

# **Agreement on the promotion and protection of investments between the Republic of Korean and the Republic of the Congo**

The Government of the Republic of Korea and the Government of the Republic of the Congo (hereinafter referred to as the contracting parties),

Desiring to create favourable conditions for investment by investors of one State in the territory of the other party, and,

Recognizing that the promotion and protection of investments on the basis of this Agreement promotes individual initiative in business in the two States,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

1. The term means every kind of investment assets invested by an investor of one Contracting Party in the territory of the other contracting party and particularly but not limited to, including:

(a) Movable and immovable property, including any related property rights such as mortgages, liens, pledges;

(b) In the stock shares and debentures and any other form of participation in a company or any business;

(c) Financial or commercial claims related to an investment;

(d) Intellectual property rights, including copyrights, trademarks, patents, industrial processes, designs, technical know-how, trade secrets, trade names and goodwill; and

(e) Any right conferred by law or under a contract for an investment and any licences and permits under the law, including the right to search for, cultivate, extract and exploit natural resources. any change in the form in which assets are invested shall not affect their character as investment.

2. The term investor means any natural or legal person who invests in the territory of the other contracting party.

(a) The term "natural person" means with regard to either Contracting Party: a natural person having the nationality or citizenship of that Party in accordance with its laws;

(b) The term "legal person" means with regard to either Contracting Party, any entity incorporated or constituted in accordance with the laws and regulations of each of the Contracting Parties and recognized as a juridical person by its laws such as public institutions, companies, Governments, foundations, companies, partnerships, firms, institutions, organizations and associations, irrespective of whether their liabilities are limited or not and whether organized or not for profit

3. The term "remuneration" means all amounts yielded by an investment and in particular, though not exclusively, includes interests, capital gains, profits, dividends, royalties, fees for technical assistance and other fees

4. The term territory means the Territory of the Republic of Korea and the territory of the Republic of the Congo, as well as the maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of each State over which the State concerned exercises its sovereign rights, in accordance with international law, for the purpose of the exploration and exploitation of natural resources of such zones.xxviii

5. The term "freely convertible currency Currency means a widely used in the settlement of payments for international transactions and widely traded in the principal international exchange markets.

## **Article 2. Promotion and Protection of Investments**

1- Each Contracting Party shall encourage the creation of favourable conditions for investors of the other contracting party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investors of either Contracting Party shall at all times fair and equitable treatment and shall enjoy full protection and security in the territory of the other contracting party.

## **Article 3. National Treatment**

1. Each Contracting Party shall accord to investments and investors of the remuneration of the other contracting party in its territory which is fair and equitable treatment and no less favourable than that accorded to investments and remuneration of its own to investors or investments of investors and earnings of a third country.

2. Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment of their investments disposal or treatment which is fair and equitable and no less favourable than that accorded to its own investors or to investors of a third country.

3. The provisions of paragraphs 1 and 2 of this article shall not be interpreted as an obligation of one of the Contracting Parties to accord to investors of the other party the benefit of any treatment preference or privilege which may be extended by virtue of that Contracting Party by:

(a) Any customs union or free trade area of existing and future, any area of common external tariff monetary union or any similar international agreement or other forms of regional cooperation to which either Contracting Party is or may become a party, or

(b) Any existing or future international agreement or other arrangement relating wholly or mainly to taxation.

## **Article 4. Compensation for Loss or Damage**

1- Should investments of investors of either Contracting Party suffer losses due to a war or armed conflict, a national state of emergency, revolt, riot, insurrection or other similar events in the territory of the other contracting party, they shall receive treatment no less favourable than that which the other Party accords to its own investors to investors or of any third State as regards restitution, indemnification, compensation or other settlement.

Subject to paragraph 1 of this article, investors of one Contracting Party who in any of the situations referred to in paragraph that suffer damage or loss in the territory of the other Contracting Party as a result of:

(a) The requisition of their property by its forces or authorities;

(b) The destruction of their property by its authorities or forces provided that it has not been produced during an action or was not required by the necessity of the situation; shall enjoy fair and adequate compensation for the loss or damage sustained during the period of the XXIX requisitioning or as a result of the destruction of the property. such payments shall be freely transferable without delay.

## **Article 5. Expropriation**

1- The investments of investors of either Contracting Party shall not be nationalized or expropriated or subjected to measures having effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) in the territory of the other contracting party except for reasons of public interest, by law, on a non-discriminatory basis and against prompt, effective and adequate compensation. such compensation shall amount to the market value of the expropriated investment following the work of the expropriation or its value at the time it was made public; the value, whichever is earlier include interest calculated on a commercial rate from the date of expropriation and paid without delay. such payments shall be freely transferable.

2 of the investor a contracting party complaining the expropriation of all or part of the investment has the right to a prompt review by a judicial or other independent authority of the other contracting party, of the valuation of its investment in accordance with the principles set out in paragraph 1 of this article.

3 - where a contracting party expropriating the assets of a company which is incorporated or constituted under its laws and regulations and in which investors of the other contracting party own shares or other kinds of participation, the provisions

of paragraphs 1 and 2 of this article shall apply.

## **Article 6. Transfers**

(1) The Contracting Parties shall guarantee the transfer of payments related to investments and remuneration. such transfers include in particular but not exclusively:

- (a) The net profits, dividends, royalties, fees and technical assistance technical service, interest and other current income accruing from any investment of an investor of the other contracting party;
- (b) Products generated by the sale or the total or partial liquidation of any investment made by an investor of the other contracting party;
- (c) Funds in repayment of loans related to an investment;
- (d) The earnings of nationals of the other Contracting Party who are allowed to work on its territory in connection with an investment;
- (e) The amounts spent for the management of the investment in the territory of the other Contracting Party;
- (f) Additional funds necessary for the maintenance and development of an investment; and
- (g) Compensation pursuant to articles 4 and 5.

2. Transfers shall be made in a freely convertible currency, without undue delay at the rate of exchange prevailing at the time of the current transactions or determined in accordance with the official rate of exchange prevailing on the date of transfer.

## **Article 7. Subrogation**

If a Contracting Party or its designated agency makes a payment under it has given an indemnity in respect of an investment, it shall recognize:

- (a) The assignment, whether under the law or pursuant to a legal transaction of any right or claim of the investor of the other contracting party or its designated agency;
- (b) If one contracting party or its designated agency is entitled by virtue of subrogation XXX to exercise the rights and assert that the claims of investor and shall assume the obligations related to the investment.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. In accordance with the provisions of this Agreement, any dispute concerning an investment between a Contracting Party and an investor of the other Contracting Party shall be made to the extent possible, amicably through consultations and negotiations between the parties to the dispute.

2. The local remedies under the laws and regulations of the Contracting Party in whose territory the investment has been made shall be available to an investor of the other Contracting Party on the basis of treatment no less favourable than that accorded to its own of investments or investors to investors of a third country which is more favourable to the investor.

3. However, if the dispute cannot be settled within six months from the date of its initiation by either party, it shall upon the request of the investor or the Contracting Party submitted to the International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, on 18 March 1965.

4. The decision of the International Centre for Settlement of Investment Disputes shall be final and binding for all parties in dispute: each Contracting Party shall ensure the recognition and enforcement of the decision in accordance with its laws and regulations.

## **Article 9. 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 through consultation or through diplomatic channels.

2. If the dispute cannot be settled within six months, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal in accordance with the provisions of this article.
3. The arbitral tribunal shall be set up as follows for each individual case. (2) within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. these two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the President ""). the Chairman shall be appointed within three (3) 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, a request may be made to the on Thursday, 24 February 2011 Official Journal of the Republic of the Congo 303président of the International Court of Justice to make the appointments. if he happens to be a national of one of the contracting parties or if he is prevented from carrying out the said function, the Vice-President shall be invited to make the appointments. if the Vice-President is also a national of either Contracting Party or is prevented from carrying out the function, the said member of the International Court of Justice next senior Higher who is not a national of either party shall be invited to make the appointments.
5. The arbitral tribunal shall take its decision by a majority of votes. such decision shall be binding. each Contracting Party shall bear the cost of its own arbitrator and its representation in the proceedings of the arbitral tribunal, the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties XXXI. the arbitral tribunal shall determine its own procedure.

## **Article 10. Most Favoured Nation**

1. Where a matter is governed by this Agreement and simultaneously by another international agreement to which both parties are contracting parties or by general principles of International Law, RI nothing in this Agreement shall prevent either Contracting Party or any of its investors that investments in the territory of the other Contracting Party from taking advantage of any rule that is the more favorable to his case.
2. If the treatment to be accorded by investors of one Contracting Party to the other Contracting Party in accordance with its laws and regulations or other specific provisions or contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded. either Contracting Party shall comply with any other obligation it may enter into with regard to investments in its territory by investors of the other contracting party.

## **Article 11. Implementation of the Agreement**

This Agreement shall apply to all investments made before or after its entry into force, but shall not apply to any dispute or any claim concerning an investment settled before its entry into force.

## **Article 12. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty days after notification in writing by either contracting party from the other contracting party of the completion of the constitutional procedures required in its territory.
2. This Agreement shall remain in force for a period of ten years and thereafter, unless one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party in writing of its intention to denounce this Agreement.
3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of twenty years from the date of denunciation.

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

Done in triplicate in Seoul, on 8 November of the year 2006 in the Korean, English and French languages, all texts being equally authentic. in case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Korea,

