

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT AND THE GOVERNMENT OF THE KINGDOM OF SWAZILAND CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Arab Republic of Egypt and the Government of the Kingdom of Swaziland, hereinafter referred to as the "Contracting Parties",

Desiring to intensify the economic cooperation between the two countries; and

Their determination to create better conditions for the investments made by the investors of each country in the territory of the other country; and

Realizing that the encouragement and legal protection of investments will be a catalyst to stimulate private sector initiatives and increase the economic well-being of both parties; and

Taking into account that the two parties are members of the Common Market for Eastern and Southern Africa (COMESA),

They have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investment" means all types of assets, in particular, but not limited to:

- a) movable and immovable property, as well as other rights in rem such as mortgages, guarantees, and pledges;
- b) capital shares, bonds, and any other form of shareholding in companies;
- c) claims to money or any performance in accordance with a contract of economic value;
- d) Intellectual property rights such as industrial property, copyrights and patents, invention, patents, utility models, designs, trademarks, trade names, technological processes, know-how and goodwill;
- e) The economic value of concession rights issued in accordance with public law or under a contract, including concessions to search for, exploration, exploitation, or extraction of natural resources.

2. Any change in the form of the assets or the manner of its investments does not affect its nature as an investment as defined in this agreement.

3. "Returns" means the amounts resulting from the investment during any given period such as - but not exclusively - earnings, dividends, interest, royalties, fees, or capital gains.

4. "Investor" means for each of the Contracting Parties:

- a) a natural person who acquires has the citizenship of any of the Contracting Parties according to of the relevant laws in force in either country; and
- b) a legal person created or formed in accordance with the laws in force in either of the Contracting Parties.

5. "Laws" include legislation, in addition to published administrative rules and regulations.

6. "Territory" means the land of the region and the territorial waters of each of the Contracting Parties.

## **Article 2. Scope of the Agreement**

1. This agreement applies only to:

a) With regard to investments in the territory of the Kingdom of Swaziland, all investments made by investors of the Arab Republic of Egypt and approved by the writing of the competent authorities specified by the government of the Kingdom of Swaziland according to its laws and according to those terms and conditions, if any, it deems appropriate.

b) With regard to investments in the territory of the Arab Republic of Egypt, all the investments made by the investors of the Kingdom of Swaziland and approved by the written competent authorities by the government of the Arab Republic of Egypt in accordance with its laws and according to these terms and conditions, if any, it deems appropriate.

2. The provisions of the foregoing paragraphs shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

However, this Agreement shall not apply to any dispute, which arose before its entry into force.

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

1. Each Contracting Party shall in its territory promote, as far as possible, investments by investors of the other Contracting Party and admit such investments into its territory in accordance with its laws.

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

3. Each Contracting Party shall use its best endeavors to grant, in accordance with its laws, the necessary permits in connection with the carrying out of such investments and, whenever necessary, licensing agreements and contracts for technical, commercial or, administrative assistance.

4. Investments approved under Article (2) shall in any case be accorded fair and equitable treatment in accordance with this Agreement.

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

1. Neither Contracting Party shall, in its territory, subject investments owned or controlled by investors of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investors or to those of any third State.

2. Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their activities in connection with their investments, to treatment less favourable than that which it accords to its own investors or those of any third State.

3. The treatment granted under this Article shall not relate to the benefit of any treatment, preference or privilege which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs, monetary, or economic union or a common market or free trade area.

4. The treatment granted under this Article shall not relate to the benefit of any advantage, which either Contracting Party accords to investors of third States by virtue of a double taxation agreement regarding matters of taxation.

5. The provisions of the preceding paragraphs of this article relevant to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party shall not apply to ownership of land. Nevertheless, this limitation shall not affect the rights of investors of either Contracting Party, to own land or property needed for their investment activities.

## **Article 5. More Favourable Treatment**

1. If the laws of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this agreement, contain a provision, whether general specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that is provided for by this Agreement, such provision shall to the extent that it is more favourable prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it assumed prior to this Agreement with regard to investment in

its territory by investors of the other Contracting Party.

## **Article 6. Nationalization and Expropriation**

1. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.
2. Investments by investors of either Contracting Party shall not be nationalized expropriated, or subjected to any other measure the effect to which would be tantamount to nationalization or expropriation in the territory of other Contracting Party except for reasons of public interest and subject to due process of law. In all cases prompt, adequate, and effective compensation shall be paid. Such compensation shall be equivalent to the net asset value of the affected investment immediately before the date on which the actual or impending nationalization, expropriation, or other comparable measure becomes publicly known.
3. Compensation referred to in this Article, shall be paid without delay, shall carry the usual commercial interest until the date of payment and shall be effectively realizable and freely transferable. Adequate legal provisions shall have been made in an appropriate manner at or prior to the time of nationalization, expropriation or other comparable measure as to the determination and payment of such compensation.

## **Article 7. Compensation for Losses**

1. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party due to war or other armed conflict, revolution, a state of national emergency, insurrection or riot shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors or to those investors of any third State, whichever is the more favourable, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be prompt and freely transferable.
2. Without derogation from the provisions of paragraph (1) of this Article, investors of either Contracting party who, in any of the situations referred in that paragraph, suffer losses in the territory of the other Contracting party resulting from:
  - a) requisitioning of their property by the forces or authorities of the latter Contracting Party, acting under and within the scope of the legal provisions relating to their competencies, duties and command structures; or
  - b) destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement.

Shall be accorded restitution or adequate compensation, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

## **Article 8. Transfer of Investment, Capital and Returns**

1. Each Contracting Party shall, in accordance with its relevant laws, allow investors of the other Contracting Party the free transfer of funds relating to their investments and returns, including compensation paid pursuant to the provisions of Article (6) and (7) of this Agreement.
2. All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

## **Article 9. Subrogation**

If either Contracting Party makes a payment to any of its investors under a guarantee, which it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall without prejudice to the rights of the former Contracting Party under Article (11), recognize the assignment whether by operation of law or pursuant to a legal transaction of any right or claim of such investor to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such assigned right or claim which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments, Articles (6), (7) and (8) shall, mutatis mutandis, apply to any such assigned right or claim.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by the Governments of the two Contracting Parties amicably.
2. If a dispute cannot thus be settled within six months from the start of negotiation, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
3. Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has notified the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.
4. If these appointments are not made during the period specified in paragraph (3) above, then either of the Contracting Parties, in the absence of any other arrangements, shall invite the President of the International Court of Justice to make the required appointments, if the President of the International Court of Justice is citizen of any of the Contracting Parties or if he finds a reason that prevents him from carrying out the aforementioned task, the Vice-President shall be called to make these appointments, and if the Vice-President is a citizen of either of the two Contracting Parties, or if he finds a reason that prevents him from performing the aforementioned task, the next member of the court in seniority, who is not a citizen of either of the Contracting Parties or not prevented to perform these tasks, shall be called to make the necessary appointments.
5. The arbitral tribunal shall decide the subject of the dispute on the basis of this agreement and any other agreement in force between the Contracting Parties and the rules of customary international law, and it must take into account, as appropriate, the local law of the Contracting Party in which territory the investment is located.
6. The arbitral tribunal shall take its decisions by majority vote, and these decisions shall be final and binding. Each Contracting Party shall bear the costs of its member and its representatives in the arbitration proceedings. The President and the remaining costs shall be borne equally by the Contracting Parties. Nevertheless, the court may decide in its decision that one of the Contracting Parties bears a higher percentage of the costs. Each of the Contracting Parties shall abide by this ruling and implement it. The tribunal shall determine its own procedures in all other matters.
7. If a dispute between the Contracting Parties is referred to arbitration in accordance with Article 11 of the Convention on the Settlement of Investment Disputes between Countries and Citizens of Other Countries signed on March 18, 1965, then the provisions of this Article 10 do not apply to such conflicts.
8. A judgment or decision issued under this agreement shall not be implemented in accordance with Article 11 of this agreement;
9. The assignment or settlements referred to in Article 9 of this Agreement are excluded.

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

1. Disputes between any of the Contracting Parties and the investor of the other Contracting Party regarding the investment of an investor in the territory of the first Contracting Party shall be settled expeditiously and as much as possible, through negotiations between the parties concerned.
2. If the dispute is not settled within six months, from the date the dispute was raised, then at the request of the investor concerned, it will be referred to arbitration. Each of the contracting parties hereby agrees to refer disputes arising to arbitration, provided that the investor in question has exhausted all domestic appeal methods. The dispute is referred to arbitration at the International Center for Settlement of Investment Disputes established in accordance with the Agreement on the Settlement of Investment Disputes between countries and citizens of other countries signed on March 18, 1965, or in the Cairo Regional Center for International Commercial Arbitration. The decision to resolve the dispute shall be issued based on this Agreement and the relevant rules of customary international law and the domestic law of the Contracting Party where the investment in question is located.
3. The tribunal's decision is final and binding on both parties. It may not be appealed or opposed, and it becomes effective in accordance with the local law of the Contracting Party where the investment in question is located.
4. The Contracting Party that is a party to the dispute shall not be entitled to claim during the arbitration proceedings or procedures for implementing the ruling, that the concerned investor has received compensation in accordance with an insurance contract that covers all or some of its losses.

## Article 12. Entry Into Force

1. Each of the Contracting Parties shall notify the other party upon the completion of the internal legal procedures necessary for the entry into force of this Agreement. This agreement shall enter into force thirty days after the date of the last notification.

2. This agreement shall remain in effect for a period of ten years, and thereafter be renewed for an indefinite period unless one of the parties terminates it in writing twelve months before its expiration. Any of the Contracting Parties may terminate it at any time after the ten-year period ends, by notifying the other party before its termination by twelve months.

3. With regard to investments made before the date of the expiration of this agreement, the provisions of Articles 1 to 11 continue to be in effect for a period of ten years following the date of the expiry of the agreement.

Without prejudice to the right of the Contracting Parties to take interim measures in accordance with what is permitted in accordance with the rules of customary international law, this agreement will remain in effect regardless of the emergence of any dispute between the Contracting Parties. These procedures shall be terminated from the date of the end of the conflict, regardless of the existence of diplomatic relations between the two parties at that time.

4. This agreement may be amended by a written agreement between the two Contracting Parties. The amendment shall take effect in accordance with the same procedure stipulated in paragraph 1 of this article.

In witness to the foregoing, the undersigned duly authorized, have signed this Agreement, in Mbabane on 18 July 2000, in two originals in both Arabic and English languages, both texts being equally authentic, and in the case of difference in interpretation, the English text shall prevail.

For the Government of the Kingdom of Swaziland

T. Shaband,

Minister of Foreign Affairs and Arab Trade

For the Government of the Arab Republic of Egypt

Amr Moussa

Minister of Foreign Affairs