

Cooperation agreement between the Government of the Republic of the Congo and the Government of the People's Republic of China on the promotion and protection of investments

The Government of the Republic of the Congo and the Government of the People's Republic of China (designated contracting parties in this Agreement):

- In order to create favourable conditions for investment by investors of a Party contratante in the territory of the other party;
- Recognizing that the promotion and the reciprocal promotion and protection of such investments will be conducive to stimulating business initiative of the investors and increasing prosperity in both States;
- Desiring to intensify cooperation between the two States on the basis of equality and mutual interests;

Have agreed as follows:

Article 1. General Definitions

1. The term "investment" means any kind of asset invested by investors of one Contracting Party in accordance with the legislation in force in the territory of the other party and shall include, inter alia:

- a) Movable and immovable property and other property rights such as mortgages and guarantees;
- b) Shares, obligations, stocks or any other form of participation in companies;
- c) Securities or any other activity having an economic value associated with an investment;
- d) Intellectual property rights, including copyrights, patents, trademarks, designation of origin, technical process, know-how and goodwill;
- e) Trade concessions granted by law or pursuant to a legal agreement, including concessions to cultivate, extract, explore or exploit natural resources.

Any change in the form of capital invested does not affect the quality of investment.

2. The term "investor" means:

- a) Natural persons who have the nationality of either Contracting Party in accordance with the law of that Contracting Party;
- b) The economic entities, including corporations, companies, registered associations, companies and other organizations established in accordance with the legislation of one of the Contracting Parties and having their headquarters in the territory of that Contracting Party regardless of whether they are whether for profit or not, or their liability is limited or not.

3. The term "income" means the amounts generated by investments, including the profits, dividends, interests, capital gains, royalties and all other lawful income.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.

2. Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other contracting party.

3. Subject to its laws no Contracting Party shall take unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments by investors of the other Contracting Party.

4. In accordance with its laws, the Contracting Party concerned shall provide assistance and facilitate procedures for obtaining visas and working to permit nationals of the other contracting party engaging in activities of investment in its territory.

Article 3. Treatment of Investments

1. Investments made by investors of each Contracting Party shall permanently enjoy fair and equitable treatment in the territory of the other contracting party.

2. Subject to its laws, each Contracting Party shall apply to investments and activities related to investments made by investors of the other Contracting Party the same treatment as that applied to the investments and associated activities of its own investors.

3. No Contracting Party shall not apply a less favourable treatment to investments and activities relating to these investments made by the investisseuse the other contracting party, as applied for investments and associated activities by investors of a third State.

4. The provisions of paragraphs 1 to 3 of this article shall not be interpreted as an obligation of one contracting party to extend to investors of the other party treatment, preference or privilege by virtue of:

a) Any customs union, free trade area, economic union and any international agreement resulting in a customs union, a free trade zone, an economic union;

b) Any international agreement or arrangement relating wholly or mainly to taxation;

c) Any international agreement or arrangement for facilitating border trade.

Article 4. Expropriation

1. Neither Contracting Party shall expropriate or nationalize or take other similar measures (hereinafter "expropriation") against investments made by investors of the other Contracting Party in its territory unless the following conditions are met:

a) For the public interest;

b) In accordance with their national judicial procedure;

c) Without discrimination;

d) Against compensation.

2. The compensation referred to in paragraph 1 of this article shall be equivalent to the market value of the expropriated investment and immediately before the expropriation took place when the expropriation or who will take place is known in public, which means earlier. such market value shall be determined in accordance with generally recognized principles of valuation. the compensation shall include at the current interest rate prevailing in trade and applicable to the currency in which the investment was originally made from the date of expropriation until the date of payment. The indemnification / compensation shall also be made without delay, be effectively realizable and freely transferable.

Article 5. Indemnification / Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war, state of emergency, riot, insurrection or other similar events in the territory of the latter, from Contracting Party shall receive this treatment within the meaning of restitution, indemnification, compensation or other remedies, not less favourable than that accorded to its own investors or to those of a third State.

2. Subject to paragraph 1 of this article, investors of one Contracting party which, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from:

a) Requisition of property by their forces or the authorities of the latter, or

b) The destruction of their property by the authorities or forces of the latter, which was not held during the fighting or was not required by the necessity of the situation,

Shall be accorded reasonable indemnification / restitution or compensation.

Article 6. Transfers of Investments and Returns

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to investors of the other Contracting Party and the transfer of their investments returns held in its territory including:

- a) Profits, dividends, interests and other legitimate income;
- b) The income from the sale or the total or partial liquidation of investments;
- c) Payments pursuant to a loan agreement in connection with investments;
- d) The royalties related to the issues raised in paragraph 1 (d) of article 1;
- e) Payments of technical assistance or technical service and management;
- f) Payments in connection with projects;
- g) The earnings of nationals of the other Contracting Party who work in connection with an investment in its territory.

2. Nothing in paragraph 1 of this article shall affect the free transfer of compensation paid pursuant to Articles 4 and 5 of this Agreement.

3. The transfers mentioned above shall be made in a freely convertible currency and at the market rate and within the limits of the acceptance of investments by the contracting party and on the date of transfer.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its investor under given an indemnity in respect of an investment made in the territory of the other party, that Party shall recognize the assignment of any rights and claims of the investor to former indemnified the Contracting Party or its designated agency by law or by legal transaction, and the right of the former Contracting Party or its designated agency to exercise, by virtue of subrogation to the same extent as the investor.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute arising between the contracting parties concerning the interpretation or application of this agreement should, as far as possible, be settled by consultation through diplomatic channels.

2. If a dispute thus cannot be settled within six months, it shall be at the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. The arbitral tribunal shall consist of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint an arbitrator. Those two arbitrators shall, within two months, together select a national of a third country which has diplomatic relations with both contracting parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a citizen of either Contracting Party or is otherwise prevented from exercising such functions, the member of the International Court of Justice to read as follows in seniority who is not a citizen of a controlling party or is not otherwise prevented from carrying out the said functions shall be invited to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall issue its arbitration award (in accordance with the provisions of this Agreement and the principles of international law recognized by both contracting parties).

6. The arbitral tribunal shall render its award by a majority of votes. The award shall be final and binding on both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in the arbitral proceedings.

The cost of the Chairman and the Tribunal shall be borne in equal parts by the Contracting Parties.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiation within a period of six months, one of the Parties to the dispute shall be entitled to submit the dispute to a competent court of the Contracting Party accepting the investment.

3. If a dispute cannot be settled within a period of six months after recourse to the negotiations as provided for in paragraph 1 of this article shall be submitted, at the request of one of the Parties.

a) To the International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the settlement of disputes between States and Nationals of Other Countries adopted at Washington on 18 March 1965; or

b) To an ad hoc arbitral tribunal.

Provided that the Contracting Party involved in the dispute request by the investor concerned to exhaust the procedure local administrative review specified by the laws and regulations of the Contracting Party prior to the submission of the dispute to the procedure of the aforementioned arbitration.

However, if the investor concerned has had recourse to the procedure specified in paragraph 2 of this article, the provisions of this paragraph will not apply.

4. Subject to paragraph 3 of this Article, the ad hoc arbitral tribunal referred to in paragraph 3 (b) shall be constituted for each individual case in the following manner: each party to the dispute shall appoint one arbitrator, and both parties shall appoint a national of a third country, having diplomatic relations with both parties. Contractors as President. The first two arbitrators will be appointed within two months of the written notification. requesting arbitration by each party to the dispute to the other and the President will be chosen within the next four months. If, within the period above mentioned, the Tribunal has not been constituted, each of the parties to the to the conflict may invite the Secretary General of the International Centre for the Resolution of Disputes in respect of Investments of make the necessary appointments.

5. The ad hoc arbitral tribunal shall determine its own procedure. However, the Tribunal may, in the determination procedure, take as a guide the Arbitration Rules of the International Centre for Settlement of Disputes on investments.

6. The tribunal referred to in paragraph 3 (a) and (b) of this Article shall obtain its arbitral award by majority vote. Such arbitral award shall be final and binding on both parties to the dispute. Both Contracting Parties shall undertake to apply the arbitral award.

7. The tribunal referred to in paragraph 3 (a) and (b) of this Article shall take its decisions in accordance with the laws of the Contracting Party to the dispute accepting the investments, including its rules on conflicts of jurisdiction, the provisions of this Agreement and the applicable principles of international law.

8. Each Party to the dispute shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. the relevant costs of the Chairman and the Tribunal shall be borne in equal parts by the parties to the dispute. in its decision that the Tribunal may indicate a higher proportion of costs be borne by one of the Parties to the dispute.

Article 10. Additional Obligations

1. If the legislation of either Contracting Party or international obligations existing or established thereafter between the contracting parties result in a position which entitles investments made by investors of the other Contracting Party to a more favourable treatment than that provided for by this Agreement, such position shall not be affected by this Agreement.

2. Each Contracting Party shall observe any obligation it may have entered into with the investors of the other Contracting Party as regards their investments.

Article 11. Implementation

This Agreement shall apply to investments made before or after its entry into force by investors of each Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12. Relationship between the Contracting Parties

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the contracting parties.

Article 13. Consultations

1. The representatives of the Contracting Parties shall meet from time to time for the purpose of:

- a) Review the implementation of this Agreement;
- b) Exchanging information on legal investment opportunities;
- c) Resolving disputes arising out of investments;
- d) Forwarding proposals on promotion of investment;
- e) Studying other issues in connection with investments.

2. Where a contracting party proposes a consultation on any matter relating to paragraph 1 of this article, the other Contracting Party shall give prompt response and the consultation be held alternatively in Brazzaville and Beijing.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the month following the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures necessary relating thereto has been completed and the Agreement shall remain in force for a period of ten years.

2. This Agreement shall remain in force unless either Contracting Party fails to give a written notice to the other contracting party to terminate this Agreement one year before the expiration of the period specified in paragraph 1 of this article.

3. After the expiration of the initial ten year period, either Contracting Party may at any time terminate this Agreement by giving written notice of at least one year prior to the other contracting party.

4. In respect of investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 13 will continue to be effective for a further period of ten years from such date of termination.

In WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in triplicate in Beijing on 20 March 2000, in Chinese, English and French languages, all texts being equally authentic. In case of divergence of interpretation, the English text is authentic.

For the Government of the Republic of the Congo

For the Government of the People's Republic of China