

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA ON INVESTMENT PROMOTION AND PROTECTION**

Preamble

The Government of the Italian Republic and the Government of the Republic of Namibia (hereinafter referred to as the "Contracting Parties"),

Animated by the desire to create favorable conditions for improving economic cooperation between the two countries and in particular in relation to capital investments by investors of a Contracting Party in the territory of the other Contracting Party; and

Recognizing that the promotion and mutual protection of such investments, on the basis of international agreements, will help to stimulate entrepreneurial initiatives that can foster the prosperity of both Contracting Parties; and

With the commitment to ensure in good faith respect for the rule of law and the implementation of legislation in order to facilitate the development of the private sector and to promote foreign investment

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investment" means any type of asset invested before or after the entry into force of this Agreement by a natural person or a legal person of a Contracting Party in the territory of the other Contracting Party in accordance with the laws and its regulations, irrespective of the legal form chosen.

Without limiting the general scope of the above, the term "investment" includes in particular but not exclusively:

- a) Movable and immovable property, as well as any "rem" right, to the extent that they can be invested;
- b) Equity and bonds, participation in registered or unlisted entities or any other credit, as well as government bonds and public securities in general;
- c) Rights to money related to an investment, as well as reinvested earnings and capital gains or rights to services having an economic value as an integral part of an investment;
- d) Copyright, trade marks, patents, industrial design and other intellectual and industrial property rights, know-how, commercial secrets, trade names and start-ups;
- e) Any law of economic nature arising out of a law or contract and any license and concession accorded in accordance with the provisions in force on economic activities, including prospecting, extraction and exploitation of natural resources;
- f) Any increase in value of the original investment.

Any changes in the form of the investment do not involve any change in the nature of the investment, provided that they are made in accordance with the law of the Contracting Party in whose territory the investment is made.

2. "Investor" means any natural or legal person of a Contracting Party which carries out investments in the territory of the other Contracting Party, as well as affiliates, subsidiaries and foreign affiliates in any way controlled by such natural or legal persons;

3. "Natural person" means, for each Contracting Party, any natural person having the nationality of that Party in accordance

with its laws;

4. "Legal person" means, with respect to both Contracting Parties, any entity constituted in accordance with the laws of a Contracting Party having its seat in the territory of that Contracting Party;

5. "Profits" means the sums resulting from an investment, including, in particular, profits or interests, capital gains, dividends, royalties or fees for technical assistance or services and other services, and any other benefits in kind such as Not exclusively, raw materials, products or products and breeding animals;

6. "Territory" means, in addition to the overburden included within the land borders, also airspace, continental shelf, exclusive economic zones, sea or submarine, as a Contracting Party exercises its sovereignty, as well as sovereignty or jurisdiction In accordance with international law;

7. "Investment Agreement" means an agreement between a Contracting Party (or its agencies) and an investor of the other Contracting Party relating to an investment;

8. "Competent multilateral agency" means an international organization of which both the Contracting Parties are a member and has regulatory powers in economic matters such as the Bretton Woods Institutions.

## **Article 2. Promotion and Protection of Investment**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest in their territory and to permit such investments, subject to their right to exercise the powers conferred by their laws.

2. Any investment permitted under Article 2 (1) shall be subject to fair and fair treatment at any time and shall enjoy full protection and security in the territory of the other Contracting Party, no Contracting Party shall in any way prejudice, through measures Arbitrary or discriminatory, the management, maintenance, use, enjoyment or transfer of investments made in their territory by investors of the other Contracting Party. Each Contracting Party shall comply with its obligations with regard to investments made by investors of the other Contracting Party (1), shall at all times agree fair and fair treatment and shall enjoy full protection and security in the territory of the other Contracting Party, None Contracting Party in no way prejudices, by arbitrary or discriminatory measures, the management, maintenance, use, enjoyment or transfer of investments made in its territory by investors of the other Contracting Party. Each Contracting Party shall respect its obligations with regard to investments made by investors of the other Contracting Party

3. Each Contracting Party shall maintain in its territory conditions enabling the continuity of legal treatment, including the fulfillment, in good faith, of all commitments made towards each specific investor.

## **Article 3. National Treatment and Most Favored Nation Clause**

1. Both Contracting Parties, within the boundaries of their territory, shall accord investment and related income from investors of the other Contracting Party a treatment no less favorable than that reserved for investments and the income of their own nationals or investors of States third.

2. Where the law of one of the Contracting Parties or obligations deriving from international law, existing at the time or subsequently set up and applicable to each Contracting Party, contains a general or specific rule that provides for investment by investors of the other Contracting Party More favorable treatment than that provided for in this Agreement, this provision, to the extent that it is more favorable, will prevail over this Agreement.

3. The provisions of paragraphs 1 and 2 of this Article shall not relate to the advantages and privileges which a Contracting Party may accord to investors of non-member States as a result of their accession to an Economic or Monetary Union, a Common Market, To a Free Trade Area, to a Regional or Sub-Regional Agreement, to a Multilateral International Economic Agreement, or under Agreements concluded to avoid double taxation or facilitate cross-border exchanges. Paragraphs 1 and 2 of this Does not refer to the advantages and privileges that a Contracting Party may grant to investors of third States as a result of their accession to an Economic or Monetary Union, a Common Market, a Free Trade Area, an Agreement Regional or sub-regional agreement, to an international multilateral economic agreement, or under Agreements concluded to avoid double taxation f Exchange or facilitate cross-border exchanges.

## **Article 4. Compensation for Damage or Loss**

1. Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party suffer losses due to war or other forms of armed conflict, revolution, national emergency, rebellion, insurrection or disorder shall be accorded to him a treatment In respect of refund, indemnity, compensation or other composition, no less favorable than

that accorded by that Contracting Party to its investors or third-country investors, whichever is the most favorable for the investors concerned.

## **Article 5. Nationalization or Expropriation**

1 . Investments covered by this Agreement shall not be subject to measures that may restrict, permanently or temporarily, the rights of ownership, possession, control or enjoyment thereof, except where specifically provided for by applicable national or local law and / or regulations and judgments Issued by competent courts or tribunals.

2 . No Contracting Party shall adopt, directly or indirectly, "de jure" or "de facto", expropriation measures, nationalization or any other measure having the same nature or the same effect as regards investments made by investors of the other Contracting Party, For public purposes, on a non-discriminatory basis and according to regular law and provided that provisions are made for prompt, adequate and effective compensation. Compensation will correspond to the fair market value of the investment covered by such measures immediately prior to the date on which such measures have been made public. The investor concerned shall have the right, in accordance with the laws of the Contracting Party which shall expire, to give an urgent review of the legality of the measure adopted in relation to the investment and investment assessment in accordance with the principles set out in this paragraph , By a competent judicial authority.

3 . The exchange rate applicable to such damages shall be that prevailing on the date immediately preceding the date on which nationalization or expropriation was announced or made public.

4 . Without limiting the scope of paragraph 2 of this Article, where the subject of nationalization, expropriation or similar measure is an enterprise of any kind, the investor's share assessment shall be made in the investment currency plus Capital increases and capital revaluations, as well as unallocated profits and reserve funds and decreased for amounts corresponding to capital cuts and losses. Paragraph 2 of this Article, if the subject of nationalization expropriates Or similar measure is an enterprise of any kind, the investor's share valuation will be made in the currency of the investment, plus capital increases and capital revaluations, as well as unallocated profits and reserve funds and decreased by Amounts corresponding to capital cuts and losses.

5 . Compensation will be calculated in a convertible currency at the prevailing exchange rate applicable on the date on which the nationalization or expropriation decision was announced or made public and will be freely chargeable and transferable.

6 . Compensation will be considered timely if it occurs without undue delay and, in any case, within three months.

7 . Three months have elapsed, with arrears on compensation, interest on the EURIBOR half-yearly rate will apply.

8 . In the absence of an agreement between the investor and the Contracting Party concerned, the amount of compensation shall be determined in accordance with the dispute settlement procedures provided for in Article 9 of this Agreement. Compensation payable under the terms of this Article shall be freely Transferable. Article 9 of this Agreement Compensation payable under the terms of this article shall be freely transferable.

9 . The provisions of paragraph 2 of this Article shall also apply to profits from an investment and, in the event of liquidation, to the proceeds of the liquidation itself. Paragraph 2 of this Article shall also apply to profits from an investment and, Of liquidation, to the proceeds of the liquidation itself.

## **Article 6. Repatriation of Capital, Profits and Profits**

1 . Each Contracting Party shall ensure that investors of the other Contracting Party may transfer abroad without undue delay and in any convertible currency, the following:

a) Capital and additional capital, including reinvested earnings used to maintain and increase the investment;

b) Net profits, dividends, royalties, fees for assistance and technical services, interests and other profits;

c) Profits deriving from total or partial sale or total or partial liquidation of an investment;

d) Funds for the repayment of loans linked to an investment and the payment of interest thereon;

e) An adequate part of remuneration and allowances paid to nationals of the other Contracting Party for activities and services carried out in connection with an investment made in the territory of the other Contracting Party.

2 . Without limiting the scope of Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same favorable treatment reserved for investments made by third-country

investors, where this is more favorable. Article 3 of this Agreement, the Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article the same favorable treatment accorded to investors of third countries, if it is more favorable.

3. In the event of a series of difficulties in the balance of payments, each Contracting Party may temporarily limit the transfer of funds, provided that it implements the relevant provisions adopted in the specific case by a competent multilateral agency. Such restrictions will be imposed on a basis of equity, non-discrimination and good faith.

## **Article 7. Subrogation**

In the event that a Contracting Party or its institution has provided a guarantee against non-commercial risks for investments made by its investor in the territory of the other Contracting Party and has made payments to that investor on the basis of such collateral, the other Contracting Party shall recognize the transfer of the investor's rights to the first Contracting Party. In relation to the transfer of payments to the Contracting Party or its establishment by virtue of such transfer, the provisions of Articles 4, 5 and 6 of this Agreement shall apply.

## **Article 8. Transfer Procedures**

1. The transfers referred to in Articles 4, 5, 6 and 7 shall be made without undue delay and, in any event, within six months of the fulfillment of all tax obligations and shall be carried out in a convertible currency. All transfers shall be made at the prevailing exchange rate applicable on the date on which the investor requests transfer, with the exception of the provisions of paragraph 5 of Article 5 concerning the exchange rate applicable in the case of nationalization or expropriation. Articles 4, 5, 6 and 7 shall be made without undue delay and, in any event, within six months of the fulfillment of all tax obligations and shall be executed in a convertible currency. All transfers shall be made at the prevailing exchange rate applicable on the date on which the investor requests transfer, with the exception of the provisions of paragraph 5 of Article 5 concerning the exchange rate applicable in the case of nationalization or expropriation.

2. The tax obligations referred to in paragraph 1 of this Article shall be deemed to have been fulfilled when the investor has fulfilled the obligations, obligations and conditions laid down in the relevant legislation provided for by the laws of the Contracting Party in whose territory the investment was effected. paragraph 1 of this Article shall be deemed to have been fulfilled when the investor has fulfilled the obligations, obligations and conditions laid down by the relevant legislation under the laws of the Contracting Party in whose territory the investment was made.

## **Article 9. Disputes between Investors and Contracting Parties**

1. As the parties have agreed to arbitration, disputes between a Contracting Party and investors of the other Contracting Party regarding investments, including claims relating to the amount of compensation, shall, as far as possible, be settled in friendly.

2. In the event that an investor and an entity of one of the Contracting Parties have concluded an investment agreement, the procedure laid down in that investment agreement shall apply.

3. If the dispute can not be made in a friendly manner within six months of the date of the written request for composition, the interested investor may, at his option, have the dispute over the composition:

- a) To the Court of the Contracting Party competent for the territory;
- b) To an arbitral tribunal ad hoc, in accordance with the Arbitration Rules of the United Nations Commission on International Commercial Law (UNCITRAL); The host Contracting Party undertakes to accept the referral to that arbitration;
- c) The International Center for the Settlement of Investment Disputes, for the application of the arbitration procedures provided for in the Washington Convention of 18 March 1965 on the settlement of disputes concerning investments between States and citizens of other States, if or not just two Contracting Parties have acceded to you.

4. Both Contracting Parties shall refrain from negotiating through diplomatic channels any arguments relating to an arbitration procedure or ongoing judicial proceedings until such proceedings have been concluded and one of the Contracting Parties has failed to comply with the judgment of the Arbitral Tribunal or the judgment of the arbitral tribunal. Other court within the period laid down therein, or otherwise within the time limit which may be determined on the basis of the provisions of international or domestic law applicable to the present case.

5. This Agreement shall not apply to litigious or pending disputes at the date of entry into force of the same with respect to investments made before its entry into force.

## **Article 10. Composition of Contracts between the Contracting Parties**

- 1 . Disputes arising between the Contracting Parties on the interpretation and application of this Agreement shall, as far as possible, be composed in a friendly manner through the diplomatic channels.
- 2 . In the event that the dispute can not be made within six months of the date on which one of the Contracting Parties has notified it in writing to the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be brought before a Court of First Instance Ad hoc arbitration as provided in this article.
- 3 . The Arbitral Tribunal shall be constituted as follows: within two months from the date of receipt of the arbitration request, each Contracting Party shall appoint a member of the Tribunal. The two members will nominate the President of the Court of First Instance that he will not be a citizen of the Contracting Parties. The Chairman shall be appointed within three months from the date of the appointment of the other two members and shall be appointed by mutual agreement between the Parties.
- 4 . If, within the time limit referred to in paragraph 3 of this Article, the appointments of the members and the President have not been made, each Contracting Party may, in the absence of any agreement, request the President of the International Court of Justice to provide it. In the event that he is a national of one of the Contracting Parties, or for whatever reason, he / she can not proceed with the nomination, the request shall be addressed to the Vice President of the Court. Should the Vice President of the Court be a citizen of one of the Contracting Parties or, for whatever reason, not be able to arrange appointments, the invitation to do so will be addressed to the senior member of the International Court of Justice Is not a citizen of any of the Contracting Parties. Paragraph 3 of this Article, appointments of members and the President have not been made, each Contracting Party may, in the absence of any agreement, request the President of the International Court of Justice to provide it. In the event that he is a national of one of the Contracting Parties, or for whatever reason, he / she can not proceed with the nomination, the request shall be addressed to the Vice President of the Court. Should the Vice President of the Court be a citizen of one of the Contracting Parties or, for whatever reason, not be able to arrange appointments, the invitation to do so will be addressed to the senior member of the International Court of Justice Is not a citizen of one of the Contracting Parties.
- 5 . The Arbitral Tribunal will decide by majority vote and its decisions will be binding. Each Contracting Party shall bear the expenses for its arbitration and for its representation at the hearings. The expenses for the President as well as any other expenses shall be equally divided between the Contracting Parties, unless the arbitral tribunal decides otherwise. The arbitral tribunal will establish its own procedures.

## **Article 11. Relations between Governments**

The provisions of this Agreement shall apply irrespective of the existence or not of diplomatic or consular relations between the Contracting Parties.

## **Article 12. Application of other Provisions**

- 1 . If a matter is governed by both this Agreement and any other international agreement that the two Contracting Parties are signing or by general rules of international law, the most favorable provisions shall apply to the Contracting Parties and their investors.
- 2 . If the host Contracting Party has not granted the most favorable treatment referred to in Article 3 to an investor in the other Contracting Party and the investor has suffered damage as a result of that, the latter shall be entitled to compensation for such damage. Article 3 to an investment of the other Contracting Party and the investor has suffered damage as a result of that, the latter shall be entitled to compensation for that damage.
- 3 . Subsequent to the date on which the investment was made, any substantial changes in the law of the Contracting Party governing, directly or indirectly, the investment will not be applied retroactively and the investment made under this Agreement will therefore be protected .

## **Article 13. Entry Into Force**

This Agreement shall enter into force on the date of receipt of the last notification by which a Contracting Party shall officially notify the other Contracting Party of its completion of its ratification procedures.

## **Article 14. Duration and Expiration**

1 . This Agreement shall remain valid for a period of ten years from the date of notification under Article 13 and thereafter shall remain in force for a further period of five years, unless one of the two Contracting Parties denounces it in writing no later than one Year before its expiry date. Article 13 and subsequently shall remain in force for an additional period of five years, unless one of the two Contracting Parties denies it in writing no later than one year before its expiry date.

2 . In the case of investments made before the expiry date referred to in paragraph 1 of this Article, the provisions of Articles 1 to 12 and of the Protocol shall remain in force for a further period of five years from the date referred to in paragraph 1 of this Article. Article 12, the provisions of Articles 1 to 12 and the Protocol shall remain in force for a further period of five years from that date.

Done at Windhoek on 9 July 2004 in two originals, one in the Italian and one in the English language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA