

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

## **PREAMBLE**

The Government of the United Arab Emirates and the Government of the Federal

Republic of Nigeria (hereinafter referred to as "the Contracting Parties"),

Desiring to intensify economic cooperation between them and create conditions conducive to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party in accordance with its domestic laws and regulations;

Recognizing the importance of promoting the flow of capital for economic activity and development and aware of its role in expanding economic relations and technical co-operation between them, particularly with respect to investment by nationals of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the Agreement on treatment and protection to be accorded such investments will stimulate economic initiative of nationals of the Contracting Parties for their mutual benefit and economic development;

Recognizing the existence of any Customs Union, Economic Union, Free Trade Area or Regional Economic Integration Agreement to which the Contracting Parties belong; and

Considering that investment relations should be promoted and economic co-operation strengthened in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence;

HAVE AGREED as follows:

## **Article 1. Definitions**

1. For the purpose of this Agreement:

(a) "Investment" means any kind of asset that an investor owns or controls, directly or indirectly that has the characteristics of committing capital or other resources in the territory of the other Contracting Party subject to its laws and investment policies applicable from time to time.

Forms that such investments may take include:

- i. tangible and intangible property, including rights in rem such as mortgage, liens and other pledges;
- ii. rights derived from shares, stocks, bonds, debentures and any other form of interests or participation in a Company;
- iii. a loan or other claims to money or a claim to any performance under contract having economic value;
- iv. the acquisition, exercise and disposition of property rights, including Intellectual and Industrial Property Rights, Copyrights, Patents, Trademarks, Trade Names, Industrial Designs, Trade Secrets, know-how and goodwill;
- v. any other rights required to conduct economic value conferred by law or under a contract;
- vi. business concessions conferred by law however natural resources shall not be covered by this agreement; and

vii. returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided they are in accordance with the laws of the host Contracting Party.

(b) "Investor" means with regard to either Contracting Party:

I. natural persons having the nationality of one Contracting Party in accordance with its law;

II. Legal persons or other entities, including companies, corporations, business associations and partnerships, which are constituted or otherwise duly organized under the laws of that Contracting Party and have their effective economic activities in the territory of that same Contracting Party.

III. The Government, its subdivisions and local governments can be investors.

(c) "Returns" means the amount yielded or derived from or associated with an investment and includes profits, interests, capital gains, dividends, royalties and fees, payments in kind and all other lawful income;

(d) "National" means natural persons deriving their status as citizens of either of the Contracting Parties in accordance with its applicable laws in force ;

(e) "Companies" means any corporation, firm, association, partnership, trust or other legally recognized entity that is duly incorporated, constituted, or organized under the law in force in the territory of the other Contracting party;

(f) "Territory" - for the "United Arab Emirates" when used in a geographical sense, means the territory of the United Arab Emirates which is under its sovereignty as well as the area outside the territorial water, airspace and submarine areas over which the United Arab Emirates exercises, sovereign and jurisdictional rights in respect of any activity carried on in its water, sea bed, sub soil, in connection with the exploration for or the exploitation of natural resources by virtue of its law and international law.

"Territory" - for the Federal Republic of Nigeria when used in a geographical sense, means the territory of the Federal Republic of Nigeria which is under its sovereignty as well as the area outside the territorial waters, airspace and submarine areas over which the Federal Republic of Nigeria exercises, sovereign and jurisdictional rights in respect of any activity carried on in its waters, seabed, subsoil, in connection with the exploration for or the exploitation of natural resources which has been or might in future be designated under its national laws and in accordance with International Law as an area within which it exercises sovereign rights and exclusive jurisdiction.

(g) "Freely convertible currency" means a convertible currency as classified by the International Monetary Fund or any currency that is widely traded in the International Foreign Exchange Market.

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

This Agreement shall apply to all Investments in the territory of each of the Contracting Party, whether made before or after the date of entry into force, but shall not apply to any dispute that arose before entry into force of this Agreement.

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

1. Each Contracting Party shall encourage and create favourable conditions to invest in its territory and shall, in accordance with its Laws or Investment Policies applicable from time to time, admit such investments.

2. When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment, including authorizations of engaging key technical and managerial personnel of their choice regardless of nationality for the purpose of carrying out activities connected with such investments provided that such an investor shall be a citizen of a country with whom both Contracting Parties have diplomatic relations.

## **Article 4. Protection and Treatment of Investments**

(1) Investments of nationals and companies of one Contracting Party shall enjoy adequate protection and security in the territory of the other Contracting Party in accordance with the laws of the host Contracting Party and applicable rules of international law.

(2) Neither Contracting Party shall, impair through arbitrary or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments of nationals and companies of the other Contracting Party in its territory.

(3) Each Contracting Party shall endeavour to make public all laws, regulations, policies and procedures that pertain to or directly affect investments and ensure fair and equitable treatment of investments in its own territory.

(4) Notwithstanding the provisions of paragraphs (1) to (3) of this Article, either Contracting Party may within the framework of its Development Policy grant special incentives to its own nationals and companies in order to stimulate the creation of local industries.

## **Article 5. Most Favoured Nation Provisions**

A Contracting Party shall at all times treat investments made in its own territory on a basis no less favorable than that accorded to investment or returns of its own nationals or companies or that of any third country in terms of management, acquisition, expansion of investment, disposal and liquidation provided that the provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- (a) any customs union, economic union, free trade area or regional economic integration Agreement to which the Contracting Party belongs;
- (b) The provisions of a double taxation agreement with a third country.
- (c) The Most Favoured Nation shall not apply to any procedural or judicial matters.

## **Article 6. Compensation for Expropriation**

(1) Neither Contracting Party shall nationalize or expropriate an investment or returns on investment of investors in its territory directly or indirectly or subject them to measures, the effect of which is equivalent to expropriation or nationalization, except under the following conditions:

- (a) That the measures are taken in public interest and in accordance with the due process of law;
- (b) That such measures are not discriminatory and its execution is in a non-discriminatory manner;
- (c) That adequate compensation is duly paid.

(2) The Compensation referred to in paragraph (1) (c) of this Article shall:

- (a) Be paid expeditiously;
- (b) Be equivalent to fair market value of the expropriated investment immediately before the expropriation took place;
- (c) Not reflect any change in value occurring because the intended expropriation had become known earlier; and
- (d) Be fully realizable and transferable in a freely convertible currency.

(3) The legality of expropriation, nationalization or similar measures and the amount of the indemnification shall be verified through judicial process of a court of competent jurisdiction of the Contracting Party in territory of which the investment was made.

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

When a Contracting Party adopts any measure relating to losses in respect of investments in its territory by citizens or companies of any other country owing to war or other armed conflict, revolution, a state of national emergency, civil disturbances or other similar events, the treatment accorded to nationals of the other Contracting Party as regards restitution, indemnification, compensation or other settlement shall be no less favorable than that which the first Contracting Party accords to citizens or companies of any third country.

## **Article 8. Transfer of Funds Related to Investments**

(1) A Contracting Party shall permit the transfer freely and without delay all funds of the national of the other Contracting Party relating to an investment in its territory and earnings or other remuneration of personnel engaged from abroad in connection with that investment.

**Such transfers shall include:**

- (a) the initial capital plus any additional amount used to maintain or increase the investment;
- (b) returns, dividends, profits after taxes, interests and professional fees;
- (c) fees, including payments in connection with intellectual and industrial property rights;
- (d) proceeds of sale or liquidation of whole or any part of the investment;
- (e) funds pursuant to repayment of loans;
- (f) compensation for deprivation or payment made for the losses referred to in Article 7;
- (g) payment made for the acquisition of production equipment and materials, raw materials, consumables, packages, semi-finished or finished products;
- (h) Revenues and profits of the National Airlines.
- (i) Judgment debts.

(2) The transfer abroad of such funds and the earnings of personnel shall be permitted in a freely convertible currency and shall be made at the exchange rate applying on the date of transfer in accordance with the law of the Contracting Party which has admitted the investment. (3) Notwithstanding paragraphs (1) and (2) above, a Contracting Party may protect the rights of creditors and prevent temporarily a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

- a) bankruptcy, insolvency, or the protection of the rights of creditors;
- b) criminal or penal offences;

## **Article 9. Subrogation**

1. If one Contracting Party or its designated Agency ("the first Contracting Party ") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognize:

- a. the assignment to the first Contracting Party by law or by legal transaction of all the rights and of the Party indemnified; and
- b. That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the Party indemnified.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

- a) the rights and claims acquired by it by virtue of the assignment, and
- b) 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 in non-convertible currency by the first Contracting Party in pursuance of the rights and claims acquired shall be freely available to the first Contracting Party for the purpose of meeting any expenditure incurred in the territory of the second Contracting Party.

4. Notwithstanding the provisions of paragraphs 1 to 3 of this Article, subrogation shall take place only after the prior consent of the Contracting Party in whose territory the investment is made.

## **Article 10. Settlement of Investment Disputes**

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment under this Agreement shall, as far as possible, be settled amicably through negotiations between the Parties to the dispute.

2. Where these negotiations do not result in a solution within three (3) months from the date of request for settlement, the National or Company shall submit the dispute for local remedies in the case of an investment made in the United Arab Emirates, the investor shall submit the dispute to a Court of competent jurisdiction and if after six (6) months there is no settlement, the matter shall be referred to the International Center for Settlement of Investment Disputes (ICSID). However, in the case of an investment made in the Federal Republic of Nigeria, the investor shall if after three (3) months there is no

amicable settlement to the dispute, submit same, at its choice, for settlement to:

- a. the competent court of the Contracting Party in the territory of which the investment has been made; or
  - b. the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on 18th March, 1965; or
  - c. an ad-hoc arbitral tribunal which, unless otherwise agreed upon by the Parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
  - d. Each Contracting Party hereby consents to the submission of an Investment dispute to International Conciliation or Arbitration.
3. The Contracting Party which is a Party to the dispute shall at no time whatsoever during the procedures assert as a defense its immunity or the fact that the investor has received compensation under an Insurance contract covering the whole or part of the incurred damage or loss.
4. Neither Contracting Party shall pursue through Diplomatic Channel a dispute submitted to International Arbitration unless the other Contracting Party does not abide by and comply with the award rendered by such an Arbitral Tribunal.

## **Article 11. Settlement of Disputes between Contracting Parties**

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through Diplomatic Channels.
2. Where the Contracting Parties cannot reach an agreement within twelve months the dispute shall, upon request of either Contracting Party, be submitted to an Arbitral Tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a Chairman who shall be a citizen of a third State with whom both Contracting Parties have diplomatic relations.
3. Where one of the Contracting Parties has not appointed its arbitrator and followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator with whom both Contracting Parties have diplomatic relations shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.
4. Where both arbitrators cannot reach an agreement about the choice the Chairman within two months after their appointment and in the absence of any other Agreement the latter with which both Contracting Parties have diplomatic relations shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
5. Where in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is a citizen of either Contracting Party or is otherwise prevented from carrying out the said function, the appointment shall be made by the Vice President. Where the Vice President is a citizen of either Contracting Party or is otherwise prevented from discharging the said function, the appointment shall be made by the most senior judge of the Court who is not a citizen of either Contracting Party.
6. The Tribunal shall determine its procedure.
7. Each Contracting Party shall bear the cost of the arbitrator it has appointed 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.
8. The decisions of the Tribunal are final and binding on the Contracting Parties.

## **Article 12. Amendment**

This Agreement may be amended at any time at the request of either Contracting Party giving the other Contracting Party six (6) month's notice in writing and such amendment shall enter into force upon notification through Diplomatic Channel by Contracting Parties that their respective constitutional requirements for its entry into force have been fulfilled.

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

This Agreement shall enter into force thirty days after the date of exchange of Notes by the Contracting Parties notifying

each other through the Diplomatic Channel that their constitutional requirements for entry into force of this Agreement have been fulfilled,

#### **Article 14. Duration**

This Agreement shall remain in force for an initial period of ten years. Thereafter, it shall be renewable by tacit Agreement for a period of another 10 (ten) years.

#### **Article 15. Termination**

1. This Agreement shall be terminated in writing by either of the Contracting Party twelve (12) months before its expiry.
2. Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, its provisions shall continue to apply for a period of ten (10) years, with respect to the investments made or acquired before the date of termination.

#### **Article 16. Applicable Laws**

Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments have signed this Agreement in the English and Arabic Languages, both texts being equally authentic. In case of divergency in the interpretation, the English text shall prevail.

Done in duplicate at Abu Dhabi on 18 day of January 2016

**FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES**

**FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA**

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