

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ANGOLA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

## **Preamble**

The Government of the Republic of Angola and the Government of the People's Republic of China (hereinafter referred to as the "Parties");

Desiring to promote greater economic cooperation between them in the field of investment;

Recognising that an agreement on the treatment of investment will stimulate the flow of capital and the economic development of the Parties;

Agreeing that a stable, transparent and non-discriminatory framework for investment will enhance the efficient use of economic resources and improve living standards;

Recognising the importance of providing effective means and procedures to protect investment rights and interests under national law as well as through international arbitration;

Desiring to achieve these objectives in a manner compatible with the protection of health, safety and the environment;

Recognising the right to regulate and deciding to preserve the flexibility of the Parties to protect legitimate public welfare objectives, including public morals, public health, safety, the environment and the conservation of living and non-living exhaustible natural resources;

Having decided to conclude an Agreement concerning the promotion and reciprocal protection of investments made by investors of one Party in the territory of the other Party;

Have agreed as follows:

## **Section A.**

### **Article 1. Definitions**

For the purposes of this Agreement:

"Centre" - means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

"Claimant" - means an investor of a Party that is a party to an investment dispute with the other Party;

"Covered Investment" - means, with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement or established, acquired or extended thereafter;

"Parties to the Dispute" - means the claimant and the respondent;

"Party to the Dispute" - means either the claimant or the respondent;

"Enterprise" - means any entity incorporated or organised under applicable law, whether for profit or not, owned or controlled by private or governmental entities, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation: and a branch of an enterprise;

"Enterprise of a Party" - an enterprise incorporated or organised under the laws of a Party and a branch located in the territory of a Party and carrying on business there;

"Existing" - means in force on the date of entry into force of this Agreement;

"Freely Usable Currency" - the 'freely usable currency', as determined by the International Monetary Fund, in accordance with its Articles of Agreement; 'GATS' - the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

"Government Procurement" - means the process by which a Government obtains the use of or procures goods or services, or any combination thereof, for governmental purposes and not for the purpose of commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

"ICSID Additional Mechanism Rules" - means the Rules Governing the Additional Mechanism for the Administration of Cases by the Secretariat of the International Centre for Settlement of Investment Disputes;

"ICSID Convention" - means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, concluded in Washington on 18 March 1965;

"Investment" - means any asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including characteristics such as

the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. The forms that an investment can take include:

- a) An enterprise;
- b) Shares, quotas and other forms of participation in the capital of an enterprise;
- c) Bonds, debt securities, loans and other debt instruments, including debt instruments issued by a Party or an enterprise;
- d) Futures, options and other derivative instruments;
- e) turnkey, construction, management, production, concession, revenue sharing and other similar contracts;
- f) Intellectual property rights;
- g) Licences, authorisations, permits and similar rights granted under national legislation;
- h) other tangible or intangible property, movable or immovable, and related property rights, such as leases, mortgages, pledges and liens.

For the purposes of this definition, the Parties confirm their understanding that:

a) Some forms of debt, such as bonds, debentures and long-term securities, are more likely to have the characteristics of an investment, while other forms of debt, such as claims for payment that are immediately due and arise from the sale of goods or services, are less likely to have such characteristics;

b) Whether or not a particular type of licence, authorisation, permit or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristic of an investment also depends on factors such as the nature and extent of the rights that the holder has under the legislation of the Party. Among the licences, authorisations, permits and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected by national legislation. For greater certainty, the foregoing is without prejudice to the question of whether any asset associated with the licence, authorisation, permit or similar instrument has the characteristics of an investment;

c) The term "investment" does not include an order or decision rendered in a judicial or administrative action.

"Investment Agreement" means a written agreement between a national authority of a Party and a covered investment or investor of the other Party, on which the covered investment or investor relies to establish or acquire a covered investment, other than the written agreement itself, that grants rights to the covered investment or investor:

- a) with respect to natural resources that a national authority controls, including for their exploration, extraction, refining, transport, distribution or sale;
- b) to provide services to the public on behalf of the Party, such as the production or distribution of electricity, the treatment or distribution of water or telecommunications;

c) undertaking infrastructure projects, such as the construction of roads, bridges, canals, dams or pipelines, other than for the exclusive or predominant use and benefit of the Government.

For the purposes of this definition, the Parties confirm their understanding that:

a) "Written Agreement" - means a written agreement, executed by both Parties, in a single instrument or multiple instruments, that creates an exchange of rights and obligations, binding on both Parties under applicable law, pursuant to Article 29(2) For greater certainty:

i. A unilateral act of an administrative or judicial authority, such as a permit, authorisation or licence issued by a Party solely in the exercise of its regulatory capacity, or a decree, order or judgment, by itself:

ii. An administrative or judicial consent decree or order shall not be considered a written agreement.

b) "National Authority" - means:

i. For the Republic of Angola, a Private Investment Agency of the Central Government:

ii. For the People's Republic of China, a Central Government Agency.

"Investor of a Non-Party" - means, with respect to a Party, an investor that is attempting to make, is making or has made an investment in the territory of that Party and is not an investor of either Party;

"Investor of a Party" - means a Party, national or enterprise of a Party, that is attempting to make, is making or has made an investment in the territory of the other Party;

"Measure" - includes any law, regulation, procedure, requirement or practice;

"National" - means:

a) For the Republic of Angola, a natural person who is a national of the Republic of Angola, as defined in the Nationality Law of the Republic of Angola;

b) for the People's Republic of China, a natural person who is a national of the People's Republic of China, as defined in the Nationality Law of the People's Republic of China.

For the purposes of this definition, the Parties confirm their understanding that the term 'national' does not include any natural person who is a national of the Party to the dispute on the date on which the Parties consented to submit that dispute to conciliation or arbitration pursuant to Article 24 [Submission of a Claim to Arbitration].

"New York Convention" - means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded in New York on 10 June 1958;

"Non-Disputing Party" - means a Party that is not a party to an investment dispute;

"Person" - means a natural person or a company;

"Person of a Party" - means a national or a company of a Party;

"Protected Information" - means confidential business information or information that is privileged or otherwise protected from disclosure under the laws of a Party;

"Respondent" - means the Party that is a party to an investment dispute;

"Secretary General" - means the Secretary General of ICSID;

"TRIPS Agreement" - means the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C to the WTO Agreement;

"Territory" - means:

a) in respect of the Republic of Angola:

i. The territory in which the Republic of Angola exercises, in accordance with its national legislation and international law, rights of sovereignty and jurisdiction, including the land territory, the territorial sea and the airspace covering them, as well as the adjacent maritime zones at the limit of the territorial sea, including the seabed and the corresponding subsoil;

b) as regards the People's Republic of China:

i. The customs territory of the People's Republic of China;

ii. Its territorial sea and any area beyond the territorial sea in which the People's Republic of China may exercise sovereign rights or jurisdiction under its law.

For purposes of greater certainty, the definition of 'territory' for each Party is for the purposes of this Agreement only and is without prejudice to the position of either Party with respect to the recognition of any territorial or maritime claims.

For the purposes of this Agreement, "customs territory of the People's Republic of China" shall mean the entire customs territory of China to which the World Trade Organisation Agreement applies, as defined in paragraph 2(A)(1) of Part I of the Protocol of Accession of the People's Republic of China to the Marrakesh Agreement Establishing the World Trade Organisation.

"UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

"WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organisation, concluded on 15 April 1994.

## **Article 2. Scope of Application**

1. This Agreement shall apply to measures adopted or maintained by a Party with respect to

a) Investors of the other Party:

b) covered investments.

2. The obligations of a Party under Section A shall apply:

a) all levels of government of that Party:

b) to any non-governmental body when it exercises any regulatory, administrative or other governmental authority delegated to it by that Party.

3. For greater certainty, this Agreement shall not bind either Party in respect of any act or fact which has occurred or any situation which has ceased to exist prior to the date of entry into force of this Agreement.

4. For greater certainty, governmental authority is delegated under the laws of a Party, including through a legislative grant, and a governmental order, directive or other action that transfers to the person, or authorises the exercise by the person, of governmental authority.

5. For greater certainty, 'Governmental Authority' refers to the power vested in the Government of a Party, such as the power to expropriate, grant licences, approve commercial transactions or impose quotas, fees or other charges.

## **Article 3. National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors in respect of the management, conduct, operation and sale or other disposal of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in identical circumstances, to investments in its territory of its own investors, in respect of the management, conduct, operation and sale or other disposal of the investments.

3. For greater certainty, the granting of 'like treatment' under Article 3 (national treatment) or Article 4 (most favoured nation treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

## **Article 4. Most Favoured Nation Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party with respect to the management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party with respect to the management, conduct, operation and sale or other disposition of investments.

3. Paragraphs 1 and 2 of this Article shall not be construed to oblige either Party to accord to investors of the other Party or to the investment covered by it any treatment, preference or privilege by virtue of any bilateral or multilateral agreement relating to investment in force or signed prior to the date of entry into force of this Agreement.

4. For greater certainty, the treatment referred to in this Article shall not extend to dispute settlement mechanisms or procedures, such as those included in Section B, provided for in international investment or trade agreements.

## **Article 5. Minimum Standards of Treatment**

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with customary international law.

2. For greater certainty, paragraph 1 of this Article prescribes the minimum standard of customary international law relating to the treatment of aliens as the minimum standard of treatment to be accorded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment additional to or beyond that required by that standard and do not create additional substantive rights. The obligation under paragraph 1 of this Article to provide:

a) "Fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative proceedings in accordance with due process of law:

b) "Full protection and security" requires each Party to provide the level of police protection required by customary international law.

3. A determination that there has been a violation of another provision of this Agreement, or of a separate international agreement, does not establish the existence of a violation of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take a measure that may be incompatible with the expectations of an investor does not constitute a violation of this Article, even if it results in loss or damage to the investment covered.

5. For greater certainty, the mere fact that a grant or subsidy has not been awarded, renewed or maintained, or has been modified or reduced, by a Party shall not constitute a violation of this Article, even if it results in loss or damage to the investment covered.

6. This Article shall be interpreted in accordance with Annex A (Customary International Law).

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

1. Without prejudice to the provisions of paragraph 3 of Article 13 (non-conforming measures), each Party shall accord to investors of the other Party, as well as to the investments covered, non-discriminatory treatment with respect to the measures it adopts or maintains in relation to losses suffered by investments in its territory due to armed conflict, a state of national emergency or civil strife.

2. Notwithstanding paragraph 1 of this Article, if an investor of a Party, in the situations referred to in paragraph 1 of this Article, suffers a loss in the territory of the other Party as a result of:

a) the repossession of his covered investment or part thereof by the forces or authorities of the latter:

b) destruction of its covered investment or part thereof by the forces or authorities of the latter Party, which was not required by the necessity of the situation.

The latter Party shall grant the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be made in accordance with paragraphs 2 to 4 of Article 7 (Expropriation and Compensation), *mutatis mutandis*.

3. Paragraph 1 of this Article shall not apply to measures in force relating to subsidies or grants which would be incompatible with Article 3 (national treatment), except for Article 13(3) (non-compliant measures).

## **Article 7. Expropriation and Compensation**

1. Neither Party may expropriate or nationalise a covered investment, directly or indirectly, through measures equivalent to expropriation or nationalisation ('expropriation'), except:

- a) for a public purpose;
- b) on a non-discriminatory basis;
- c) upon payment of compensation in accordance with this Article;
- d) in accordance with due process of law.

2. The compensation referred to in paragraph 1(c) of this Article shall:

- a) be paid without delay;
- b) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation took place ("date of expropriation"), whichever is the earlier;
- c) be fully realisable and freely transferable.

3. If the fair market value is expressed in a freely usable currency, the compensation referred to in paragraph 1(c) of this Article shall not be less than the fair market value determined in accordance with paragraph 2(b) of this Article, plus interest at a commercially reasonable rate for that currency, accruing from the date of expropriation until the date of payment.

4. If the fair market value is expressed in a currency which is not freely usable, the compensation referred to in paragraph 1(c) of this Article - converted into the currency of a: payment at the market exchange rate prevailing on the date of payment - shall not be less than

- a) the fair market value, determined in accordance with paragraph 2(b) of this Article, converted into a freely usable currency at the market exchange rate prevailing on that date, plus;
- b) interest at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article shall not apply to the issuance of compulsory licences granted in respect of intellectual property rights in accordance with the TRIPS Agreement or to the revocation, limitation or creation of intellectual property rights to the extent that such issuance, revocation, limitation or creation is compatible with the TRIPS Agreement.

6. For greater certainty, the mere fact that a grant or subsidy has not been granted, renewed or maintained, or has been modified or reduced, by a Party shall not constitute an expropriation, even if it results in loss or damage to the investment covered.

7. This Article shall be interpreted in accordance with Annex B (Expropriation).

## **Article 8. Transfers**

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- a) Contributions to capital;
- b) Profits, dividends, capital gains and proceeds from the sale of all or any part of the covered investment or from the partial or total liquidation of the covered investment;
- c) Interest, royalty payments, management fees, technical assistance and other fees;
- d) Payments made under a contract, including a loan agreement;
- e) Payments made under Article 6 (loss compensation) and Article 7;
- f) Payments resulting from a dispute;
- g) the income and remuneration of a national of a Party working on a covered investment in the territory of the other Party.

2. Each Party shall allow transfers relating to a covered investment to be made in a freely usable currency at the market exchange rate in force at the time of the transfer.

3. Each Party shall permit repayments in kind in respect of a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 to 3 of this Article, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations relating to:

- a) bankruptcy, insolvency or protection of creditors' rights;
- b) Issuing, trading or dealing in securities, futures, options or derivatives;
- c) Criminal or penal offences;
- d) drawing up financial reports or keeping transfer records, when necessary to assist the police or financial regulatory authorities;
- e) ensuring compliance with orders or decisions in judicial or administrative proceedings.

5. For greater certainty, provided that such measures are not applied in an arbitrary or unjustifiable manner and provided that they do not constitute a disguised restriction on international trade or investment, paragraphs 1 to 3 of this Article shall not be construed to prevent a Party from adopting or maintaining measures necessary to ensure compliance with laws and regulations, including those relating to the prevention of deceptive and fraudulent practices, that are not inconsistent with this Agreement.

6. This Article shall not affect the ability of each Party to manage its capital account with a view to maintaining the stability and soundness of its financial system, including the foreign exchange market, the stock market, the bond market and the financial derivatives market. For greater certainty, Annex C (Temporary safeguard measures) shall apply to this Article.

## **Article 9. Performance Requirements**

1. Neither Party may, with respect to the management, conduct, operation, sale or other disposal of an investment of an investor of the other Party or of a non-Party in its territory, impose or enforce any requirement or fulfil any undertaking or commitment:

- a) export a certain level or percentage of goods or services;
- b) achieve a certain level or percentage of national content of goods or services;
- c) purchase, use or give preference to goods produced in its territory, or purchase goods from persons in its territory;
- d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;
- e) restricting the sales of goods or services in its territory which that investment produces or supplies, by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;
- f) transferring specific technology, a production process or other proprietary knowledge to a person in its territory;
- g) supplying exclusively from the territory of the Party the goods that such investment produces or the services that it provides to a specific regional market or to the world market;
- h) localising in its territory the headquarters of a specific region or of the world market;
- i) achieving a certain percentage or value of research and development in its territory.

2. Neither Party may make the obtaining or maintaining of an advantage in relation to the establishment, acquisition, expansion, management, operation, sale or other disposal of an investment in its territory by an investor of the other Party or a non-Party conditional on the fulfilment of any requirement:

- a) to reach a certain level or percentage of domestic content;
- b) to acquire, use or give preference to goods produced in its territory, or to acquire goods from persons located in its territory;
- c) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment:

d) restrict the sales of goods or services within its territory which that investment produces or supplies, by relating those sales in any way to the volume or value of its exports or foreign exchange receipts.

3. a) Nothing in paragraph 1 of this Article shall be construed to prevent a Party, in respect of an investment in its territory by an investor of the other Party or a non-Party, from imposing or enforcing a requirement or a commitment or undertaking to localise production, provide a service, train or employ workers, construct or extend certain facilities or carry out research and development activities in its territory, provided that such a measure is compatible with paragraphs 1(f) and (i);

b) None of the provisions of paragraph 2 of this Article shall be construed to prevent a Party, in relation to an investment in its territory by an investor of the other Party or a non-Party, from making the obtaining or maintenance of a benefit conditional on the fulfilment of a requirement to locate production, provide a service, train or employ workers, construct or extend certain facilities or carry out research and development in its territory;

c) Paragraph 1(f) shall not apply:

i. Where a Party authorises the use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information falling within the scope of Article 39 of the TRIPS Agreement; ii;

ii. When the requirement is imposed or the commitment is applied by a Court, an Administrative Tribunal or a Competition Authority to correct a practice considered anti-competitive following judicial or administrative proceedings under the Party's competition law.

d) Provided that such measures are not applied in an arbitrary or unjustifiable manner and provided that they do not constitute a disguised restriction on international trade or investment, subparagraphs (b), (c) and (f) of paragraph 1 and subparagraphs (a) and (b) of paragraph 2 shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

i. Necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement;

ii. Necessary to protect human, animal or plant life or health: or

iii. Related to the conservation of exhaustible living and non-living natural resources.

e) points (a), (b) and (c) of paragraph 1 and points (a) and (b) of paragraph 2 shall not apply to the qualification requirements for goods or services in respect of export promotion and external assistance programmes;

f) points (a) and (b) of paragraph 2 shall not apply to requirements imposed by an importing Party in relation to the content of goods necessary to qualify for preferential duties or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 of this Article shall not apply to any undertaking, commitment or requirement other than those set out in those paragraphs.

5. This Article shall not preclude the application of any commitment, undertaking or requirement between private parties where a Party has not imposed or required the commitment, undertaking or requirement.

## **Article 10. Senior Management and Boards of Directors**

1. Neither Party may require an enterprise of that Party, which is a covered investment, to appoint natural persons of a particular nationality to its Board of Directors.

2. A Party may require that a majority of the members of the Board of Directors, or any committee thereof, of an enterprise of that Party that is a covered investment be of a particular nationality or resident in the territory of the Party, provided that such requirement does not significantly impair the investor's ability to exercise control over its investment.

## **Article 11. Entry of Personnel**

Subject to its measures relating to public health and safety and national security applicable to entry and stay, a Party shall authorise:

a) natural persons who are nationals of the other Party and are seeking to make, are making or have made an investment in its territory, to enter and remain temporarily in its territory;

b) managers, executives and specialists defined as senior executives of an enterprise of the other Party which has



established a representative office, a branch or a subsidiary in its territory, who move temporarily as intra-corporate transferees, shall be authorised to enter its territory for an initial stay of three years;

c) managers, senior executives and specialists defined as senior executives of an enterprise of the other Party, who are assigned to foreign affiliates in its territory for the purpose of carrying out business activities, shall be granted a long-term stay authorisation, as provided for in the terms of the contracts concerned, or an initial stay of three years, whichever is the shorter.

## **Article 12. Transparency**

1. Each Party shall ensure that its laws, regulations, procedures and administrative provisions of general application relating to any matter covered by this Agreement are promptly published or otherwise made public.

2. For the purposes of this Article, 'administrative decision of general application' means an administrative decision or interpretation which applies to all persons and factual situations generally falling within its scope and which lays down a rule of conduct, but does not include:

a) a determination or decision made in an administrative or quasi-judicial proceeding applicable to a particular covered investment or to an investor of the other Party in a specific case; or

b) a decision ruling with respect to a particular act or practice.

3. Publication:

a) To the extent possible, each Party shall:

i. Publish in advance any measure referred to in paragraph 1 of this Article that it proposes to adopt:

ii. Give interested persons and the other Party a reasonable opportunity to comment on the proposed measures.

b) With respect to proposals for laws and regulations of general application relating to any matter covered by this Agreement that are published in accordance with paragraph 1 of this Article, each Party shall:

i. Publish the proposed laws and regulations on an official website or in an official or nationally circulated newspaper;

ii. Shall, in most cases, publish proposed laws and regulations at least 30 days before the date on which public comments are due:

iii. It shall endeavour to take into account the comments received from interested persons regarding the proposed laws and regulations.

c) With respect to laws and regulations of general application adopted in relation to any matter covered by this Agreement, each Party shall:

i. Publish the laws and regulations on an official website or in an official or nationally circulated newspaper:

ii. To the extent possible, ensure a reasonable period of time between the publication and the entry into force of the laws and regulations.

4. Provision of information:

a) At the request of the other Party, a Party shall, within a reasonable time, provide information and answer questions on any measure referred to in paragraph 1 of this Article that the requesting Party considers likely to significantly affect the functioning of this Agreement or substantially affect its interests under this Agreement;

b) Any request or information under this paragraph shall be provided to the other Party through the relevant contact points;

c) Information provided under this paragraph shall be without prejudice to the question of whether the measure is compatible with this Agreement.

5. Administrative procedures.

In order to administer in a consistent, impartial and reasonable manner all measures referred to in paragraph 1 of this Article, each Party shall ensure that, in its administrative procedures for applying such measures to certain covered investments or to investors of the other Party in specific cases:

- a) Whenever possible, covered investments or investors of the other Party directly affected by a proceeding are given reasonable notice, in accordance with national procedures, of the initiation of a proceeding, including a description of the nature of the proceeding, a statement of the legal authority under which it was initiated, and a general description of any disputed issues;
- b) Such persons are given a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, where time, the nature of the proceedings and the public interest so permit:
- c) Their proceedings are in accordance with domestic law.

#### 6. Review and Appeal:

- a) Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of prompt review and, where appropriate, correction of final administrative acts relating to matters covered by this Agreement. Such tribunals shall be impartial and independent of the department or authority responsible for administrative implementation and shall have no substantial interest in the outcome of the matter;
- b) Each Party shall ensure that, in such tribunals or proceedings, the parties to the proceedings have the right to:
  - i. A reasonable opportunity to support or defend their respective positions:
  - ii. A decision based on the evidence and submissions on the record or, where required by national law, on the record compiled by the administrative authority.
- c) Each Party shall ensure, subject to appeal or other review under its domestic law, that such decisions are applied and govern the practice of the departments or authorities with respect to the administrative action in question;
- d) This paragraph shall not be interpreted as requiring a Party to establish such courts or procedures where this would be incompatible with its constitutional structure or the nature of its legal system.

### Article 13. Non-Conforming Measures

- 1. Article 3 (national treatment), Article 4 (most favoured nation treatment), Article 9 (performance requirements) and Article 10 (senior management and Board of Directors) shall not apply to:
  - a) Any existing non-compliant measures maintained by a Party in its territory;
  - b) The continuation of any non-compliant measure referred to in subparagraph (a);
  - c) To an amendment of any non-compliant measure referred to in subparagraph (a), to the extent that the amendment does not increase the non-compliance of the measure, as it existed immediately prior to the amendment, with those obligations.
- 2. Articles 3 (national treatment) and 4 (most-favoured-nation treatment) shall not apply to any measure covered by an exception or derogation from the obligations set out in Articles 3 (national treatment) and 4 (most-favoured-nation treatment).
- 3. Articles 3 (national treatment), 4 (most favoured nation treatment), 9 (performance requirements) and 10 (senior management and Board of Directors) shall not apply to subsidies or grants provided by a Party, including State-supported loans, guarantees and insurance.
- 4. Articles 3 (national treatment), 4 (most favoured nation treatment), 9 (performance requirements) and 10 (senior management and Board of Directors) shall not apply to public procurement.
- 5. The Parties shall endeavour to phase out non-compliant measures.

### Article 14. Special Formalities and Information Requirements

- 1. Nothing in Article 3 (national treatment) shall be construed to prevent a Party from adopting or maintaining a measure prescribing special formalities with respect to covered investments, such as a requirement relating to the filing of an application for establishment and amendments to covered investments of the other Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and to covered investments under this Agreement.
- 2. Notwithstanding Articles 3 (national treatment) and 4 (most-favoured-nation treatment), a Party may require an investor

of the other Party or its covered investment to provide information relating to that investment solely for informational, statistical or administrative purposes. The Party shall protect confidential business information from any disclosure that could harm the competitive position of the investor or covered investment. Nothing in this paragraph shall be construed to prevent a Party from obtaining or disclosing information in the fair and good faith application of its laws.

## **Article 15. Non Derogation**

This Agreement shall not derogate from any of the following provisions which entitle a covered investment or, with respect to one Party, an investor of the other Party, to more favourable treatment than that granted by this Agreement:

- a) laws or regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party;
- b) international legal obligations of a Party;
- c) obligations undertaken by a Party, including those contained in an investment agreement.

## **Article 16. Subrogation**

If a Party or any statutory body, government agency or institution or enterprise designated by it makes a payment to an investor of the Party under a guarantee, insurance contract or other form of indemnity it has entered into in respect of a covered investment, the other Party, in whose territory the covered investment was made, shall recognise the subrogation or transfer of any rights that the investor would have had under this Agreement in respect of the covered investment but for the subrogation, including any rights under Section B, and the investor shall be prevented from exercising those rights to the extent of the subrogation.

## **Article 17. Denial of Benefits**

1. A Party may, at any time, including after the institution of arbitration proceedings in accordance with Section B of this Agreement, deny the benefits of this Agreement to an investor of the other Party that is an enterprise of that other Party and to the investments of that investor if a non-Party, or persons of a non-Party, own or control the enterprise and the Party denying the benefits:

- a) does not maintain diplomatic relations with the non-Party;
- b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or its investments.

2. A Party may, at any time, including after the institution of an arbitration proceeding in accordance with Section B of this Agreement, withhold the benefits of this Agreement from an investor of the other Party that is an enterprise of that other Party and from that investor's investments, if the enterprise does not have substantial business activities in the territory of the other Party and a non-Party, persons of a non-Party or of the denouncing Party own or control the enterprise.

3. For greater certainty, the benefits referred to in this Article include the rights of an investor of a Party to have recourse to the dispute settlement mechanism provided for in Section B of this Agreement.

## **Article 18. Protection of Confidential Information**

Nothing in this Agreement shall be construed to require a Party to provide or allow access to protected or other confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would harm the legitimate business interests of certain undertakings, public or private.

## **Article 19. Essential Security**

1. Nothing in this Agreement shall be construed to:

- a) to require a Party to provide or allow access to any information the disclosure of which it considers contrary to its essential security interests;
- b) to prevent a Party from implementing measures it considers necessary for the fulfilment of its obligations relating to the maintenance or restoration of international peace or security, or for the protection of its own essential security interests.

2. With respect to investors of the other Party and the covered investments affected by such measures, each Party shall accord them non-discriminatory treatment, regardless of whether they are publicly or privately owned.

## **Article 20. Financial Services**

1. Notwithstanding any other provision of this Agreement, the Parties shall not be prevented from adopting or maintaining measures relating to financial services for prudential reasons, including the protection of investors, depositors, policy holders or persons to whom a financial service provider owes a fiduciary duty, or to ensure the integrity and stability of the financial system.

2. Nothing in this Agreement shall apply to non-discriminatory measures of general application adopted in the context of monetary policy and related credit policy or exchange rate policy. This paragraph shall not affect a Party's obligations under Article 8 (transfers).

3. Where an investor submits a request for arbitration pursuant to Section B of this Agreement and the disputing Party invokes paragraphs 1 and 2 of this Article, the Investor-State Tribunal established pursuant to Section B of this Agreement shall not decide whether and to what extent this is a valid defence to the investor's request. The Tribunal shall request a written report from the Parties on this issue. The Investor-State Tribunal may not proceed pending receipt of such a report or a decision by a State-State Arbitral Tribunal, if such a State-State Arbitral Tribunal is constituted.

4. Following a request for a report received in accordance with the previous paragraph, the financial services authorities of the Parties shall hold consultations. If the financial services authorities of the Parties reach a joint decision on whether and to what extent the relevant paragraphs of this Article constitute a valid defence to the investor's claim, they shall prepare a written report describing their joint decision. The report shall be transmitted to the Investor-State Tribunal and shall be binding on the Investor-State Tribunal.

5. If, after 120 days, the financial services authorities of the Parties are unable to reach a joint decision on whether and to what extent the relevant paragraphs of this Article constitute a valid defence to the investor's claim, the matter shall, within 30 days, be referred by either Party to a State Arbitral Tribunal constituted in accordance with Section C. In such a case, the provisions requiring consultations between the Parties provided for in Section C shall not apply. The decision of the State Arbitral Tribunal shall be transmitted to the Investor-State Tribunal and shall be binding on the Investor-State Tribunal. All members of a State Arbitral Tribunal shall have knowledge or experience in financial services law or practice, which may include the regulation of financial institutions.

6. If the Party complained against or the non-challenging Party has not referred such matter to arbitration in accordance with Section C pursuant to paragraph 5 within 10 days of the expiry of the 120-day period referred to in paragraph 5, the arbitration provided for in Section B may proceed with respect to the claim.

7. The term "prudential reasons" is understood to include maintaining the safety, soundness, integrity or financial responsibility of individual financial institutions or the financial system, as well as maintaining the security and financial and operational integrity of payment and clearing systems.

8. For greater certainty, measures of general application adopted in pursuance of related monetary and credit policies or exchange rate policies shall not include measures which expressly cancel or alter contractual provisions specifying the currency of denomination or the exchange rate of currencies.

## **Article 21. Taxation**

1. Except as provided for in this Article, nothing in this Section shall impose obligations with regard to fiscal measures.

2. Article 7 (expropriation and compensation) applies to all tax measures, except that a claimant asserting that a tax measure involves an expropriation may only submit a request for arbitration under Section B if:

a) the claimant has previously submitted in writing to the competent tax authorities of both Parties the question of whether such tax measure involves an expropriation:

b) within 180 days from the date of such consultation, the competent tax authorities of both Parties do not agree that the tax measure does not constitute an expropriation.

3. Nothing in this Agreement shall affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax treaty between the Parties, the competent authorities under that treaty shall be solely

responsible for determining whether there is any inconsistency between this Agreement and that treaty.

4. For greater certainty, measures relating to the preservation of taxes or the punishment of illegal activities that are not discriminatory and are adopted or applied for the purpose of levying or collecting taxes fairly and effectively do not constitute expropriation as provided for in Article 7 (expropriation and compensation) of this Agreement.

5. For the purposes of this article, "competent tax authorities" shall mean:

a) For the Republic of Angola, the Ministry of Finance or an authorised representative of the Ministry of Finance:

b) For the People's Republic of China, the Ministry of Finance and the State Administration of Taxation or an authorised representative of the Ministry of Finance and the State Administration of Taxation.

## **Article 22. Entry Into Force, Duration and Termination**

1. The Parties shall notify each other in writing, through diplomatic channels, of the fulfilment of their respective internal legal procedures regarding the ratification and entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day following receipt of the latter of the two notifications. It shall remain in force for a period of 10 years and shall continue in force thereafter unless terminated in accordance with paragraph 2 of this Article.

2. Either Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter by giving one year's written notice to the other Party.

3. With regard to covered investments made before the date of termination of this Agreement, all other articles shall continue to have effect for a further period of ten years from the date of termination.

4. The Annexes to this Agreement constitute integral parts of this Agreement.

## **Section B.**

### **Article 23. Consultations**

1. In the case of an investment dispute, if the claimant wishes to submit the dispute to arbitration, it shall submit a request for consultations to the respondent at least 180 days before submitting the dispute to arbitration. The request must:

a) Specify the name and address of the claimant and, where a claim is brought on behalf of a company of the respondent which is a legal person that the claimant owns or controls, directly or indirectly, the name, address and place of incorporation of the company;

b) List the evidence that the claimant is an investor under this Agreement;

c) For each claim, identify the provision of this Agreement or the investment agreement allegedly violated and any other relevant provisions;

d) For each claim, identify the measures or events giving rise to the claim;

e) For each claim, provide a brief summary of the legal and factual basis;

f) Specify the redress sought and the approximate amount of damages claimed.

2. Following the submission of a request for consultations pursuant to this Section, the claimant and the defendant shall enter into consultations with a view to reaching a mutually satisfactory solution. Unless otherwise agreed by the Parties to the dispute, the venue of the consultations shall be the capital of the respondent.

3. If the Parties to the dispute reach a mutually agreed solution to a dispute or to certain claims formally submitted under this Section, they shall respect and comply with the mutually agreed solution reached under this Article without delay.

### **Article 24. Submission of a Request for Arbitration**

1. Without prejudice to the consultation procedure provided for in Article 21 (taxation), if a disputing party considers that an investment dispute cannot be resolved through consultations pursuant to Article 23 (consultations) and 180 days have elapsed since the date of the request for consultations:

a) the claimant, on its own behalf, may submit a request for arbitration under this Section:

i. That the respondent has violated:

A) An obligation under Article 3 (national treatment), Article 4 (most favoured nation treatment), Article 5 (minimum standards of treatment), Article 6 (loss compensation), Article 7 (expropriation and compensation), Article 8 (transfers), Article 9 (performance requirements) and Article 10 (senior management and Board of Directors); or

B) An investment agreement.

ii. That the claimant has suffered loss or damage due to or arising out of such breach.

b) The claimant, on behalf of an undertaking of the respondent which is a legal person that the claimant owns or controls, directly or indirectly, may submit a claim to arbitration under this Section:

i. That the respondent has violated:

A) An obligation under Article 3 (national treatment), Article 4 (most favoured nation treatment), Article 5 (minimum standard of treatment), Article 6 (loss compensation), Article 7 (expropriation and compensation), Article 8 (transfers), Article 9 (performance requirements) and Article 10 (senior management and Board of Directors); or

B) An investment agreement.

ii. That the company has suffered loss or damage due to or arising from the offence.

Provided that a claimant may bring a claim under subparagraph (a)(i)(B) or subparagraph (b)(i)(B) for breach of an investment agreement only if the subject matter of the claim and the damages claimed are directly related to the covered investment that was established or acquired, or intended to be established or acquired, on the basis of the relevant investment agreement.

2. An investor of a Party may not initiate or pursue a claim under this Section if a claim involving the same measure or measures alleged to constitute a violation under this Article and arising out of the same events or circumstances is initiated or pursued pursuant to an agreement between the defendant and a Party that is not a Party:

a) an enterprise of a non-Party that directly or indirectly owns or controls the investor of a Party, or

b) an enterprise of a non-Party that is directly or indirectly owned or controlled by the investor of a Party.

Notwithstanding the preceding paragraph, the claim may proceed if the defendant agrees that the claim should proceed, or if the investor of a Party and the enterprise of a non-Party agree to consolidate the claims under their respective agreements before a tribunal constituted under this Section.

3. Without prejudice to paragraph 1 of this Article, if six months have elapsed since the facts giving rise to the claim, the claimant may submit the claim referred to in paragraph 1 of this Article:

a) under the ICSID Convention and the ICSID Rules of Arbitration Procedure, provided that both the Party complained against and the non-disputing Party are parties to the ICSID Convention

b) under the rules of the ICSID Additional Mechanism, provided that both the Party complained against and the non-challenging Party are parties to the ICSID Convention;

c) Under the UNCITRAL Arbitration Rules:

d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed to have been submitted to arbitration under this Section when the claimant's notice or request for arbitration ("notice of arbitration"):

a) referred to in Article 36(1) of the ICSID Convention is received by the Secretary General;

b) referred to in Article 2 of Annex C of the ICSID Additional Mechanism Rules is received by the Secretary General;

c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the Statement of Claim referred to in Article 20 of the UNCITRAL Arbitration Rules, is received by the respondent;

d) referred to in any arbitral institution or arbitral rules selected pursuant to paragraph 3(d) of this Article are received by the respondent.

Where the claimant submits a claim pursuant to subparagraph B(1)(a)(i) or subparagraph B(1)(b)(i), the respondent may

submit a counterclaim relating to the factual and legal basis of the claim or rely on a claim for set-off against the claimant.

5. In addition to any other information required by the applicable arbitration rules, the notice of arbitration shall also include information relating to each of the categories referred to in Article 23 (consultations).

6. The arbitration rules applicable pursuant to paragraph 3 of this Article and in effect on the date the claim or claims were submitted to arbitration pursuant to this Section shall govern the arbitration, except to the extent modified by this Agreement.

7. For greater certainty, a minority shareholder who does not control a company may not bring a claim on behalf of that company.

8. In the case of arbitration under Section B, in accordance with the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not apply, unless otherwise agreed by the Parties to the dispute.

## **Article 25. Consent of Each Party to the Arbitration**

1. Each Party consents to the submission of a request for arbitration under this Section in accordance with this Agreement.

2. Consent under paragraph 1 of this Article and the submission of a request for arbitration under this Section shall fulfil the requirements of:

a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Mechanism Rules for written consent of the parties to the dispute; and

b) Article II of the New York Convention for a "written agreement".

## **Article 26. Conditions and Limitations on the Consent of Each Party**

1. No claim may be submitted to arbitration pursuant to this Section if more than 3 years have elapsed from the date on which the claimant knew, or should have known, of the alleged breach pursuant to Article 24(1) (Submission of a request for arbitration) and the fact that the claimant (for claims submitted pursuant to Article 24(1)(a) (Submission of a request for arbitration) or the company (for claims submitted pursuant to Article 24(1)(b)) is not a party to the dispute.

2. No claim may be submitted to arbitration under this Section unless:

a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement:

b) the claim arises out of measures included in the claimant's request for consultations pursuant to Article 23 (Consultations):

c) the notice of arbitration is accompanied by:

i. For claims submitted to arbitration pursuant to Article 24(1)(a) (submission of a request for arbitration), by the claimant's written waiver:

ii. For claims submitted to arbitration under Article 24(1)(b) (submission of a request for arbitration), by the written waiver of the claimant and the company. Any right to initiate or pursue before any Administrative Tribunal or Court under the laws of a Party, or under other dispute resolution procedures, any proceedings relating to any measure alleged to constitute a violation referred to in Article 24.

## **Article 27. Constitution of the Tribunal**

1. Unless otherwise agreed by the Parties to the dispute, the Tribunal shall be composed of three Arbitrators, one Arbitrator appointed by each of the Parties to the dispute and the third, who shall be the Presiding Arbitrator, appointed by agreement of the Parties to the dispute.

2. The Secretary General shall be the Appointing Authority for an arbitration under this Section.

3. If the Tribunal has not been constituted within 90 days from the date on which a claim is submitted to arbitration under this Section, the Appointing Authority shall, at the request of one of the Parties to the dispute, appoint, at its discretion and after consultation with the Parties to the dispute, the Arbitrator or Arbitrators not yet appointed.

4. The appointing authority may not appoint a Presiding Arbitrator who is a national of a Party, unless both Parties to the dispute agree otherwise.

5. In the event that the appointing authority appoints the Arbitrator in accordance with the relevant arbitration rules, the appointed Arbitrator must be a recognised expert in Public International Law and must have experience in resolving investor-State disputes.

## **Article 28. Conduct of Arbitration**

1. The Parties to the dispute may agree on the legal venue of any arbitration, in accordance with the applicable arbitration rules, pursuant to Article 24(3) (submission of a request for arbitration). If the parties to the dispute cannot agree, the Court shall determine the place in accordance with the applicable arbitration rules, provided that the place is in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may submit to the Tribunal oral and written observations concerning the interpretation of this Agreement.

3. After consultation with the Parties to the dispute, the Tribunal may allow a person or entity that is not a Party to the dispute to submit to the Tribunal a written amicus curiae brief on an issue within the scope of the dispute. Such a submission must provide the identity of that person or entity (including any controlling entity and any source of substantial financial assistance in any of the two years preceding the submission, e.g. funding of about 20 per cent of an entity's global operations annually), disclose any connection with any disputing party and identify any person, government or other entity that has provided or will provide any financial or other assistance in preparing the submission. In determining whether to permit such a submission, the court should consider, among other things, the extent to which:

a) The submission of the amicus curiae will assist the Tribunal in determining a question of fact or law relating to the proceedings by bringing a perspective, particular expertise or view different from that of the Parties to the dispute;

b) The amicus curiae's submission will address an issue within the scope of the dispute:

c) The amicus curiae has a significant interest in the proceedings.

4. The tribunal shall ensure that the submission of the amicus curiae does not disrupt the proceedings or unduly burden or unfairly prejudice any of the parties to the dispute, and that the parties to the dispute have the opportunity to submit their observations on the submission of the amicus curiae.

5. Without prejudice to the power of the Tribunal to consider other objections as a preliminary issue, the Tribunal shall consider and decide as a preliminary issue any objection by the respondent that, as a matter of law, an application submitted is not an application in respect of which a decision in favour of the applicant can be given under this Section.

6. When deciding on an objection under paragraph 5, the court shall take the applicant's factual allegations as true. The court may also consider any relevant uncontested facts. The Tribunal shall decide on the objection expeditiously and issue a decision or award on the objection(s) within a maximum of 150 days from the date of the request.

7. In any arbitration conducted under this Section, at the request of a disputing party, the Tribunal shall, before rendering a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the Tribunal has transmitted its draft decision or award, the parties to the dispute may submit written comments to the Tribunal on any aspect of its draft decision or award. The Tribunal shall consider such comments and issue its decision or judgement no later than 45 days after the expiry of the period of validity of the decision or judgement.

8. In the event that an appeal mechanism for the review of judgements rendered by Investor-State Dispute Settlement Tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether judgements rendered under Article 30 should be reviewed.

## **Article 29. Applicable Law**

1. Without prejudice to paragraph 3 of this Article, where a request is submitted pursuant to subparagraph 1(a)(i)(A) or subparagraph 1(b)(i)(A) of Article 24 (submission of a request for arbitration), the Tribunal shall decide the issues in dispute in accordance with this Agreement and the applicable rules of international law.

2. Without prejudice to paragraph 3 of this Article and the other provisions of this Section, when a request is made under subparagraph 1(a)(i)(B) or 1(b)(i)(B) of Article 24 (making a request for arbitration), the Tribunal shall apply:



- a) the rules of law specified in the relevant investment agreement, or as otherwise agreed by the parties to the dispute; or
  - b) If the rules of law have not been specified or otherwise agreed:
    - i. The law of the respondent, including its conflict of laws rules; and
    - ii. Such rules of customary international law as may be applicable.
3. A common decision of the Parties stating their interpretation of a provision of this Agreement shall be binding on a Tribunal in any ongoing or subsequent dispute and any decision or judgement rendered by that Tribunal shall be consistent with such common decision.
4. For greater certainty, paragraph 1 of this Article shall be without prejudice to the consideration of the domestic law of the defendant where it is relevant to the question of fact.
5. The "law of the defendant" means the law that a competent national court would apply in the same case.

## **Article 30. Awards**

1. When a Tribunal renders a judgement against a defendant, the Tribunal may award, separately or in combination, only:

- a) monetary damages and any applicable interest:
- b) restitution of property, in which case the judgement shall provide that the defendant may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs and attorneys' fees in accordance with this Section and the applicable arbitration rules.

2. Without prejudice to paragraph 1 of this Article, where an action is referred to arbitration pursuant to Article 24(1)(b), the Court may award costs and attorneys' fees:

- a) an award for restitution of property shall provide for restitution to be made to the undertaking;
- b) an award for monetary damages and any applicable interest shall provide for the sum to be paid to the company;
- c) the judgement shall provide that it is rendered without prejudice to any right that any person may have to compensation under applicable national law.

3. The Court may not award punitive damages.

4. The judgement shall be made available to the public without delay.

5. A Party to the dispute may not request enforcement of a final judgement until:

- a) in the case of a final award made under the ICSID Convention:
  - i. 120 days have elapsed from the date on which the award was made and no party to the dispute has applied for review or annulment of the award; or
  - ii. The review or annulment procedure has been completed.
- b) in the case of a final award rendered under the ICSID Additional Mechanism Rules, the UNCITRAL Arbitration Rules or the rules selected pursuant to Article 24(3)(d):
  - i. 90 days have elapsed from the date on which the award was rendered and no party to the dispute has initiated proceedings for review, annulment or revocation of the award;
  - ii. A court has dismissed or granted an application for review, annulment or revocation of the judgement and there is no further appeal.

6. The judgement handed down by a Tribunal shall only be binding between the Parties to the dispute and in relation to the specific case.

## **Article 31. Expert Reports**

Without prejudice to the appointment of other types of experts, where authorised by the applicable arbitration rules, a

Tribunal, at the request of a Party to the dispute or, unless the Parties to the dispute do not so approve, on its own initiative, may appoint one or more experts to submit to it a written report on any factual issue relating to the environment, health, safety or other scientific issues raised by a Party to the dispute in a proceeding, subject to such terms and conditions as the Parties to the dispute may agree.

## **Article 32. Service of Documents**

Service of notifications and other documents on a Party shall be effected at the place indicated for that Party in Annex D (Service of Documents on a Party).

## **Section C.**

### **Article 33. Consultations**

1. In the event of a dispute covered by this Section, if the complaining Party wishes to submit the dispute to arbitration, it shall submit a request for consultations to the Party complained against at least 180 days before the dispute is submitted to arbitration, setting out its wishes regarding the interpretation or application of this Agreement.

2. The request for consultations shall:

- a) For each request, identify the provision of this Agreement allegedly violated and any other relevant provisions;
- b) For each request, identify the measures or events giving rise to the request;
- c) For each request, provide a brief summary of the legal and factual basis;
- d) Specify the relief sought.

3. Upon receipt of the request for consultation, the Parties shall enter into consultations with a view to reaching a mutually satisfactory solution.

### **Article 34. Submission of a Request for Arbitration**

1. If the dispute has not been resolved through consultations pursuant to Article 33 (Consultations) of this Section and 180 days have elapsed from the date of the request for consultations, the complaining Party may submit its claims to arbitration in accordance with this Section and the applicable rules of international law.

2. No claim may be submitted to arbitration under this Section if more than four years have elapsed from the date on which the event giving rise to the dispute first occurred.

3. Unless otherwise agreed by the Parties, the UNCITRAL arbitration rules in force on the date the claims were submitted to arbitration under this Section shall apply, unless otherwise agreed by the Parties or this Agreement.

4. A claim shall be deemed to have been submitted to arbitration under this Section when the complaining Party's notice or request for arbitration ('notice of arbitration'):

- a) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the Statement of Claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the Party complained against;
- b) references to any alternative arbitral institution or arbitral rules selected by the Parties are received by the Party requested.

5. In addition to any other information required by the applicable arbitration rules, the notice of arbitration shall also include information relating to each of the categories referred to in Article 33 (consultations) of this Section. The complaining Party shall provide, together with the notice of arbitration, its written consent for the Secretary General to appoint the Arbitrator.

### **Article 35. Supplementary Provisions**

Articles 27 (Constitution of the Tribunal), 28 (Conduct of the Arbitration) and 29 (Applicable Law) shall apply mutatis mutandis to this Section.

## Article 36. Awards

1. If a tribunal makes a final decision or award against a Party complained against in relation to:
  - a) a dispute concerning the interpretation or application of this Agreement, other than a dispute referred to in subparagraphs (b), the Tribunal shall provide for:
    - i. A determination that the Party complained against has acted inconsistently with its obligations under this Agreement:
    - ii. Recommendations, if the Parties have jointly requested them for the settlement of the dispute.
  - b) A dispute in which a Party has exercised diplomatic protection on behalf of its investor for alleged violations of Articles 3 (national treatment), 4 (most-favoured-nation treatment), 5 (minimum standards of treatment), 6 (compensation for damages), 7 (expropriation and compensation for damages), 8 (expropriation and compensation for damages) and 9 (expropriation and compensation for damages). In accordance with Articles 7 (expropriation and compensation), 8 (transfers), 9 (performance requirements) and 10 (senior management and Board of Directors), the Court must grant appropriate redress in accordance with the applicable rules of international law.
2. If the Tribunal determines, as referred to in paragraph 1(a)(i), that the measure in question is inconsistent with a Party's obligations under this Agreement or that a Party has failed to fulfil its obligations under this Agreement, the responding Party shall eliminate the non-compliance, nullification or impairment.
3. The expenses incurred by the Arbitrators and other costs of the proceedings shall be paid equally by the Parties. However, the Tribunal may, at its discretion, order that a higher proportion of the costs be paid by one of the Parties, in accordance with this Agreement and the applicable arbitration rules.
4. The Tribunal may not award punitive damages.
5. The judgement handed down by a Tribunal shall not be binding except between the Parties and in relation to a specific case.

## Article 37. Service of Documents

Service of notices and other documents on a Party shall be effected at the place indicated for that Party in Annex D (Service of documents on a Party). In witness whereof, the duly authorised representatives of the respective Governments have signed this Agreement. Done in duplicate, at Beijing, on 6 December 2023, in the Portuguese, Chinese and English languages, each text being equally authentic. In the event of any discrepancy or inconsistency, the English version shall prevail. For the Government of the Republic of Angola, Mr Tété António - Minister of Foreign Affairs. For the Government of the People's Republic of China, Wang Wentao - Minister of Commerce.

## Annex A. Customary International Law

The Parties confirm their common understanding that "customary international law" in general and as specifically referred to in Article 5 (minimum standards of treatment), results from a general and consistent practice of States which they adopt on the basis of a sense of legal obligation. With regard to Article 5 (minimum standards of treatment), the minimum standard of customary international law relating to the treatment of aliens refers to all principles of customary international law that protect the rights and economic interests of aliens.

## Annex B. Expropriation

The Parties confirm their common understanding that:

1. An action or series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 7(1) (expropriation and compensation) addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through a formal transfer of title or a definitive seizure.
3. The second situation addressed in Article 7(1) (expropriation and compensation) is indirect expropriation, when an action

or series of actions by a Party has an effect equivalent to direct expropriation, without a formal transfer of title or definitive seizure:

a) In order to determine whether an action or series of actions by a Party, in a specific situation, constitutes indirect expropriation, a case-by-case, fact-based enquiry is required which considers, among other factors:

i. The economic impact of the government action, although the fact that a Party's action or series of actions has an adverse effect on the economic value of an investment does not, in itself, establish the occurrence of an indirect expropriation;

ii. The extent to which the governmental action interferes with distinct and reasonable expectations based on the investment: eiii. The character and purpose of the government action.

b) Except in rare circumstances, a Party's non-discriminatory regulatory measures designed and implemented to protect legitimate public welfare objectives, such as morals, public health and safety, and the environment, do not constitute indirect expropriation.

## **Annex C. Temporary Safeguard Measures**

1. In the event of serious balance of payments difficulties, external financial difficulties or threats thereof, nothing in this Agreement shall be construed as preventing a Party from adopting or maintaining restrictive measures with respect to payments or transfers related to capital movements.

2. Any measures adopted or maintained under paragraph 1 of this Article shall:

a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

b) be temporary and phased out as the situation specified in paragraph 1 of this Article improves, and shall not exceed 18 months in duration: however, in extremely exceptional circumstances, a Party may extend such measures for a period of twelve months, subject to prior notice and consultation with the other Party;

c) not be incompatible with the provisions of Article 3 (national treatment) and Article 4 (most favoured nation treatment);

d) not be incompatible with the provisions of Article 7 (expropriation and compensation);

e) not result in multiple exchange rates:

f) be promptly notified to the other Party and published as soon as possible.

## **Annex D. Notification of Documents to a Party**

### **Angola**

Notifications and other documents shall be served on the Republic of Angola by delivery to:

Ministry of Foreign Affairs; Directorate of Legal Affairs, Treaties and Litigation; Avenida Comandante Gika, n.º 98; Luanda, Largo António Jacinto, Edifício 1 do MIREX.

### **China**

Notifications and other documents will be served on the People's Republic of China by delivery to:

Department of Treaty and Law; Ministry of Commerce of the People's Republic of China; 2 Dong Chang'an Avenue; Beijing, 10073; People's Republic of China.