

# **Agreement between the Government of the Hashemite Kingdom of Jordan and the Government of the Democratic Republic of the Congo on the mutual protection of investments**

The Government of the Hashemite Kingdom of Jordan and the Government of the Democratic Republic of the Congo, hereinafter referred to as the Contracting Parties;

Desiring to enhance economic cooperation between them, with regard to the investments of investors of one of the Contracting Parties in the territory of the other Contracting Party,

Recognizing that an agreement on the treatment granted for such investments will stimulate the flow of capital and economic development for both countries,

Acknowledging that a stable framework for investments will lead to the maximum and effective utilization of economic resources and an increase in the standard of living,

Determined to conclude an agreement on the promotion and mutual protection of investments,

Have agreed as follows:

## **Article 1. Definitions**

1. The term "investment" means all assets invested by the investors of one of the contracting parties in the territory of the other contracting party in accordance with its laws and regulations, and it includes, by way of mentioning and not limited to:

A. Movable and immovable property and other property rights such as mortgages in kind and real estate, concessions, guarantees, usufruct rights and similar rights;

B. Shares, shares, bonds and other forms of participation in companies;

C. Financial and business claims;

D. Intellectual property rights, as defined in the multilateral agreements concluded under the umbrella of the World Intellectual Property Organization, provided that both contracting parties are parties to them, including, but not limited to, copyright and related rights, industrial property rights, trademarks, patents Invention, industrial models, technical processes, new plant varieties, craft knowledge, trade secrets, trade names and goodwill;

E. The right to engage in any economic and commercial activity in accordance with a law or a contract that includes the privileges of searching for, extracting and exploiting natural resources.

Any change in the form in which the assets were invested or reinvested, should not affect its entity as investments provided that this change does not violate the approvals granted, if any, to the assets originally invested.

2. The term "investor" in relation to either of the contracting parties means:

A. A natural person, a citizen of one of the two Contracting Parties, who has made an investment in the territory of the other Contracting Party.

B - An existing legal person, founded or the established according to the laws and regulations of one of the Contracting Parties, which has the headquarters and effective real commercial activity in the territory of the Contracting Party and with investment values in the territory of the other Contracting Party.

3. The term "returns" means income from an investment and includes, but is not limited to, profits, returns, interest, capital gains, royalties, license fees, patents, and any other fees.

4. The term "without delay" means that the period necessary to complete the necessary procedures for transferring payments. The period mentioned begins on the day when the transfer request is submitted and in no case may it exceed one month.

5. The term "freely negotiable currency" means any currency that the International Monetary Fund, from time to time, determines as a freely used currency in accordance with the provisions of the Articles of the International Monetary Fund and any amendments thereto.

6. The term "Territory" means the territory of the Hashemite Kingdom of Jordan or the territory of the Democratic Republic of the Congo, respectively, as well as the marine areas adjacent to the outer limits of territorial waters, which include the seabed and subsurface of any of the above two regions, over which the State concerned exercises, in accordance with international law, sovereign rights and jurisdiction.

## **Article 2. Encouragement and Admission of Investments**

1. Each of the Contracting Parties shall encourage and create favourable conditions for the investors of the other Contracting Party to establish their investments in its region, and also permit these investments in accordance with its laws and regulations.

2. For the purpose of encouraging the flow of mutual investments, each of the Contracting Parties shall inform the other Contracting Party of the available investment opportunities in its region, upon the request of either of the Contracting Parties.

3. Each of the Contracting Parties is granted, when necessary, in accordance with its laws and regulations and without delay necessary licenses related to the activities of advisors and experts working for the investors of the other Contracting Party.

4. Each of the Contracting Parties will study in good faith and take into account the requests submitted by senior management as well as key personnel and technicians (regardless of their nationality) employed in the investments established in its territory for purposes of entry, temporary residence and work, according to its laws and regulations related to entry, establishment and work of natural persons. Also, members of the immediate family of these employees will be given equal treatment regarding entry and residence in the territory of the host contracting party, but this treatment does not include work.

## **Article 3. Investment Protection**

1. Each of the Contracting Parties in its territory grants the investment and returns of the other Contracting Party full protection and security. Each of the Contracting Parties should not take any discriminatory, arbitrary or judicial measures that hinder the development, management, maintenance, approval, enjoyment, expansion, sale or liquidation of such investments.

2. Investments and returns from investors of any of the Contracting Parties in the other Contracting Party's territory are to be treated fairly and equitably in accordance with international law.

## **Article 4. National Treatment and Most-favoured Nation Treatment**

1. Neither of the Contracting Parties may grant the investments and returns of the investors of the other Contracting Party in its territory a treatment less favorable than that granted to investments and returns of its investors, or the investments and returns of investors of any third country, whichever is more favorable to the investor concerned.

2. Neither of the Contracting Parties may grant the investors of the other Contracting Party with respect to ownership, expansion, operation, management, maintenance, enjoyment, use, sale, and disposal of their investments a treatment less favourable than that granted to its investors or investors of any third country, whichever is more favourable to the investor concerned.

3. Each of the Contracting Parties shall grant the investors of the other Contracting Party and their investments and their returns the best treatment determined according to paragraphs (1), (2) of this article, whichever is more preferable to the investors or investments and returns.

4. Neither of the Contracting Parties may impose compulsory requirements on the investments of the other Contracting Party regarding the purchase of materials, methods of production, operation, transportation, product marketing or any similar orders with arbitrary and unjustified effects.

5. The provisions of paragraphs (1) and (2) of this Article should not be interpreted as requiring one of the Contracting Parties to grant the investor of the other Contracting Party the advantage of any transaction, preference or concession granted by the former Contracting Party under:

A. Any existing or future customs, economic or financial union, free trade area or any similar international agreement in which either of the parties is or may be party to it.

B. Any international agreement or arrangement, completely or partially on exchange.

## **Article 5. Expropriation (nationalisation)**

1. Either Contracting Party shall not expropriate or nationalize the investment of an investor from the other Contracting Party in its territory, whether directly or indirectly, or to take any measures that have the same effect (hereinafter referred to as expropriation), except:

A. For the benefit of public purposes,

B. Without discrimination,

C. In accordance with due process of law, and

D. Accompanying the payment of immediate, appropriate and effective compensation.

2. The compensation must be paid without delay.

3. The compensation value must be equal to the market value of the previously expropriated investment. If nationalization occurs directly, the market value should not be affected by any change in the value that occurred due to the news of expropriation being public.

4. The compensation must be fully collectable and freely transferable.

5. The investor from one of the Contracting Parties affected by the expropriation that has been carried out by the other Contracting Party, has the right to an immediate review of his case by the judicial authorities, or any competent and independent authority of the latter Contracting Party, and the review includes the evaluation regarding his investment and the payment of compensation in accordance with the provisions of this Article.

## **Article 6. Compensation for Losses**

1. Investments of the investors of any of the Contracting Parties whose investment in the territory of the other Contracting Party is exposed to losses or damage resulting from war, other armed conflict, civil unrest, national emergency, revolution, riots or similar events, shall be treated no less favorable than the treatment granted by the latter Contracting Party to its investors or the return of the investors of any third country, whichever is more favorable to the investor in question, in respect of compensation for damages or any other settlement.

2. Without prejudice to what is mentioned in paragraph (1) of this Article, investors from both Contracting Parties shall be granted, and in the cases referred to in that paragraph, who have sustained damage or losses in the territory of the other Contracting Party resulting from:

A. Confiscation of their property or part thereof by the forces or authorities of that party,

B. The destruction of their property or part thereof by the forces or authorities of that party that did not take place during armed clashes or for where not required by the necessity of the situation,

immediate, fair and effective compensation for the damages and losses incurred during the period of confiscation as a result of the process of destroying their property, and the resulting payments must be made in a convertible currency, and to be freely transferable without delay.

## **Article 7. Transfers**

1. Each of the Contracting Parties guarantees the freedom to transfer all payments related to the investments of the Contracting Party's investors in its territory to and from its territory, without delay. These transfers include, but are not limited to:

A. Original capital and additional amounts to maintain or develop investment,

- B. returns,
- C. Payments under contracts, including loan agreements,
- D. The returns resulting from the sale or liquidation of the investment in whole or in part,
- E. Payments arising from damages in accordance with Articles (5) and (6) of this Code,
- F. Payments arising from settlement of investment disputes,
- G. The returns and other earnings of workers from abroad in connection with the investment.

2. Each of the Contracting Parties guarantees that the transfers referred to in paragraph (1) of this Article will be made in a freely negotiable currency and at the prevailing market exchange rate on the date of the transfer and without delay.

3. Each of the contracting parties shall guarantee the calculation of interest with compensation at the prevailing exchange rate between the London banks ("LIBOR") for the period starting from the date of the event mentioned in Articles (5) and (6) until the date of transfer of the payments, and these transfers are made in accordance with the provisions Paragraphs 1 and 2 of this Article.

## **Article 8. Principle of Subrogation**

1. If one of the Contracting Parties or its designated agency (for the purposes of this Article, the "First Contracting Party"), paid an amount of money under a guarantee given regarding an investment in the territory of the other Contracting Party (for the purposes of this article, the "Second Contracting Party"), the Second Contracting Party must recognize:

A. To transfer all legal rights and claims of the compensated party to the first Contracting Party or according to a legal procedure, and

B. The right of the First Contracting Party to dispose of the rights and claims to the same extent than the party that was compensated according to a guarantee, and must also undertake the obligations associated with the investment.

The First Contracting Party has the right and in all cases:

A. To the same treatment in relation to the rights, claims and obligations arising from it under the guarantee, and

B. To any payments arising out of these rights and claims.

These rights are to the same extent that the compensated party was entitled to obtain in accordance with this Agreement in relation to the investment in question and the related returns.

## **Article 9. Application of other Obligations**

1. If the laws of either Contracting Party or current or future international obligations between them in addition to the current Agreement contain a rule, whether general or specific that grants the investments of the other Contracting Party a more favourable treatment than that granted under this Agreement, this rule must prevail with the extent of its preference over the current Agreement.

2. Each Contracting Party must take into account any contractual obligations that have arisen between it and an investor from the other Contracting Party regarding the investments approved by it in its territory.

## **Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any investment dispute between the Contracting Party and the investor from the other Contracting Party must be settled through negotiations.

2. If the dispute cannot be settled in accordance with paragraph (1) of this article within six months from the date of the written notification thereof, the dispute must be settled according to the investor's choice by:

A. A court of competent jurisdiction from the Contracting Party, or

B. Conciliation or arbitration by the International Center for Settlement of Investment Disputes (ICSID), established in

accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965. In the event of arbitration, both Contracting Parties are bound by as prescriber under this Agreement and even in the absence of any individual agreement regarding arbitration between the Contracting Party and the investor, by presenting any such dispute to this center without having the right to revoke it. This obligation includes a waiver of the requirement to fulfill internal administrative and judicial means, or

C. Arbitration through three arbitrators in accordance with the arbitration rules established by the United Nations Commission on International Trade Law, according to the latest amendment ratified by both Contracting Parties at the date of the request for commencement of arbitration proceedings. In the event of arbitration, both Contracting Parties are obligated in advance under this Agreement to present any such dispute to the said arbitration body without having the right to reverse it, even in the absence of any individual agreement on arbitration between the contracting party and the investor, or

D. Arbitration in accordance with the rules of arbitration of the International Chamber of Commerce (ICC).

3. The decision shall be final and binding, and it must be applied in accordance with the national law of each Contracting Party. The two Contracting Parties shall recognize the arbitral decisions and implement them in accordance with its relevant laws and regulations.

4. The Contracting Party (which is a party to the dispute) at any stage of the conciliation, arbitration, or enforcement of the decision, may use as a defence against the investor's claim (which is the other party to the dispute) the compensation received under an insurance contract in relation to all or part of his loss.

5. The investor who submitted the dispute to a national court in accordance with paragraph 2 (A) of this Article or to one of the arbitration bodies mentioned in paragraphs 2 (B) to (D) does not have the right to submit his case before any other court or other body, as the choice of the investor for a court or an arbitral body is final.

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

1. Disputes arising between the Contracting Parties regarding the interpretation or application of this Agreement should be settled as far as possible through negotiations.

2. If the dispute cannot be settled in accordance with paragraph (1) of this article within six months, it shall be at the request of any of the Contracting Parties presented to a special arbitration tribunal.

3. The arbitral tribunal shall be formed for each case separately, as follows: Both Contracting Parties shall appoint one arbitrator, and these two arbitrators shall appoint a third arbitrator as a citizen of another state as their President. These two arbitrators must be appointed within a period of two months from the date of informing one of the Contracting Parties to the other Contracting Party of its intention to refer the dispute to an arbitral tribunal, provided that the president is appointed within another two months from that date.

4. If the time periods specified in Paragraph (3) of this Article are not observed, and if In the absence of any other agreement, either of the Contracting Parties may invite the President of the International Court of Justice to make the necessary appointments, and if the President is a citizen of one of the Contracting Parties or is otherwise unable to perform the aforementioned mission, the Vice-President of the International Court of Justice shall be invited to make the necessary appointment, and if he is not able to perform such task due to the same reasons, the member of the International Court of Justice next in seniority shall be invited to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedural rules.

6. The arbitral tribunal shall render its decision based on the current Agreement and the rules of international law. The arbitral tribunal shall take its decision by majority vote, and the decision shall be binding and final.

7. Both contracting parties shall bear the costs of a member of the arbitral tribunal appointed by it and its legal representation in the arbitral procedures.

## **Article 12. Implementation of the Agreement**

The provisions of this Agreement apply to existing investments before or after their entry into force, but they do not apply to investment disputes that have arisen before their entry into force.

## **Article 13. Entry Into Force of the Agreement, Its Duration and Termination**

1. The Agreement shall enter into force from the date of receipt of the last notification through diplomatic means, according to which one of the Contracting Parties informs the other party of the completion of its internal legal requirements for the entry into force of this Agreement.
2. This Agreement shall remain in effect for a period of ten years and renewed for other similar periods, unless either of the Contracting Parties notifies the other Contracting Party of his desire to terminate it, one year before the date of the end of the original period or any subsequent period, in which case the notice of termination of the agreement becomes effective with the end of the current ten year period.
3. With regard to investments made before the notice of termination of this Agreement has entered into force, the provisions of this Agreement shall remain in force for a period of ten years from the date of termination of this agreement.

IN WITNESS WHEREOF, the undersigned duly authorized by their respective governments have signed this Agreement.

Done in Amman on 23/06/2004 in two original copies in the Arabic, French and English languages, being all these texts equally authentic. In case of divergence, the English text shall prevail.

For the Government of the Democratic Republic of the Congo

(Signature)

For the Government of the Hashemite Kingdom of Jordan

(Signature)