

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF CAMEROON FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Italian Republic and the Government of the Republic of Cameroon (hereinafter referred to as the Contracting Parties)

In order to develop economic cooperation between the two states and to create favorable conditions for the investments of Italian investors in Cameroon and Cameroon in Italy, they agreed on the following provisions:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means, irrespective of the legal form chosen and the legal order of reference, any assets of any kind invested before or after the entry into force of this Agreement by a natural or legal person of a Contracting Party in the territory of the other Party, in accordance with the legislation of the latter Party and in particular but not exclusively:

- a) Movable and immovable property, as well as any other real rights such as mortgages, usufructs, bonds and similar rights;
- b) Shares and other forms of direct or indirect participation, even minority, in companies established in the territory of one of the Parties;
- c) Monetary credits and any other title of credit, bonds, government bonds and public entities, credits relating to each service and any other right having economic value;
- d) Intellectual property rights and/or industrial property rights such as copyright, inventory patents, licenses, designs or industrial designs, trademarks or service marks, trade names, know-how, business start-up and any similar rights recognized by law and by the regulations of each Contracting Party;
- e) Concessions in accordance with the laws and regulations of each Contracting Party, including exploration, extraction and exploitation of natural resources, and any other rights conferred by law and regulations, by private or public contracts or by decision of the competent authorities.
- f) Income from any investment and income from capital;
- g) Any increase in the value of the original investment.

A change in the form of the investment does not affect its qualification as investment.

2. "Investor" means:

- a) For each Contracting Party, natural persons having their nationality;
- b) Any economic entity or legal entity established under the law of each Contracting Party having its seat in its territory or any economic entity or legal person controlled directly or indirectly by nationals of either Contracting Party and established in accordance with the law of the latter;

3. "Physical person" means, with reference to each Contracting Party, a natural person who, by law, has the nationality of that State.

4. "Legal person" means any body established in the territory of one of the Contracting Parties and recognized by it, such as public institutes, corporations of persons or of capital, foundations, associations and, irrespective of whether their liability is limited or not.

5. "Income" means the proceeds of an investment, including, but not limited to, profits, dividends, interest, capital gains, royalties, management fees, fees for technical assistance or services, and any other consideration, regardless of the source, whether monetary or in kind, into which such income is paid.
6. "Territory" means, in addition to land within the land borders, also "maritime areas". The latter comprise marine and submarine areas on which the Contracting Parties have sovereignty or exercise, under international law, sovereignty or jurisdiction.
7. "Investment Agreement" means an agreement between a Party (or its agencies or representatives) and an investor of the other Party relating to an investment.
8. "Non-discriminatory treatment" means at least as favorable treatment as the best in the range of national treatment and treatment of the most favored nation.
9. "Right of access" means the right to be allowed to make investments in the territory of the other Contracting Party.

## **Article 2. Promotion, Authorization**

1. Each Contracting Party shall encourage the promotion of investments made in its territory by investors of the other Contracting Party and the carrying out of such investments in accordance with its laws and regulations.
2. Investors of a Contracting Party shall have the right of access to investment activities in the territory of the other Contracting Party on terms that are equally favorable to those granted under Article 3 (3).
3. When a Contracting Party has authorized an investment by an investor of the other Contracting Party in its territory, it shall grant, in accordance with its laws and regulations, the necessary authorizations relating to that investment, including those relating to recruitment of managerial or technical staff, irrespective of their nationality.
4. Each Party shall establish and maintain in its territory a legal framework to ensure the continuity of legal treatment for investors, including the successful completion of all commitments undertaken by each investor.

## **Article 3. Protection, Treatment**

1. Each Contracting Party shall ensure full protection and security in its territory of investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not interfere with unjustified or discriminatory measures in the management, maintenance, use, enjoyment, increase, sale or liquidation of such investments.
2. Each Contracting Party shall ensure fair and equitable treatment of investments made in its territory by investors of the other Contracting Party. Such treatment shall be no less favorable than that reserved by each Contracting Party to investments made in its territory by its own nationals or investors of any third State if such treatment is more favorable.
3. Any modification of the form in which the asset was invested or invested does not affect the investment grade and the protection to which such investments are entitled.
4. Most favored nation treatment does not apply to the privileges deriving from the present or future membership of each Contracting Party to an economic and/or monetary union, customs, a free trade area, a common market, or any other form of economic or regional organization, a multilateral economic agreement or agreements concluded to avoid double taxation or to facilitate cross-border trade.

Such treatment shall not apply either to the benefits that each Contracting Party grants to investors of a third State on the basis of an agreement to avoid double taxation or other mutual tax arrangements.

5. The investments referred to in this Agreement shall not be subject to any measure limiting, for a fixed or indefinite period, the ownership, possession, control, and enjoyment rights inherent in it, where this is not specifically provided for by national law, regulations or judgments issued by the Courts or the competent Tribunals.

## **Article 4. Transfers**

1. Each Contracting Party on whose territory investments by investors of the other Contracting Party have been made accords to that investor the free transfer of:

- a) Interest, dividends, benefits, compensation for assistance and technical services or other current investment income;

- b) Royalties arising from the rights referred to in paragraph 1;
- c) Sums destined for the repayment of loans regularly stipulated and to the payment of the relative interests;
- d) Proceeds of the sale or of the total or partial liquidation of the investment, including the surplus value of the invested capital;
- e) Compensations provided for in Article 5;
- f) Capital and additional capital, including invested income used to maintain and increase investment;
- g) Wages and other remuneration paid to nationals of a Contracting Party authorized to work in the territory of the other Contracting Party for an investment.

Citizens of each of the Contracting Parties which have been authorized to work in the territory of the other Contracting Party under an approved investment are also authorized to transfer their remuneration to their country of origin.

2. Transfers will be made without undue delay and in any case within a period of six months, provided that the tax obligations have been met in the meantime. Transfers shall be made in a currency convertible at the current exchange rate applicable on the date on which the investor requests the transfer, except for the provisions of Article 5 on the exchange rate applicable in the event of nationalization or expropriation.

3. The tax obligations referred to in the preceding paragraph shall be deemed to be fulfilled when the investor has completed the procedures provided for by the law of the Contracting Party in whose territory the investment was made.

## **Article 5. Expropriation and Compensation**

1. Neither Contracting Party shall, directly or indirectly, impose nationalization expropriation measures or other measures of the same nature and having the same effect against investors of the other Contracting Party except for reasons of public interest duly established in accordance with its laws and its regulations, which are not discriminatory and are accompanied by clauses providing for fair, just and effective compensation.

2. The compensation referred to in paragraph 1 above shall be equivalent to the real value of the investment in the market immediately before the nationalization or expropriation decision is announced or made public.

In the absence of agreement between the receiving Contracting Party and the investor, the allowance shall be calculated on the basis of international parameters. It will be calculated in a currency convertible at the exchange rate prevailing on the date on which nationalization or expropriation was announced or made public, and will include interest calculated on the basis of the LIBOR Standard from the date of nationalization or expropriation up to the date of payment.

The compensation, once determined, will be paid without delay and in any case within a period of six months and the authorization for its transfer abroad, if necessary, will be promptly granted.

3. If the object of the expropriation is a foreign capital company established in the territory of one of the Contracting Parties, the remuneration to be paid to the investor of the other Contracting Party shall be calculated taking into account the investor's share in that company as indicated in the documents of that company.

4. A citizen or a company of one of the Contracting Parties claiming that his or her investment has been expropriated in whole or in part shall be entitled to an immediate examination by the judicial or administrative authorities of the other Party in order to determine whether, expropriation took place and, if so, whether such expropriation and any related compensation are in conformity with the principles of international law and decide on all other related matters.

5. If, after expropriation, the property in question has not been used for any or part of the purpose, the owner or claimants are entitled to repurchase the property at the price of the compensation calculated in accordance with the provisions of paragraphs 2 and 3 of the present Article.

6. Investors of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, national emergency, or revolt occurred in the territory of the other Contracting Party, the latter Party shall provide a fair and equitable treatment in accordance with Article 3 (2) of this Agreement. In any case, they will be entitled to compensation.

## **Article 6. Subrogation**

1. Subject to case-by-case examination, each Contracting Party may grant an insurance policy, insofar as its legislation so

provides, to investments made by its investors in the territory of the other Party.

2. If one of the Contracting Parties, by virtue of a guarantee provided for an investment made in the territory of the other Party, makes payments to one of its investors concerned, the latter shall recognize that the first Party is surrogated by law in the same credit position of the insured investor.

However, the rights thus obtained must not exceed those of the investor and the surrogate leaves intact all the rights that the latter party has on the investor.

The transfer of the sums resulting from the above surrogate is governed by the provisions of Article 4.

## **Article 7. Settlement of Disputes between Investors and Contracting Parties**

1. Any disputes concerning investments between one of the Contracting Parties and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

2. If the dispute cannot be settled within six months from the date on which it was initiated by one of the parties to the dispute, it may be settled by the investor's choice by one of the following procedures:

- a) recourse by the investor to the competent administrative authorities of the Contracting Party in whose territory the investment is made;
  - b) a legal action by the investor in the competent courts of the Contracting Party in whose territory the investment is made;
  - c) before an ad hoc arbitration tribunal, in accordance with the UNCITRAL Arbitration Rules of the United Nations Commission on International Trade Law. The Contracting Party undertakes to accept the referral to such arbitration;
  - d) at the International Centre for the Settlement of Investment Disputes for the implementation of the arbitration procedures provided for in the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, if or as soon as the Contracting Parties have acceded thereto;
  - e) before an ad hoc tribunal which, in the absence of any other agreement between the parties to the dispute, will be set up in accordance with the rules of arbitration of the United Nations Commission on International Commercial Law (UNCITRAL).
3. As regards disputes relating to the amount of the compensation to be paid in accordance with the provisions of Article 5 (2) and (3), they may be subject to the procedures set out in paragraphs 1 and 2 above.
4. Both Contracting Parties shall refrain from dealing diplomatically with matters relating to an arbitration or a judicial proceeding already initiated until the relevant proceedings have been brought to an end and one of the Parties to the dispute has failed to comply with the arbitral tribunal's award or the judgment of another court within the time-limits laid down in the judgment or judgment, or within the limits otherwise determined by the law of international or domestic law applicable in the present case.
5. The Contracting Party that is a party to a dispute may at no time, during the proceedings relating to investment disputes, invoke in its defense its immunity or the fact that the investor has received, under an insurance contract, a compensation which covers all or part of the damage or loss suffered.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be made by diplomatic means.
2. If, within a period of six (6) months from the date on which a dispute arises, the Contracting Parties have not reached an agreement, the dispute shall be submitted, at the request of one of the Parties, to an Arbitral Tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator and the two arbitrators shall elect as a President a national of a third State.
3. If one of the Contracting Parties has not appointed an arbitrator and has not accepted the invitation of the other Contracting Party to make such appointment within a period of two (2) months, the arbitrator shall be appointed at the request of that Contracting Party, by the President of the International Court of Justice.
4. If the two arbitrators fail to reach an agreement on the election of the President within a period of two (2) months after their appointment, the latter shall be appointed, at the request of one of the Contracting Parties, by the President of the International Court of Justice;

5. If, in the cases specified in paragraphs (3) and (4) of this Article, the President of the International Court of Justice is unable to exercise his function or is a national of one of the Contracting Parties, the appointment shall be made by the Vice-President; If the latter has an impediment or is a citizen of one of the Contracting Parties, the appointment shall be made by the senior member of the Court who is not a citizen of one of the Contracting Parties.

6. In addition to the stipulations of paragraphs (1), (2), (3), (4) and (5) of this Article, the tribunal shall establish its own procedure.

7. Each Contracting Party shall bear the costs of the arbitrator he has appointed and those for his representation in arbitration proceedings. The expenses of the President and the remaining expenses shall be borne by the Contracting Parties on an equal measure.

8. The decisions of the Court of First Instance are final and binding on each Contracting Party.

## **Article 9. Investments Prior to the Agreement**

This Agreement shall also apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement. However, this Agreement shall not apply to disputes that arose prior to its entry into force.

## **Article 10. Special Arrangements**

1 . Investments which have been the subject of a particular commitment by one of the Contracting Parties to investors of the other Contracting Party shall, subject to the provisions of this Agreement, be governed by the terms of that special commitment where the latter contains more favorable provisions than those of Provided for in this Agreement.

2 . If a matter is governed both by this Agreement and by any other international agreement to which the two Contracting Parties have acceded or otherwise regulated by the rules of general international law, the Contracting Parties and their investors shall benefit from more favorable provisions for their case.

3 . If, by virtue of laws or regulations, other provisions or specific contracts, investment authorizations or agreements, the rules adopted by a Contracting Party vis-à-vis investors of the other Contracting Party are more favorable than those provided for in this Agreement, the most favorable treatment will be applied.

4. If, after the date on which the investment is made, the laws, regulations, rules or economic policy measures which are in force directly or indirectly for investors are to be amended, the same treatment will be applied as that in force at the time the investment is made.

## **Article 11. Entry Into Force - Denunciation - Duration**

Each of the Contracting Parties shall notify each other of the completion of its internal procedures for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This Agreement is concluded for a period of ten years; It shall remain in force after this deadline unless one of the two Parties denies it by diplomatic notice with a one-year notice.

Upon expiration of the term of this Agreement, investments made during the term shall continue to benefit from the protection of its rules for an additional period of five years.

## **Article 12. Implementation of other Regulations**

The procedures for the application of certain Articles of this Agreement are the subject of a Protocol which forms an integral part thereof.

In witness whereof, the undersigned representatives duly authorized by their respective Governments have signed this Agreement and its annex.

For the Government of the Italian Republic

For the Government of the Republic of Cameroon

# **PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CAMEROON OF CAMEROON AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

At the time of the signature of this Agreement between the Government of the Republic of Italy and the Government of the Republic of Cameroon on the promotion and protection of investments, the Contracting Parties have also agreed upon the following clauses which shall be considered an integral part of the Agreement:

## **1. With Regard to Article 2:**

(a) All activities relating to the purchase, sale and transport of raw and auxiliary materials, energy and fuels as well as means of production and exploitation of any kind, shall enjoy treatment no less favorable than that accorded to activities related to investments made by investors from a third State. The normal functioning of such activities shall not be hindered in any way, provided that it is in conformity with the laws and regulations of the host country, in compliance with the provisions of this Agreement.

(b) Nationals authorized to work in the territory and maritime zones of one of the Contracting Parties shall be afforded practical and adequate facilities for the exercise of their professional activities.

(c) The Contracting Parties shall accord sympathetic consideration, within the framework of their internal legislation, to requests for entry and residence authorizations, work permits and movement permits submitted by nationals of one Contracting Party for the purpose of investment in the territory of the other Contracting Party.

## **2. With Respect to Article 5:**

With respect to the indemnities provided for in Article 5, their amount shall correspond to the real value of the investments in question.

## **3. Regarding Article 8:**

The arbitration procedure referred to in paragraphs 2, 3, 4, 7 and 8 shall be as follows:

(a) The arbitral tribunal shall be composed of three arbitrators.

Each of the two Parties shall select one arbitrator. The two arbitrators shall appoint by mutual agreement a third arbitrator who shall be of a different nationality from those of the arbitrators appointed by the Parties, and who shall be a national of a State maintaining diplomatic relations with each of the Parties to this Agreement. All members of the Tribunal shall be appointed within three months of the appointment of the first arbitrator.

b) If one of the Parties doesn't appoint its own arbitrator, or if the two arbitrators don't reach an agreement on the choice of the third arbitrator within the terms mentioned in the previous paragraph, one of the two Parties can ask the President of the International Court of Justice to make the missing appointments.

The arbitration shall take place in accordance with the law of the Party on whose territory or in whose maritime zones the investment is made, and in accordance with the provisions of this Agreement.

Its procedure shall be regulated by the arbitration rules of UNCITRAL.

Its decisions shall be binding for both Parties. The Tribunal may interpret its judgment at the request of either Party.

Each Contracting Party shall bear the expenses for the arbitrator it has appointed and its own expenses during the arbitration. The expenses of the President of the Tribunal and other expenses shall be divided equally between the two Parties.

The recognition and implementation of the arbitral decision on the territory of the contending Parties will be governed by their respective national legislations, in accordance with the International Conventions to which they are Parties.

Done at Yaounde on 29 June 1999, in three original copies, each in the Italian, French and English languages, the three texts being equally authentic.

For the Government of the Italian Republic

For the Government of the Republic of Cameroon