

COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE CONGO AND THE GOVERNMENT OF THE REPUBLIC OF GUINEA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of the Congo and the Government of the Republic of Guinea ;

Desiring to create favourable conditions for investments by investors of one of the Contracting Parties in the territory of the other Contracting Party ,

Considering that the reciprocal promotion and protection of investment is likely to stimulate private initiative and increase the prosperity of each State ;

Desiring to intensify co-operation between the two States on the basis of equality and common interests, in accordance with the principles of international law ;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement :

1. The term "investment" means any kind of assets invested by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the regulations in force in the latter's territory, and includes in particular :

(a) movable and immovable property and other property rights such as mortgages and guarantees ;

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

(c) financial claims and commitments and other claims arising from contracts and having an economic value ;

(d) intellectual property rights, such as copyrights and other similar rights, industrial property rights such as patents, licences, industrial designs, trade marks, trade names, technical processes, know-how, goodwill and any other similar rights ;

(e) trade concessions granted in accordance with the law or arising from an Agreement, including concessions on exploration, agriculture, extraction and exploitation of natural resources.

2. The term "investor" means

(a) natural persons who have the nationality of either Contracting Party in accordance with the legislation of that Contracting Party ;

(b) economic entities, including companies, registered companies, associations, public limited companies and any other organisations formed under the law of either Contracting Party and having their headquarters in the territory of that Contracting Party.

(c) irrespective of whether they are profit-making or not, or whether their liability is limited or not.

3. The term "revenue" means the sums generated by investments, including profits, dividends, interest, capital gains, royalties and any other legitimate income.

4. the term "territory" means for the Contracting Parties the area within the land boundaries, the area of the sea, the seabed and subsoil outside the territorial waters subject to the sovereign right or jurisdiction of the Contracting Parties in accordance with national law or international law.

Article 2. Investment Promotion and Protection

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and shall accept such investments in accordance with its laws.
2. Investments made by investors of either Contracting Party shall enjoy permanent protection and security in the territory of the other Contracting Party.
3. Subject to its laws, no Contracting Party shall take abnormal or discriminatory measures against the investments of investors of the other Contracting Party with respect to the management, maintenance, use, enjoyment, and disposal of investments by investors of the other Contracting Party.
4. In accordance with its legislation, the Contracting Party concerned must provide assistance and facilitate the procedures for obtaining visas and work permits for nationals of the other Contracting Party working in investment activities in its territory.

Article 3. Treatment of Investments

1. Investments made by investors of each Contracting Party shall enjoy fair treatment on a permanent basis in the territory of the other Contracting Party.
2. Subject to its legislation, each Contracting Party shall apply to investments and activities relating to investments made by investors of the other Contracting Party the same treatment as it accords to investments and activities relating thereto of its own investors.
3. No Contracting Party shall apply less favourable treatment to investments and investment-related activities made by investors of the other Contracting Party than it accords to investments and investment-related activities of investors of a third State.
4. The provisions of paragraphs 1 to 3 of this Article shall not be construed as an obligation on a Contracting Party to grant investors of the other Contracting Party preferential or privileged treatment under :

any customs union, free trade area, and any international agreement leading to a customs union, free trade area or economic union; any international agreement or arrangement wholly or mainly relating to taxation; any international agreement or arrangement facilitating frontier trade.

Article 4. Expropriation

1. Neither Contracting Party shall expropriate, nationalise or take similar measures against investments made by investors of the other Contracting Party in its territory unless its measures have been taken :
 - (a) in the public interest ;
 - (b) in accordance with national judicial procedure ;
 - (c) without discrimination;
 - (d) in return for compensation.
2. The compensation referred to in paragraph 1 of this Article shall be equivalent to the value of the investments thus expropriated immediately before the expropriation takes place or before the expropriation which is to take place is published. This value shall be determined in accordance with generally accepted valuation principles. Compensation should include interest at the current commercial rate applicable to the currency in which the investment was originally made, from the date of expropriation to the date of payment. The compensation must be effectively enforceable and freely transferable.

Article 5. Compensation for Losses

1. Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses as a result of war, a state of emergency, insurrection, riots or other similar events in the territory of the latter shall be accorded by that Contracting Party treatment in respect of restitution, compensation, indemnification and other remedies no less favourable than that accorded to its own investors or those of a third State.

2. Subject to paragraph 1 of this Article, investors of a Contracting Party who in any situation referred to in that paragraph are victims of losses in the territory of the other Party resulting from :

(a) the requisition of their property by the armed forces or authorities of the latter, or;

(b) the destruction of their property by the armed forces or authorities of the latter, which did not take place during the fighting or was not demanded by the necessity of the situation, shall be entitled to reasonable restitution or compensation

Article 6. Transfers

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to investors of the other Contracting Party the transfer of their investments and profits held in its territory, including :

(a) profits, dividends, interest and other lawful income ;

(b) receipts from the sale or liquidation of all or part of the investments;

(c) repayments under a Loan Agreement in respect of the investments;

(d) royalties related to matters raised in paragraph 1(d) of Article 1;

(e) payments for technical assistance or technical service, management ;

(f) payments in respect of projects;

(g) income of citizens of the other Contracting Party working in connection with an investment in its territory.

2. Nothing in paragraph 1 of this Article shall affect the free transfer of compensation paid in accordance with the provisions of Articles 4 and 5 of this Agreement.

3. The above-mentioned transfer shall be made in a freely convertible currency and at the market rate and within the limits acceptable to the Contracting Party on the date of transfer.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its investor pursuant to a given guarantee in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of all rights and claims of the indemnified investor to the first Contracting Party or its designated agency by law or by judicial process, the right of that first Contracting Party or its designated agency to exercise by subrogation any right to the same extent as the investor.

Article 8. Settlement of Disputes between Contracting Parties

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

2. If a dispute cannot be so resolved within six (6) months, it shall, at the request of one of the Contracting Parties, be submitted to an ad hoc arbitral tribunal.

3. This tribunal shall consist of three arbitrators. Within two months of receipt of the written notification requesting arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within a further two months, jointly select a citizen of a third country having diplomatic relations with both Contracting Parties as President of the Arbitral Tribunal.

4. If the Arbitral Tribunal is not constituted within four months of receipt of the written notification requesting arbitration, either Contracting Party may, in the absence of any other Agreement, invite the President of the International Court of Justice to make such appointments as it deems necessary. If the President is a citizen of one of the Contracting Parties or is otherwise prevented from exercising the said functions, the next senior member of the International Court of Justice who is not a citizen of one of the Contracting Parties or is not otherwise prevented from exercising the said functions shall be invited to make such appointments as may be deemed necessary.

5. The arbitral tribunal shall choose its own procedure. The arbitral tribunal shall make its (arbitral) award in accordance with the provisions of this Agreement and the principles of international law recognized by each of the Contracting Parties.

6. The Arbitral Tribunal shall make its award by a majority of votes. The award shall be final and binding on both Contracting Parties. The arbitral tribunal shall, at the request of one of the Contracting Parties, give the reasons for its decision.

Any dispute arising out of the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

7. Each Contracting Party shall bear the costs of appointing the arbitrators and of its representation at the arbitral proceedings. The costs relating to the Chairman and the expenses of the Tribunal shall be borne equally by the two Contracting Parties.

Article 9. Settlement of Disputes between Investors and a Contracting Party

1. Any dispute arising between an investor of one Contracting Party and the other Contracting Party in connection with an investment made in the territory of the other Contracting Party shall, as far as possible, be resolved amicably by negotiation between the Parties to the dispute.

2. If the dispute cannot be resolved by negotiations within six (6) months, one of the Contracting Parties to the dispute shall be entitled to submit the dispute to a competent tribunal of the Contracting Party in whose territory the investment is made.

3. If a dispute cannot be resolved within six (6) months after recourse to negotiations as provided for in paragraph 1 of this Article, the dispute shall be submitted, at the request of one of the Contracting Parties :

(a) to the International Centre for Settlement of Investment Disputes (ICSID) in accordance with the Convention on the Settlement of Disputes between States and Nationals of Other Countries signed at Washington on March 18, 1965, or ;

(b) the ad hoc arbitral tribunal.

Provided that the Contracting Party involved in the dispute requests the investor concerned to exhaust local remedies under the laws and regulations in force in the Contracting Party to the dispute before submitting it to the above-mentioned arbitral procedure.

However, if the investor concerned has availed itself of the procedure specified in paragraph 2 of this Article, the provisions of this paragraph shall not apply.

4. Subject to paragraph 3 of this Article, the ad hoc tribunal referred to in paragraph 3 (b) shall be constituted for each individual case in the following manner:

each Party to the dispute shall appoint one arbitrator, and both Parties shall appoint a national of a third country, having diplomatic relations with both Contracting Parties, as its resident. The first of these arbitrators shall be appointed within two months of the written notification requesting arbitration by each Party to the dispute to the other Contracting Party, and the Chairman shall be chosen within four months thereafter. If, within the above-mentioned period, the tribunal has not been constituted, each Party to the dispute may invite the Secretary-General of the International Centre for Settlement of Investment Disputes to make the necessary appointments.

5. The ad hoc tribunal shall determine its own procedure. However, the tribunal may, in the course of the proceedings, take as its guide the rules of the International Centre for Settlement of Investment Disputes.

6. The Tribunal provided for in paragraph 3 (a) and (b) of this Article shall render its award by a simple majority vote. The award shall be final and binding on the Parties to the dispute. Both Contracting Parties undertake to apply the award in their respective territories.

7. The tribunal referred to in paragraph 3(a) and (b) of this Article shall take its decisions in accordance with the laws and regulations of the Contracting Party in whose territory the investments have been made, including its conflict of laws regulations, the provisions of this Agreement and the principles of international law.

8. Each Party to the dispute shall bear the costs of its arbitrator and his representation in the arbitral proceedings. The expenses of the chairman and the tribunal shall be borne equally by the Parties to the dispute. The tribunal may in its decision indicate that a greater proportion of the costs shall be borne by one of the parties to the dispute.

Article 10. Other Obligations

1. If the legislation of each Contracting Party or existing or subsequently established international obligations between the Contracting Parties contain provisions which entitle investments made by investors of the other Contracting Party to

treatment more favourable than that provided for in the Agreement, such provisions shall not affect this Agreement.

2. Each Contracting Party shall observe any commitments it has entered into with investors of the other Contracting Party concerning their investments.

Article 11. Application

This Agreement shall apply to investments which have been made before or after its entry into force by investors of each Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12. Relations between Contracting Parties

The provisions of this Agreement shall apply irrespective of the existence of diplomatic and consular relations between the Contracting Parties.

Article 13. Consultations

1. The representatives of the Contracting Parties shall meet from time to time in the goal:

- (a) to review the implementation of this Agreement;
- (b) to exchange legal information on investment opportunities,
- (c) to resolve disputes arising from investments ;
- (d) transmit proposals on investment promotion;
- (e) to study other investment-related matters.

2. Where one of the Contracting Parties proposes a consultation on any matter relating to paragraph 1 of this Article, the other Contracting Party shall give a prompt reply and the consultations shall be held alternately in the capitals of the two countries.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the month following the date on which the two Contracting Parties have notified each other of the completion of the constitutional procedures required for its entry into force.

2. This Agreement shall remain in force if one of the Contracting Parties fails to give written notification to the other Contracting Party to terminate this Agreement one year before the expiry of the period specified in paragraph 1 of this article.

3. After the expiry of the initial period of ten years, either Contracting Party may at any time terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made before the date of termination of this Agreement, the provisions of Articles 1 to 13 shall apply for an additional period of ten years from the date of termination.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate in the Congo in the French language, both texts are equally authentic.

For the Government of the Republic of Guinea

For the Government of the Republic of the Congo