitration institution or to any other arbitration rules, if they so agree.

For the avoidance of doubt, the provisions of this Agreement relating to arbitration procedures shall prevail over those of the arbitration rules chosen to govern the arbitration in the event of inconsistency.

Article 29. Conditions for Submitting a Claim to Arbitration

(1) Each Party hereby consents to the submission of a dispute to arbitration in accordance with the provisions of this Section, provided that:

(a) the Investor expresses a clear and unequivocal waiver of any right to pursue and/or continue any claim relating to the measures underlying the claim made under this Agreement, on behalf of the Investor and the Investment, in the local courts of the Host State or in any other dispute resolution forum;

(b) The submission of the dispute to such arbitration shall take place within three years from the time the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement resulting in loss or damage to the disputing investor or its investment;

(c) the disputing investor being a home state investor until at least the time the disputing investor submits the dispute to arbitration;

(d) the disputing investor providing written consent to arbitration in accordance with the provisions set out in this Section; and

(e) the disputing investor shall notify the Respondent in writing, at least 90 days before the claim is submitted, of its intention to submit the dispute to such arbitration, and which:

(i) The notice shall state the name and address of the disputing investor and, where the dispute is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;

(ii) designates one of the forums mentioned in paragraph 19 (2) of this Article as the dispute resolution forum;

(iii) waives the right of the disputing investor to institute or continue any proceedings (other than those under Article 35(1) (Provisional measures of protection and diplomatic protection)) before any of the other dispute settlement tribunals referred to in Article 28(2) (Commencement of arbitration) in respect of the matter in dispute; and

(iv) briefly summarizes the Defendant's alleged breach of this Agreement (including the provisions allegedly breached), the legal and factual basis for the dispute and the loss or damage allegedly caused to the disputing investor or to his investment by virtue of this violation

(f) The Investor has consented in writing to arbitration in accordance with the procedures set out in this Agreement.

(2) For greater certainty, the disputing investor may not make a claim under this Chapter if the investment was made by means of fraudulent misrepresentation, concealment, corruption or conduct amounting to an abuse of process.

Article 30. Constitution of the Arbitral Tribunal

(1) Unless the Parties to the dispute agree otherwise, the arbitral tribunal shall consist of three arbitrators, who shall not be nationals or permanent residents of either Party. Each Party to the dispute shall appoint an arbitrator and the Parties to the dispute shall agree on a third arbitrator, who shall be the chairman of the arbitral tribunal. If an arbitral tribunal has not been established within 90 days from the date on which the claim was submitted to arbitration, either because a Party has not designated an arbitrator or because the parties to the dispute have not reached an agreement on the chairman, the Secretary-General of ICSID shall, at the request of a party to the dispute, designate, at his discretion, the arbitrator or arbitrators not yet appointed. If the Secretary-General is a resident or permanent resident of either Party, or is unable to act, the Deputy Secretary-General, who is not a resident of the country or territories of either Party, may be invited to make the necessary appointments.

(2) Arbitrators must:

(a) have experience or expertise in public international law or international investment law; and

(b) be independent of, and not affiliated with, or take instructions from, the Parties and the contesting investor.

(3) If an arbitrator appointed under this Article resigns or becomes unable to act, including as a result of a conflict of interest declared in accordance with Article 31 (prevention of conflicts of interest by arbitrators), a substitute arbitrator shall be appointed in the same manner as that prescribed for the appointment of the original arbitrator, and shall be vested with the same powers and duties as the original arbitrator had.

(4) Each Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings. The fees of the chairman of the arbitral tribunal and other costs of the arbitration shall be borne equally by the Parties, unless the arbitral tribunal decides that a higher proportion of the costs shall be borne by one of the Parties.

Article 31. Prevention of Conflicts of Interest of Arbitrators

- (1) The arbitrators appointed to resolve disputes under this Agreement shall, at all times during the course of the arbitration
- (a) be impartial, free from actual or perceived conflicts of interest, and independent of the Parties at the time of accepting an appointment to serve and must remain so throughout the arbitration process; and
- (b) disclose to the parties, the arbitration institution or other appointing authority (if required by the applicable institutional rules) and to the co-arbitrators, any matter which may have been resolved in the eyes of the arbitrator. In addition, the arbitrator must not, in the opinion of a reasonable third party, raise doubts as to the impartiality of the arbitrator, the absence of conflicts of interest or the independence of the arbitrator. For greater certainty, the above requirements include the obligation not to act simultaneously as counsel in any other actual or potential treaty-based arbitration involving a foreign investor and a State.

Article 32. Place of Arbitration

Unless the parties to the dispute agree otherwise, the court shall determine the place of the arbitration shall be conducted in accordance with the applicable arbitration rules, provided that it is in the territory of a State Party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Article 33. Applicable Law to the Settlement of Disputes

- (1) A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.
- (2) The law applicable to the interpretation of this Agreement shall be this Agreement and the general principles of international law concerning the interpretation of treaties, including the presumption of uniformity between international treaties to which the Parties are signatories
- (3) A joint decision of the parties declaring their common understanding of a provision of this Agreement shall be binding on any court, and any decision or award rendered by a court shall apply to and be consistent with that joint decision.

Article 34. Expedited Procedure for Preliminary Exceptions

- (1) A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.
- (2) Without prejudice to the power of the tribunal to deal with other objections as a preliminary question, a tribunal shall consider and decide as a preliminary question any objection raised by the Respondent that, as a matter of law, a claim submitted is not a compensable claim in favour of the disputing investor under Article 37 (Arbitral Awards).
- (3) Such an objection shall be submitted to the tribunal as soon as possible after the establishment of such a tribunal, and in no case later than the date fixed by the tribunal for the respondent Party to submit its counter-memorial.
- (4) The respondent Party shall not waive any jurisdictional objection or argument raised on the merits merely because the respondent Party has or has not raised an objection or used the expedited procedure provided for in this Article.
- (5) Upon receipt of a preliminary objection under this Article, the tribunal shall suspend all proceedings on the merits and shall render a decision or award on the objection(s), stating the reasons therefor, no later than 150 days from the date of the request. However, if a Party to the dispute requests a hearing, the tribunal may take an additional 30 days to issue its decision or award. Regardless of whether a hearing is requested, a court may, for extraordinary reasons, delay announcing its decision or award for an additional short period of time, not to exceed 30 days.
- (6) In ruling on the objection of the defending Party under this Article, the tribunal may, if appropriate, award the disputing Party reasonable costs and attorneys' fees incurred in making the submissions or in opposing the objection. In determining whether such an award is warranted, the tribunal shall determine whether the claim of the disputing investor or the objection of the disputing Party is vexatious or frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

Article 35. Interim Measures of Protection and Diplomatic Protection

(1) Neither Party may prevent the disputing investor from seeking provisional measures involving the payment of damages or the resolution of the dispute before the courts or administrative tribunals of the defending Party, prior to the institution of proceedings, for the preservation of its rights and interests.

(2) No Party shall grant diplomatic protection, or create an international claim, with respect to a dispute that an investor of that Party and the other Party have agreed to submit or have submitted to arbitration under this Section, unless that other Party has accepted the award in that dispute. Diplomatic protection, for the purposes of this paragraph, does not include innocent diplomatic exchanges for the sole purpose of facilitating the settlement of a dispute.

Article 36. Conclusions Submitted by Third Parties

(1) The non-contesting Party to this Agreement may make oral and written submissions to the Tribunal concerning the interpretation of this treaty and may be present at the hearing.

(2) The tribunal has the power to accept and consider amicus curiae briefs from a person or entity that is not a Party to the dispute. In determining whether to grant leave to file an amicus curiae brief, the tribunal shall consider, inter alia, the extent to which it will do so:

(a) the finding of amicus curiae would assist the court in determining a fact or legal issue related to the dispute;

(b) the submission of the amicus curiae finding would deal with a matter of dispute;

(c) the amicus curiae has a significant interest in the arbitration; and

(d) there is a public interest in the subject matter of the arbitration.

(3) The tribunal must ensure that:

(a) any submission of amicus curiae briefs does not disrupt the proceedings; and

(b) such findings do not impose an undue burden or prejudice the any of the Parties to the dispute.

(4) Without prejudice to the appointment of other types of experts where the applicable arbitration rules so permit, a tribunal may, at the request of a Party to the dispute or, at its own discretion, appoint an expert to assist in the determination of the dispute on its own initiative, subject to the consent of the Parties to the dispute, which consent shall not be unreasonably withheld, appoint one or more experts to report to it in writing on any factual environmental, health, safety or other scientific matter raised by a Party to the dispute in a proceeding, subject to such terms and conditions as may be agreed by the Parties to the dispute.

Article 37. Arbitral Awards

(1) When a court makes a final decision against a respondent Party, it may separately or in combination grant only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

(2) A tribunal constituted under this Agreement shall award costs and expenses in any arbitration where the jurisdiction of the tribunal is denied to the investor and shall, unless there is a good reason for not doing so, make an award award of costs and expenses to the Party to the dispute that will prevail in the final award.

(3) Any arbitral award shall be final and binding on the Parties to the dispute. Each Party shall ensure the recognition and enforcement of the arbitral award in accordance with its laws and regulations on the subject.

(4) Where a claim is brought on behalf of an enterprise of the respondent Party, the award shall be made to the enterprise.

(5) In any arbitration conducted under this Section, at the request of a party to the dispute, a tribunal may, before rendering a decision or award on liability, transmit its proposed decision or award to the parties to the dispute. Within 60 days of the transmission of the tribunal's proposed decision or award, the parties to the dispute may submit written comments to the tribunal concerning any aspect of the proposed decision or award. The tribunal shall consider such comments and shall render its decision or award no later than 45 days after the expiration of the 60-day comment period.

Article 38. Consolidation of Proceedings

(1) Where two or more proceedings have been referred separately to arbitration under this Section, and the proceedings have a question of law or fact in common and arise out of the same events or circumstances, any Party to the dispute may apply for an order for consolidation of the proceedings, in accordance with the agreement of all the parties to the dispute whose subject matter was covered by the order, or the terms and conditions of this Article.

(2) A Party to the dispute requesting an order for consolidation of proceedings under this Article shall deliver a written request to the Secretary General of the ICSID or to the chairman of any other arbitration body that parties may agree to, and to all the parties to the dispute whose subject matter is covered by the order for consolidation of proceedings, specifying the name and address of each party to the dispute whose subject matter is covered by the order; the nature of the order sought; and the grounds on which the order is sought.

(3) Unless the Secretary General of the ICSID or the chairperson of any other arbitration body designated as agreed by the parties, finds within 30 days of receiving a request in accordance with paragraph 2 of this Article that the application is manifestly unfounded, a tribunal shall be constituted under this Article.

(4) Unless all parties to the dispute seeking to be covered by the consolidation order agree otherwise, the tribunal established under this Article shall consist of three arbitrators, who shall not be nationals or permanent residents of either party, and who shall be appointed as follows:

(a) an arbitrator appointed by mutual agreement of the disputing investors;

(b) an arbitrator appointed by the Respondent; and

(c) the President of the Arbitration Tribunal appointed by the Secretary General of ICSID.

(5) If, within 60 days of the receipt by the Secretary-General of a request under paragraph 2 of this Article, the Respondent Party fails or the disputing investors fail to appoint an arbitrator in accordance with paragraph 4 of this Article, the Secretary-General shall, at the request of any Party to the dispute and the subject matter of which is covered by the order, designate the arbitrator or arbitrators not yet appointed.

(6) Where a Tribunal constituted under this Article is satisfied that two or more claims submitted to arbitration under Article 28 (Institution of Arbitral Proceedings) have a question of law or fact in common and arise out of the same events or circumstances, the Tribunal may, in the interests of a just and efficient determination of the claims, and after having heard the parties to the dispute, by order:

(a) exercise jurisdiction, hear and decide together on all or part of the applications;

(b) exercise jurisdiction to hear and determine one or more of the latter claims, the outcome of which, in its opinion, would facilitate the resolution of the other claims; or

(c) appoint a tribunal previously constituted under Article 30 (Constitution of Arbitral Tribunal) to exercise jurisdiction over, hear and determine all or part of the claims, provided that

(i) such tribunal shall, at the request of any disputing investor who was not previously a Party to the dispute before such tribunal, be reconstituted with its original members, except that the arbitrator for the disputing investors shall be appointed pursuant to paragraphs 4(a) and 5 of this Article; and

(ii) such Tribunal shall decide whether an earlier hearing shall be repeated.

(7) Where a tribunal has been established under this Article, a disputing investor who has submitted a request under Article 28 (Commencement of Arbitral Proceedings) and whose name has not been disclosed in a request made under paragraph 2 of this Article, may apply in writing to the tribunal for its inclusion in any order made under paragraph 6 of this Article, specifying:

(a) the name and address of the disputing investor;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The applicant must provide the Secretary General with a copy of the application.

(8) A Tribunal established under this Article shall conduct the proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

(9) A tribunal constituted under Article 30 (Constitution of the Arbitral Tribunal) shall not have jurisdiction to decide a claim or a part of a claim over which a tribunal constituted or constituted under this Article has declared itself competent.

(10) At the request of a party to the dispute, a court established under this Article may, pending its decision under paragraph 6 of this Article, order that the proceedings before a tribunal constituted under Article 30 (Constitution of the Arbitral Tribunal) be suspended, unless that tribunal has already begun its work.

Section II. SETTLEMENT OF DISPUTES BETWEEN STATES

Article 39. Scope of Application

This Section applies to the settlement of disputes between the Parties arising from the interpretation or application of the provisions of this Agreement.

Article 40. Consultations and Negotiations

(1) Each Party may request in writing consultations on the interpretation or application of this Agreement. In the event of a dispute between the Parties on the interpretation or application of this Agreement, it should, as far as possible, be settled amicably by consultation and negotiation.

(2) If the dispute is not settled by the above means within six months from the date on which such negotiations or consultations have been requested in writing, and unless the Parties agree otherwise, either Party may submit the dispute to an arbitral tribunal constituted in accordance with this Chapter or, with the agreement of the Parties, to any other international tribunal.

Article 41. Initiation of a Procedure

(1) An arbitration procedure shall be initiated upon written notification by one of the Parties (hereinafter referred to as "the Claimant") to the other Party (hereinafter referred to as "the Respondent") through diplomatic notification. Such notification shall contain a statement of the provisions of this Agreement alleged to have been violated, the legal and factual grounds for the complaint, a summary of the progress and results of consultations and negotiations under Article 41 (Consultations & Negotiations), the intention of the requesting Party to initiate proceedings under this Section and the name of the arbitrator appointed by that requesting Party.

Article 42. Application of Articles

(1) The following articles of Section I concerning the settlement of disputes between an investor and a State apply mutatis mutandis to this Section II with respect to the settlement of disputes between States.

(a) Article 30 - Constitution of the arbitral tribunal

(b) Article 31 - Prevention of conflicts of interest of arbitrators

(c) Article 32 - Place of arbitration

(d) Article 33 - Applicable law in matters of dispute settlement

(e) Article 34 - Expedited procedure for preliminary objections

(f) Article 36 - Presentation of submissions by third parties

Chapter VI. FINAL PROVISIONS

Article 43. Periodic Review of this Agreement

(1) The Parties shall meet every five years after the entry into force of this Agreement to review its operation and effectiveness, including levels of investment between the Parties.

(2) The Parties may adopt joint measures to improve the effectiveness or clarify the provisions of this Agreement.

Article 44. Other Obligation

If the legislation of one of the Parties or existing or subsequently established international obligations between the Parties, in addition to this Agreement, create a position entitling the investment of investors of the other Party to more favourable treatment than that provided for in this agreement, that position is not affected by this Agreement.

Article 45. Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of that Party and to the investment of such an investor where the rejecting Party establishes that the enterprise is owned or controlled by persons of a non-Party, or the rejecting Party and does not exercise control over it no significant commercial activity in the territory of the other Party.

Article 46. Indirect Expropriation Through Taxation

(1) Article 6 (Expropriation) and Section I (Settlement of disputes between States) of Chapter V (Settlement of Disputes) shall apply to tax measures to the extent that such tax measures constitute an expropriation as provided for in Article 6. (1)

(2) An investor seeking to invoke Article 6 with respect to a tax measure shall first refer the matter to the competent tax authorities of both Parties as set forth below at the time it notifies its intention to submit the dispute to such arbitration under Section I of Chapter V. If the competent tax authorities of both Parties do not agree to consider the matter or, after agreeing to consider it, do not agree that the measure is not an expropriation within the meaning of Article 6 within six months of such referral, the investor may submit its claim to arbitration under Section I of Chapter V.

(3) For the purposes of this Article, "relevant tax authorities" means :

(a) in the case of the Democratic Republic of Congo, the Ministry of Finance or its representative; and

(b) In the case of the Republic of Rwanda, the Ministry of Finance and Economic Affairs Economic Planning or its successor.

(1) In determining whether a tax measure constitutes an expropriation, the following considerations are relevant: (i) The imposition of taxes does not generally constitute expropriation. The mere introduction of new tax measures or the imposition of taxes in more than one jurisdiction respect of an investment does not in itself constitute an expropriation; (ii) tax measures consistent with tax policies, principles and practices In particular, tax measures aimed-at-preventing tax evasion or tax avoidance should not generally be considered as expropriation, In particular, tax measures aimed at preventing tax evasion or tax fraud should not generally be considered as liable to expropriation; and (iii) tax measures applied in a non-discriminatory manner, as opposed to being directed at investors of a particular nationality or particular taxpayers, are less likely to constitute expropriation. A tax measure should not constitute an expropriation if, at the time of the investment, it was already in force and the information relating to the measure was made public or was otherwise publicly available.

Article 47. Entry Into Force, Duration, Amendment and Termination

(1) Each Party shall notify the other Party through diplomatic channels of the completion of its internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the date of notification by the last Party.

(2) The Agreement may be amended by mutual written consent of the Parties. Amendments shall enter into force in accordance with the same legal procedure prescribed in the first paragraph of this Article.

(3) This Agreement is concluded for a period of ten (10) years and is automatically renewed for a further period of ten (10) years, unless either Party has given notice of intention to terminate the Agreement at the end of the current period of ten years, at least six months before the renewal date.

(4) Each State Party may terminate this Agreement by giving official notice to the other Party twelve (12) months after the date of termination, notwithstanding any previous renewal, of this Agreement.

(5) With respect to investments made prior to the date on which this Agreement is terminated, the provisions of this Agreement shall remain in force for a further period of ten (10) years from that date.

In witness whereof, the undersigned, being duly mandated to this effect by their respective Governments, have signed the present Agreement.

Done at Goma, on 26/06/2021, in two copies, in the French language, both texts being authentic and valid as the original.

FOR THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO

H.E. Jean-Lucien BUSSA TONGBA

Minister for Foreign Trade

FOR THE GOVERNMENT OF THE REPUBLIC OF RWANDA

Hon. Béata U. HABYARTIMANA

Minister of Trade and Industry