

AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the Contracting Parties");

Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative, will contribute to development and will increase prosperity in both States;

Recognising the right of each Contracting Party to define the conditions under which foreign investment can be received and the investor's duty to respect the host Country's Sovereignty and laws;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) "investment" means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares in and stock and debentures of a company;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, technical processes, know-how and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments and the term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement; the alteration of the asset shall not be contrary to the initial approval granted to the investment by the Contracting Party in whose territory the investment is made;

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "Nationals" means, with regard to either Contracting Party, natural persons having the nationality of that Contracting Party;

(d) "Companies" means, with regard to either Contracting Party, corporations, firms, associations and other legal persons incorporated or constituted under the law in force in any part of each Contracting Party or in any territory to which this Agreement is extended in accordance with the provisions of Article 11;

(e) "territory", which includes the territorial sea and any maritime area situated beyond the territorial sea of the State concerned which has been or might in the future be designated under their national laws in accordance with international

law as an area within which they may exercise rights with regard to the sea-bed and subsoil and the natural resources, means:

(i) In respect of the Federal Republic of Nigeria: as defined by the Constitution of the Federal Republic of Nigeria. Constitution of the Federal Republic of Nigeria.

(ii) In respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 11 hereof.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall within the limits of its resources encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws shall admit such capital. This Agreement shall, to the extent that a written approval is required for an investment, only extend to investment, whether made before or after the coming into force of this Agreement, which is specifically approved in writing by the Contracting Party in whose territory the investment has been made or is subject to the laws in force in the territory of the Contracting Party concerned and to the conditions, if any, upon which such approval shall have been granted.

(2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investment in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

(1) Neither Contracting Party shall in its territory subject investment or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, either Contracting Party may grant to its own nationals and companies special incentives in order to stimulate the creation of local industries, provided they do not significantly affect the investment and activities of nationals and companies of the other Contracting Party in connection with an investment.

Article 4. Compensation for Losses

(1) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State.

(2) Without prejudice to paragraph (1) of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable

Article 5. Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to

measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal policies of that party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the prevalent commercial rate until the date of payment, shall be made without delay, and shall be effectively realisable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of the Contracting Party making the expropriation, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 6. Repatriation of Investment and Returns

(1) Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns.

(2) Transfers of currency shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the National or Company making the investment and the Contracting Party concerned. Unless otherwise agreed by the National or Company making the investment transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future free trade zone, customs union or regional economic organisation or any similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation,

Article 8. Reference to International Centre for Settlement of Investment Disputes

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (hereafter called "the Convention") opened for signature at Washington on 18 March 1965 any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall, in accordance with Article 25(2)(b) of the Convention, be treated for the purposes of the Convention as a company of the other Contracting Party. If any such dispute should arise and agreement cannot be reached within three months between the parties to the dispute through pursuit of local remedies or otherwise, then, if the national or company affected also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the national or company affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(2) Neither Contracting Party shall pursue a dispute through the diplomatic channel after the dispute has been referred to the Centre unless:

- (a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or
- (b) The other Contracting Party should fail to abide by or comply with any award rendered by an arbitral tribunal.

Article 9. Disputes between the Contracting Parties

- (1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel,
- (2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
- (4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
- (5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

- (1) If one Contracting Party or its designated agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the party indemnified
- (2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.
- (3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 11. Territorial Extension

At the time of signature of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom is responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 12. Amendment or Revision

Any amendment to or revision of this Agreement shall be in writing and shall come into effect when confirmed by both Contracting Parties in an Exchange of Notes.

Article 13. Entry Into Force

This Agreement shall enter into force on signature.

Article 14. Duration and Termination

This Agreement shall remain in force for an initial period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made at any time before the termination of the Agreement, its provisions shall continue in effect with respect to such investments for a period of fifteen years from the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Abuja this eleventh day of December 1990.

For the Government of the Federal Republic of Nigeria

MOHAMMED YAHAYA

For the Government of the United Kingdom of Great Britain and Northern Ireland

TIMOTHY SAINSBURY