

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ANGOLA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Angola and the Government of the Arab Emirates United States (hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for investment in both States and to intensify cooperation between private companies in both states, with a view to stimulating the productive use of the resources;

Recognizing the increasing importance of the progressive liberalisation of the investments, to stimulate the initiative of investors to promote prosperity in both Contracting Parties;

Considering that fair and equitable treatment of investments on a reciprocal basis will serve that purpose;

Convinced that this Agreement will contribute to the further development of the two Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means any type of asset and includes, but is not limited to, the following:

- A. Tangible and intangible, movable and immovable assets as well as any other rights such as leases, mortgages, pledges, privileges, guarantees;
- B. An enterprise or commercial enterprise, or shares and other forms of participation in an enterprise or business project;
- C. reinvested returns, cash credits and performance credits according to contracts with economic value;
- D. Industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, know-how and any other similar rights;

2. This Agreement does not cover concessions or other rights conferred by law or contract relating to natural resources;

3. Claims in cash involving the type of interests set forth in subparagraphs (a) to (d) referred to in the preceding paragraph, but no cash claims arising solely from:

(i) commercial contracts for the sale of goods or services by a national or an enterprise in the territory of one Contracting Party to an enterprise in the territory of the other Contracting Party, or

(ii) the granting of credit in the context of a commercial transaction, such as trade finance, other than a loan referred to in paragraph 1(d).

1. Any change in the way the assets are invested does not affect their nature as investment.

2. The term "returns" means the amounts generated by investment and includes in particular, but not limited to, profits, interests, capital gains, dividends and royalties.

3. Returns and, in the case of reinvestments resulting from reinvestment, shall receive the same protection as an investment in accordance with the provisions of this Agreement.

4. The term "investor" means, for each Contracting Party:

A) Natural persons having the citizenship or nationality of each Contracting Party in accordance with its laws.

B) An entity established in accordance with the law of that Contracting Party and recognised as a legal person, such as companies, firms and development finance institutions.

C) The Government of a Contracting Party and its Financial Institutions.

5. The term "territory" refers to:

A) Angola: the Republic of Angola and, when used geographically, includes its territorial sea, as well as any area outside the territorial sea, including the continental shelf, which has been or may be designated in accordance with the laws of Angola, and in accordance with international laws, as an area within which Angola may exercise sovereign rights and jurisdiction.

B. United Arab Emirates: the territory of the United Arab Emirates, its territorial sea, the airspace and underwater areas over which the United Arab Emirates exercises in accordance with international law and the sovereign rights of the United Arab Emirates; including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity undertaken in its water resources, seabed and subsoil, in the context of the exploitation or enjoyment of natural resources under its law and international law.

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

1. Each Contracting Party shall admit investments from investors of the other Contracting Party in accordance with its laws and regulations.

2. Investments by investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. For greater assurance, the protection and security shall not exceed the treatment granted by the Contracting Party to its own residents and other foreign nationals under the laws and regulations of the Contracting Party to protect its own security and public order.

3. Neither Contracting Party shall in any way, through unreasonable or discriminatory measures, prejudice the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

4. Each Contracting Party shall comply with any obligation it may have entered into with respect to investments by investors of the other Contracting Party.

## **Article 3. Protection of Investments**

1. Investments and returns of investors of either Contracting Party, made in accordance with its laws and regulations, shall always be accorded fair and equitable treatment.

2. Neither Contracting Party shall prevent, by arbitrary or discriminatory measures, the development, management, use and expansion of the sale and, where appropriate, liquidation of such investments.

3. For the sake of security, fair and equitable treatment means that each Contracting Party shall, as far as possible, make its laws and regulations relating to investments available to the public and give the investor the right of access to its courts, administrative tribunals and agencies and to all other judicial authorities.

4. In accordance with its laws and regulations, each Contracting Party shall ensure to investors of the other Contracting Party that, in case of liquidation of an investment, the proceeds of liquidation receive the same protection and treatment.

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

1. Each Contracting Party shall, in accordance with its laws and regulations, grant in its territory to the investments and income of investors of the other Contracting Party treatment no less favourable than that which it grants to the investments and income of investors of any third State, with respect to the development, management, maintenance, use, expansion, sale or another disposal of its investment.

2. With regard to most-favoured-nation treatment, each Contracting Party shall grant in its territory to investors of the other Contracting Party, in respect of the development, management, maintenance, use, expansion, sale or another disposal of its investment, treatment no less favourable than that which it grants to investors of any third State, whichever is more favourable to the investors concerned.

3. Paragraphs 1 and 2 of this Article shall not apply to public contracts at all levels, concessions, grants or loans granted to small and medium-sized enterprises.

4. Without prejudice to any other bilateral investment agreement which the Contracting Parties have signed with other States before or after the entry into force of this Agreement, the most-favoured-nation treatment does not apply to procedural or judicial matters.

5. The provisions of paragraphs 1 and 2 of this Article may not be interpreted as obliging a Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the first Contracting Party by virtue of:

A. Any existing or future customs union or economic or monetary union, a free trade area or similar international agreements to which either Contracting Party is or may become a party in the future;

B. any international agreement or arrangement, wholly or partly related to taxation.

## **Article 5. Compensation for Damage or Loss**

1. Where investments made by investors of either Contracting Party suffer loss or damage as a result of war or another armed conflict, civil disturbance, a national state of emergency, revolution, rioting or similar events in the territory of the other Contracting Party, treatment as regards restitution, compensation or other arrangements shall be accorded by the latter Contracting Party no less favourable than the treatment accorded by the latter Contracting Party to its own investors or to investors of any third State, whichever is more favourable to investors concerned.

2. Without prejudice to paragraph 2 1 of this Article, investors of one Contracting Party who, in any of the events referred to in this clause, suffer damage or loss in the territory of the other Contracting Party as a result of

(A) the requisition of their property or part of their assets by their forces or authorities;

(B) destruction of its property or part of its assets by its forces or authorities, which has not been caused in combat or is not required by the necessity of the situation, shall be promptly, adequately and effectively compensated for the damage or loss suffered during the requisition period or as a result of the destruction of its property. The resulting payments shall be made in currency freely convertible and freely transmissible without delay.

## **Article 6. Prohibition of Performance Requirements**

1. Neither Contracting Party imposes on its territory compulsory measures on investments by investors of the other Contracting Party with regard to the purchase of materials, means of production, operation, transport, marketing of its products or similar orders with disproportionate or discriminatory effects. This paragraph shall not apply to measures taken in accordance with laws and regulations in connection with government purchases of goods and services at any level of government of the Contracting Party.

2. Neither Contracting Party may:

A. restrict the export of goods and services and;

B. impose conditions to achieve a certain level or percentage of domestic content.

## **Article 7. Expropriation**

1. A Contracting Party shall not expropriate or nationalise, directly or indirectly, in its territory, an investment of an investor from the other Contracting Party, nor shall it take measures having equivalent effect (hereinafter referred to as "expropriation"), unless the following conditions are met simultaneously:

A. For public interest purposes;

B. On a non-discriminatory basis;

C. In accordance with due legal process, and,

D. accompanied by the payment of immediate, adequate and effective compensation.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation is known, whichever occurs first.

3. Where fair market value cannot be determined, compensation shall be determined fairly, taking into account all relevant factors and circumstances such as the capital invested, the nature and duration of the investment, substitution and the book value.

4. The compensation must be paid out without delay, be effectively realisable and freely transferable.

5. The investor of a Contracting Party affected by the expropriation by the other Contracting Party shall have the right to a prompt review of his case, including the assessment of his investment and the payment of compensation in accordance with this Article, by a judicial or other competent and independent authority of the latter Contracting Party.

6. Where a Contracting Party expropriates the assets of a legal person established in its territory in accordance with its laws and regulations and involving investors of the other Contracting Party, it shall ensure that the provisions of this Article are applied in a manner which guarantees adequate and effective compensation to such investors.

## **Article 8. Immunity of Government Movable or Immovable Property**

1. The movable and immovable property of any of the Contracting Parties, or that of local governments or local authorities, shall not be subject to nationalisation, expropriation or kidnapping, directly or indirectly, and shall be beyond the jurisdiction of the local courts of any of the Contracting Parties.

2. State property shall not be subject to any of the above measures by any third party and shall be immune from the jurisdiction of the local courts.

## **Article 9. Transfers**

1. In accordance with the laws and regulations in force in the territory of the Contracting Party, each Contracting Party shall ensure that all payments for investment in its territory by an investor of the other Contracting Party can be freely made transferred in and out of the Territory without delay. These transfers shall include in particular:

A) initial capital and additional amounts to maintain or increase a investment;

B) returns;

C) proceeds from the sale or liquidation of all or part of an investment;

D) compensation payments in accordance with Articles 5 and 7 of this Agreement;

E) payments in accordance with Article 10 of this Agreement;

(F) payments arising from the settlement of an investment dispute;

2. Each Contracting Party shall ensure that the transfers provided for in paragraph 1 of this Article are made without delay and in a currency freely convertible, at the market exchange rate prevailing on the date of the transfer.

3. Without prejudice to paragraphs 1 and 2 of this Article, a Contracting Party may, in accordance with its laws and regulations, of in good faith and in an equitable and non-discriminatory manner, to prevent temporary transfers, to enforce their laws and regulations concerning:

A. Protection of creditors in bankruptcy proceedings; and

B. Criminal offences.

## **Article 10. Subrogation**

1. If one of the Contracting Parties or its designated body (for effects of this article: the "guarantor") make a payment under of compensation granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party will recognise :

A. The assignment to the guarantor by law or by legal transaction of all rights and claims of the indemnified party; and

B. That the guarantor has the right to exercise such rights and to enforce such rights credits by means of subrogation, to the same extent as the party indemnified by assuming the obligations relating to the investment.

2. The guarantor has the right in all circumstances:

A. The same treatment as regards rights, claims and obligations acquired by him by virtue of the cession; and

B. Any payments received in respect of such rights and claims which the indemnified party was entitled to receive on by virtue of this Agreement, in respect of the investment in question and their related returns.

3. The rights or claims subrogated shall not exceed the original rights or claims of the investor.

4. Notwithstanding the provisions of paragraph 2 1 of this Article, subrogation will be carried out in the Contracting Party only after approval of the competent authority of that Contracting Party.

## **Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. An investor who has a dispute with a Contracting Party must initially try to resolve it through negotiations.

2. To start negotiations, the investor must hand over to the Party Contractor a written notification. The notification must specify:

A. The name and address of the investor having the dispute;

B. the provisions of this agreement allegedly infringed;

C. The factual and legal basis of the claim; and

D. the claim for compensation and the amount of damages claimed.

3. If the Contracting Party so requires, if the dispute cannot be amicably settled within three months of receipt of the written notification, the dispute will be submitted to the competent court of the Contracting Party in whose territory the investment is made.

4. If the dispute cannot be settled amicably within six months from the date of receipt of the written notification or of the start of the conciliation referred to in paragraph 2 3 of this Article, the dispute shall be resolved, at the investor's request, as follows:

A. By arbitration of the International Centre for the Resolution of Investment Disputes (ICSID), set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other states, open for signature in Washington, D.C. to 18 March 1965. In the event of arbitration, each of the Parties The Contracting Parties, by this Agreement, hereby irrevocably consent and in advance, even in the absence of an individual arbitration agreement between the Contracting Party and the investor, to submit any dispute to this Centre; or

B. By the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), accepted by both Contracting Parties. In the event of arbitration, each Contracting Party shall, by means of this Agreement, irrevocably and in advance, even in the absence of an individual arbitration agreement between the Contracting Party and the investor, submit such a dispute to the said court.

5. The judgment is final and binding, provided that the provisions of Articles 42 to 54 of the ICSID Convention and Regulations have been complied with. Each Contracting Party shall ensure the recognition and enforcement of the arbitration award in accordance with its laws and regulations.

6. A Contracting Party which is a party to a dispute shall not raise objections, at any stage of the conciliation procedure or of arbitration or the enforcement of a judgment, of which the investor who is the other party to the dispute has received compensation in by virtue of insurance in respect of all or part of their losses.

7. When the investor and any designated entity of a Party the contractor or its lessee administration has concluded an agreement concerning the investor's investments, the procedure of settlement of disputes provided for therein.

## **Article 12. Settlement of Disputes between the Contracting Parties**

1. The controversies between the Contracting Parties concerning interpretation or application of this Agreement shall be settled either by as far as possible, through diplomatic negotiations.

2. If a dispute under paragraph 1 of this Article cannot be resolved within six months, at the request of either Party

Contractors will be submitted to a three-member arbitral tribunal.

3. This arbitral tribunal shall be constituted ad hoc. Each Contracting Party shall appoint a member and these two members shall agree on a national of a third State as its President. These members will be appointed within two months of the date on which one of the Contracting Parties has informed the other Contracting Party of their intention to refer the dispute to an arbitration tribunal whose chairman shall be appointed within two months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the Court International Justice to make the necessary appointments. If the President of the International Court of Justice is a national of any of the Contracting Parties or is otherwise prevented from performing this function, the Vice-President or, in the event of his or her incapacity, the next member of the International Court of Justice in terms of seniority, according to the Court's Rules of Procedure must be invited, under the same conditions, to make the appointments necessary. The appointed judge must be a national of a State which has diplomatic relations with the Contracting Parties.

5. The arbitral tribunal shall establish its own rules of procedure, unless the Contracting Parties decide otherwise.

6. The arbitral tribunal shall take its decision pursuant to this Agreement and in accordance with the rules of international law. The decision is taken by a majority of votes; the decision will be final and binding.

7. Each Contracting Party shall bear the costs of its own member and his legal representation in the arbitration procedure. The President's costs and the remaining costs will be borne by equal shares by both Contracting Parties. However, the Court may, in its judgment determine another distribution of costs.

### **Article 13. Application of other Rules**

Without prejudice to Article 4.2, if the legislation of either Party Contracting Parties or obligations between the Contracting Parties arising out of existing international law or established below between the Contracting Parties, in addition to this Agreement, contain general rules or specific, which confer on investors of the other Contracting Party more favourable treatment than that provided for in this Agreement, these rules will be applied in so far as they are more favourable to investor.

### **Article 14. Implementation of the Agreement**

This Agreement shall apply to ongoing investments and to investments which will be made after the entry into force of this Agreement but will not apply to any investment dispute that has arisen nor to any claim that has been settled before it enters into force.

### **Article 15. Consultations**

The Contracting Parties shall consult each other at the request of either Party, on any question related to implementation or enforcement of this Agreement, including an investment dispute. These consultations will be held on a proposal from one of the Contracting Parties in a place and at a time to be agreed by diplomatic means.

### **Article 16. Denial of Benefits**

1. The advantages of this Agreement shall not apply to an investor of a Contracting Party if the main purpose of the acquisition of the nationality of that Contracting Party has been obtained from benefits under this Agreement which otherwise would not be available to the investor.

2. The benefit of this agreement will not be available to an investor to restructure its investment through intermediary countries which have no diplomatic relations with the host State and do not have substantial commercial activity in that State.

3. For greater certainty, the benefit of this Agreement will not be available for third parties.

4. Before denying the benefits of this Agreement, the Contracting Party denying the benefits shall notify the other Contracting Party.

### **Article 17. Preventive and Safeguard Measures**

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services for prudential reasons.
2. Measures applied in accordance with paragraph 1 of this Article may not be used as a means of specifically avoiding or solely their commitments or their obligations under this Agreement.
3. The measures referred to in paragraph 2 1 of this Article shall not infringe the Agreement of the International Monetary Fund on the free movement of capital.

## **Article 18. Measures on Health, Safety, the Environment and National Labour Standards**

1. None of the Contracting Parties shall repeal or derogate from their laws on health, safety, the environment or their commercial or industrial labour standards as a means of encouraging investments by investors of the Contracting Party or any non-Contracting Party.
2. Investment will focus on environmental protection and the sustainable development and will encourage the use of technologies which do not harm the environment, in accordance with national policies of the Parties.

## **Article 19. Entry Into Force, Amendments, Duration and Denunciation**

1. This Agreement shall enter into force on the date of receipt of the last notification, through diplomatic channels, by which one of the Parties Contracting Parties shall notify the other Contracting Party that their internal legal requirements for the entry into force of this agreement have been fulfilled.
2. This Agreement may be amended in writing by mutual consent of the Contracting Parties. Such amendments shall enter into force in accordance with the same procedure as the Agreement.
3. This Agreement shall remain in force for a period of ten years and shall be extended for subsequent ten-year periods unless, one year before the expiry of the initial or subsequent period, either of the Contracting Parties notifies the other Contracting Party of their intention to terminate the Agreement. In that case, the termination will enter into force at the end of the current ten-year period.
4. With regard to investments made before the date on that the termination of this Agreement enters into force, the provisions of this Agreement will continue to apply for a period of ten years from the date of its entry into force.
5. This Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

In witness whereof, the undersigned duly authorized to sign this Agreement.

Done at Dubai on 5 April 2017 in three copies in the Arabic, Portuguese and English languages, all three texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF ANGOLA

Abrahão Pio dos Santos Gourgel

THE UNITED ARAB EMIRATES

Obaid Humaid Al Tayer

Minister of State for Finance