

# **AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF ANGOLA FOR THE PROMOTION AND THE RECIPROCAL PROTECTION OF INVESTMENTS**

The Kingdom of Spain and the Republic of Angola, hereinafter "the Contracting Parties";

Desiring to intensify economic cooperation for the reciprocal benefit of both countries;

Aiming to create favorable conditions for the investments made by investors of one Contracting Party in the territory of the other; and

Recognizing that the promotion and protection of investments pursuant to this Agreement, to the norms and principles of applicable International Law and to the legislation of the Contracting Parties stimulate initiatives in this field,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investor" means any national or any company of one of the Contracting Parties that make investments in the territory of the other Contracting Party:

(a) "national" means any natural person who has the nationality of one of the Contracting Parties in accordance with its legislation;

(b) "company" means any legal person or any other entity legally constituted or duly organized in accordance with the laws of that Contracting Party and having its registered office in the territory of that same Contracting Party, such as corporations, groups or associations business

2. "Investments" means all types of assets that have been invested by investors of one Contracting Party in the territory of the other Contracting Party according to the legislation of the latter, including in particular, although not exclusively, the following:

(a) Ownership of real and personal property, as well as other rights in rem such as mortgages, pledge rights, usufructs and similar rights;

(b) Shares, securities, obligations and any other form of participation in business;

(c) Rights to monetary contributions and any other contractual benefit that has economic value and is linked to an investment;;

(d) Intellectual property rights; technical procedures, knowledge technical (know-how) and goodwill;

(e) Rights to carry out economic and commercial activities, granted by law or by virtue of a contract or concession, including concessions for the prospecting, cultivation, extraction or exploitation of natural resources.

Investments made in the territory of a Contracting Party by a company of the same Contracting Party that is owned or effectively controlled by investors of the other Contracting Party shall also be considered investments made by the latter investors provided that they have been made in accordance with legal provisions of the first Contracting Party.

No change in the way assets are invested or reinvested will affect the nature of their investment, provided that such modification is made in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made.

3. "Investment income" shall mean the amounts produced by a investment and, in particular, but not exclusively, profits, dividends, interest, capital gains and fees

4. The term "territory" designates the terrestrial territory, the internal waters, the airspace and the territorial sea of each of the Contracting Parties as well as the exclusive economic zone and the continental shelf that extend beyond the limit of the territorial sea of each of the Contracting Parties over which they have or may have jurisdiction or sovereign rights in accordance with the international law.

## **Article 2. Scope of Application**

This Agreement shall apply to investments made, before or after the entry into force thereof, by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter. However, it will not apply to claims arising from events that occurred prior to its entry into force or to claims that have been resolved prior to its entry into force.

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

1. Each Contracting Party shall promote, in its territory, as far as possible, the investments of investors of the other Contracting Party and shall accept these investments in accordance with its legal provisions.

2. When a Contracting Party has admitted an investment in its territory, it shall grant, in accordance with its legal provisions, the necessary permits in relation to the said investment and with the execution of licensing agreements, technical, commercial or administrative assistance. Each Contracting Party shall endeavor to grant, whenever necessary, and the authorizations required in relation to the activities of consultants or qualified personnel, whatever their nationality.

## **Article 4. Protection**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall receive fair and equitable treatment and enjoy full protection and security in accordance with International Law.

2. None of the Contracting Parties shall in any way hinder, through arbitrary or discriminatory measures, the management, maintenance, use, enjoyment and sale or, where appropriate, the liquidation of such investments. Each Contracting Party shall comply with any contractual obligation contracted in writing in relation to investments of investors of the other Contracting Party.

## **Article 5. National Treatment and Most-favoured Nation Clause**

1. Each Contracting Party shall grant, in its territory, to investment of investors of the other Contracting Party a treatment that will not be less favorable than the granted to the investments of its own investors or to the investments of investors of any third State.

2. Each Contracting Party shall grant to investors of the other Contracting Party, with regard to the management, maintenance, use, enjoyment and sale or, where appropriate, the liquidation of the investments made in its territory, a treatment no less favorable than that granted to its own investors or investors of a third State.

3. The treatment granted under paragraphs 1 and 2 of this Article shall not be construed as obliging either of the Contracting Parties to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from:

a) Its association or participation, current or future, in a free trade zone, customs, economic or monetary union or in any other form of regional economic organization or international agreement of similar characteristics or

b) Any international agreement or agreement relative totally or mainly to taxation.

4. The provisions of this Article shall be without prejudice to the right of the Contracting Parties to apply a different tax treatment to different taxpayers according to their fiscal residence.

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

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to nationalization, expropriation or any other measure having similar effects (hereinafter "expropriation") except for reasons of

public utility or social interest, in accordance with due legal procedure, in a non-discriminatory manner and accompanied by the payment of a prompt, adequate and effective compensation.

2. The compensation shall be equivalent to the fair market value that the expropriated investment had immediately before adopting the expropriation measure or before the imminence of it was public knowledge, whichever comes first (hereinafter "valuation date").

3. The market value shall be expressed in a freely convertible currency, at the exchange rate prevailing in the market for that currency at the valuation date. The compensation shall include interest at a commercial rate fixed according to criteria of market for said currency from the date of expropriation until the date of payment. The compensation will be effectively realizable and freely transferable.

4. The affected investor shall have the right, in accordance with the Law of the Contracting Party that makes the expropriation, to the prompt review, by the judicial authority or other competent and independent authority of said Contracting Party, of its case to determine whether the expropriation and valuation of its investment have been adopted in accordance with the principles established in this Article.

5. If a Contracting Party expropriates the assets of an enterprise that is incorporated in its territory in accordance with its legislation in force and in which there is participation of investors of the other Contracting Party, the first Contracting Party shall ensure that the provisions of this Article are applied in such a way as to guarantee such investors a prompt, adequate and effective compensation.

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

1. Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflict, revolution, national emergency, insurrection, disturbance or any other similar event, shall be granted, under restitution, compensation or other agreement, a treatment no less favorable than that which the last Contracting Party grants to its own investors or to investors of any third State. The resulting payments must be freely transferable.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of a Contracting Party who suffer losses in any of the situations indicated in the said section in the territory of the other Contracting Party as a result of:

a) The requisition of their investments or part thereof by the forces or authorities of the last Contracting Party, or

b) The destruction, not required by the necessity of the situation, of their investments or of part of their investments by the forces or authorities of the last Contracting Party,

shall be granted, by the last Contracting Party, a refund or prompt compensation, adequate and effective. The resulting payments will be made without delay and will be freely transferable.

## **Article 8. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments related to its investments, and in particular, but not exclusively, the following:

a) The initial capital and the additional sums necessary for the maintenance, expansion and development of the investment;

b) Investment income, as defined in Article 1;

c) The funds necessary for the repayment of loans linked to an investment;

d) The compensation and compensation provided in Articles 5 and 6;

e) The proceeds of the sale or total or partial liquidation of an investment;

f) Salaries and other remuneration received by personnel hired abroad in relation to an investment;

g) Payments resulting from the resolution of disputes.

2. The transfers referred to in this Agreement will be made in freely convertible currency at the market exchange rate applicable on the day of the transfer.

3. Transfers shall be made after compliance with fiscal obligations as provided by legislation by the Contracting Party

receiving the investment.

4. The effective conclusion of the transfers must occur within the usual periods in the practices of the international financial centers.

## **Article 9. Other Provisions**

1. If the legal provisions of one of the Contracting Parties or the obligations between the Contracting Parties, current or future, arising from international law outside this Agreement, result in a general or special regulation by virtue of which it should be granted to investments of investors of the other Contracting Party more favorable treatment than provided in this Agreement, such regulation shall prevail over this Agreement, as it is more favorable.

2. Conditions more favorable than those of this Agreement that have been agreed by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

## **Article 10. Subrogation**

1. If a Contracting Party or the agency designated by it makes a payment by virtue of an indemnity, insurance contract or guarantee against non-commercial risks in relation to an investment of its investors in the territory of the other Contracting Party, the latter Contracting Party will recognize:

- a) The subrogation of any right or title of the said investor in favor of the first Contracting Party or its designated agency and
- b) The right of the first Contracting Party or its designated agency to exercise, by virtue of subrogation, any right or title to the same extent as its previous owner.

2. This subrogation shall make it possible for the first Contracting Party or the agency designated by it to be direct beneficiaries of all types of payments for compensation to which the initial investor may be entitled.

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

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be resolved, as far as possible, through diplomatic channels.

2. If the dispute can not be resolved in that way within six months from the start of the negotiations, it shall be submitted, at the request of either of the Contracting Parties, to an arbitration tribunal.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint an arbitrator and these two arbitrators shall elect a national of a third State as president. The arbitrators shall be appointed within three months and the president within five months from the date on which either Contracting Party has informed the other of its intention to submit the dispute to an arbitral tribunal.

4. If the necessary appointments have not been made within the time limits provided in section 3 of this Article, either Contracting Party may, in the absence of another agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice can not perform this function or is a national of either of the Contracting Parties, the Vice President will be invited to make the relevant designations. If the Vice-President is unable to perform this function or is a national of either of the Contracting Parties, the designations shall be made by the oldest member of the aforementioned Court who is not a national of either of the Contracting Parties.

5. The President of the arbitral tribunal shall be a national citizen of a State with which the Contracting Parties have diplomatic relations.

6. The arbitral tribunal shall render its opinion on the basis of the provisions contained in this Agreement and the generally accepted principles of International Law.

7. Unless the Contracting Parties decide otherwise, the court shall establish its own procedure.

8. The court shall adopt its decision by majority vote and that decision shall be final and binding for the Contracting Parties.

9. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those related to its representation in the arbitration proceedings. The other expenses, including those of the President, shall be borne in equal parts by the Contracting Parties.

## **Article 12. Disputes between a Contracting Party and Investors of the other Contracting Party**

1. Any dispute concerning investments that arise between one of the Parties Contracting parties and an investor of the other Contracting Party with respect to matters regulated in this Agreement shall be notified in writing, including detailed information, by the investor to the Contracting Party receiving the investment. To the extent possible, the parties to the dispute will try to settle these differences through a friendly settlement.
2. If the controversy can not be resolved in this way within a period of six months from the date of the written notification mentioned in paragraph 1, the controversy may be submitted, at the investor's discretion:
  - a) To the competent courts of the Contracting Party in whose territory the investment was made; or
  - b) An ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law; or
  - c) To the International Center for Settlement of Investment Disputes (ICSID) created by the "Agreement on Settlement of Disputes Regarding Investments between States and Nationals of Other States", open for signature in Washington on March 18, 1965, when each State party to this Agreement has adhered to it. If one of the Contracting Parties is not a Contracting State of the aforementioned Agreement, the dispute may be resolved in accordance with the Additional Mechanism for the Administration of Conciliation, Arbitration and Fact Check Procedures by the Secretariat of the ICSID.
3. Once the controversy has been submitted to one of the procedures referred to in the previous section, the election will be final.
4. Arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law, and the generally accepted rules and principles of International Law.
5. The Contracting Party that is a party to the dispute may not invoke in its defense the fact that the investor, by virtue of an insurance or guarantee contract, has received or is going to receive compensation or other compensation for all or part of the the losses suffered.
6. The Contracting Parties shall refrain from dealing, through diplomatic channels, with matters related to disputes between a Contracting Party and an investor of the other Contracting Party submitted to judicial proceedings or international arbitration in accordance with the provisions of this article, except in the case in which one of the parties to the dispute has not complied with the judicial decision or the award of the arbitration court, in the terms established in the respective judgment or arbitration award.
7. Arbitration decisions shall be final and binding to the parties of the dispute. Each Contracting Party undertakes to execute the awards according to their national legislation.

## **Article 13. Consultations**

Either Contracting Party may propose to the other Contracting Party the celebration of consents on any matter pertaining to the interpretation or application of this Agreement. The other Contracting Party shall accept the proposal with the greatest willingness and shall grant sufficient opportunity for such consultations in a place and on a date to be agreed through diplomatic channels.

## **Article 14. Amendments**

This Agreement may, at the initiative of either of the Contracting Parties, be amended by written agreement between the Contracting Parties. Any amendment shall enter into force by the same procedures required for the entry into force of this Agreement.

## **Article 15. Entry Into Force, Extension, Denunciation**

1. This Agreement shall enter into force thirty days after the date of receipt of the last of the notifications by which the Contracting Parties have communicated to each other that the respective constitutional formalities required for the entry into force of international agreements have been completed.

2. This Agreement shall remain in force for an initial period of ten years and shall be automatically renewed for the same additional periods, except if one of the Contracting Parties notifies the other, in writing, through diplomatic channels, its intention to rescind it, one year before of the final date of its duration.

3. After the initial period of validity, any of the Contracting Parties may, at any time, denounce this Agreement in writing. The denunciation shall take effect twelve months after receipt of the notification by the other Contracting Party.

4. With respect to investments made prior to the date on which the effective denunciation of the Agreement, the provisions contained in the remaining Articles of this Agreement shall continue in force for an additional period of ten years from the date of termination of the Agreement.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

Done in duplicate, in Spanish and Portuguese, both texts being equally authentic, in Luanda on November 21, 2007.

FOR THE REPUBLIC OF ANGOLA

José Pedro de Morais Junior

Finance Minister

FOR THE KINGDOM OF SPAIN

Joan Clos i Matheu

Minister of Industry, Tourism and Commerce