

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

The Government of the Italian Republic and the Government of the Federal Republic of Nigeria

(hereinafter referred to as "the Contracting Parties"),

Desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially for investment by nationals of one Contracting Party, in the territory of the other Contracting Party and

Acknowledging that offering encouragement and mutual protection to such investments will contribute towards stimulating business ventures that will foster the prosperity of both Contracting Parties,

Hereby agree as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment", shall be construed to mean any kind of property invested before or after the entry into force of this Agreement by a natural or legal person of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter without limiting the generality of the foregoing, the term "Investment" comprises:

(a) Movable and immovable property, and any other property rights such as mortgages, liens or pledges including real guarantee rights on property of a third party to the extent that it can be invested;

(b) Shares, debentures, stocks, equity holdings and other negotiable instruments or documents of credit, as well as Government and public securities in general;

(c) Credit for sums of money as well as reinvested income as defined in paragraph 5 hereafter; paragraph 5 hereafter;

(d) Copyright, commercial trademarks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade names and goodwill;

(e) Any right of a financial nature accruing by law or by contract and any license, concession and franchise issued in accordance with current provisions governing the exercise of business activities, including prospecting for, cultivating, extracting and exploiting natural resources;

2. The term "investor" shall be construed to mean any natural or legal person of a Contracting Party who effected, is effecting or intending to effect investments in the territory of the other Contracting Party;

3. The term "national" means, with regard to either Contracting Party, natural person having the nationality of the Contracting Party;

4. The term "company" means, with regard to either Contracting Party, corporations, firms, associations and other legal persons public or private incorporated or constituted under the law in force in any part of the territory of each Contracting Party;

5. The term "returns" shall be construed to mean the income accruing to an investment, including in particular, profits, dividends, interests, capital gains, royalties, management and technical services or other fees;

6. The term "territory", in addition to the areas lying within the land boundaries, includes the maritime areas adjacent to the coast of the State concerned, as well as the marine and submarine zones, to the extent to which that State exercises

sovereign rights or jurisdiction in those areas according to international law.

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

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory and shall admit such investments in accordance with its legislation.
2. For feasibility studies, establishing, developing, administering or advising on the operations of an investment, nationals of either Party and members of their families shall be permitted to enter and to reside in the territory of the other party in accordance with the laws and regulations of that Party.
3. Each Contracting Party shall at all times ensure fair and equitable treatment of the investments of investors of the other Contracting Party and that the management, maintenance, enjoyment, use, transfer, conversion, disposal, and liquidation of investments effected in its territory by investors of the other Contracting Party, as well as the companies in which such investments have been made, shall in no way be subject to unjustified or discriminatory measures.
4. Each Party shall facilitate the dissemination of all laws, regulations, administrative practices and procedures that relate to investments.

## **Article 3. National Treatment and the Most Favoured Nation Clause**

1. Each Contracting Party, within the bounds of its own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own investors or investors of any Third State.
2. The treatment accorded to any kind of activities related to the investments of investors of either Contracting Party shall not be less favourable than that accorded to similar activities connected with investments made by its own investors or by investors of any Third Country.
3. The provisions of paragraphs 1 and 2 of this Article shall in particular apply to the transfer of Capital, Profit and Income.
4. The provisions of paragraphs 1) and 2) of this Article shall not apply to any advantages or privileges which one Contracting Party grants or may grant at some future time to Third States by virtue of its membership in custom or economic unions, common market associations, free trade areas, regional or subregional agreements, nor do they apply to any advantage which either Contracting Party accords to investors of a Third Party by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters.

## **Article 4. Compensation for Damages or Losses**

Should investors of either Contracting Party incur losses in their investments in the territory of the other Contracting Party, due to war or other forms of armed conflict, state of emergency, revolt, insurrection, riot or other similar events, the Contracting Party in which the affected investment has been made shall offer a fair compensation and no less favourable treatment to investors of the other Contracting Party than that offered to its own nationals or to nationals of any Third State by way of compensation, indemnification, restitution or other settlement.

## **Article 5. Nationalization or Expropriation**

1. The investments covered by this Agreement shall not be subject to any measure which might limit permanently or temporarily their related rights of ownership, possession, control or enjoyment, save where specifically provided by law and by judgements or orders issued by Courts or Tribunals having jurisdiction.
2. Investments of investors of one Contracting Party shall not be directly or indirectly nationalized, expropriated, requisitioned or subjected to any measures having similar effects in the territory of the other Contracting Party, except for public purposes, or national interest, against immediate full and effective compensation and, where such measures are taken, they should be on a non-discriminatory basis and in conformity with the legal provisions and procedures.
3. The compensation shall be adequate and equivalent to the market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public, and shall be calculated according to internationally acknowledged evaluation standards. Whenever there are difficulties in ascertaining the market value, the compensation shall be calculated on the basis of a fair appraisal of the establishment's constitutive and distinctive elements as well as of its activities components and results. Compensation shall include interest calculated at the commercial

applicable interest rate a six-month LIBOR basis, accruing from the date of nationalization or expropriation to the date of payment. In the event of failure to reach an agreement between the investor and the Contracting Party having liability, the amount of the compensation shall be calculated following the settlement of dispute procedure provided by Article 8 of this Agreement. Once the compensation has been determined, it shall be paid promptly and authorization for its repatriation in convertible currency issued.

4. Should the measures indicated in paragraphs 1 and 2 of this Article not be stated as enforceable within the prescribed time or whenever the said measures have been acknowledged by the competent Authorities, as to be no more consistent with public purposes or national interests, the concerned investor shall, at its request and without prejudice of the due indemnification, be allowed to apply for the recovery of the property or its possession rights.

In the event that investors have already received indemnification, the effective market value of the restituted property ascertained at the date of the said restitution, has to be paid to the concerned Contracting Party.

If after the dispossession, the goods concerned have not been utilised, wholly or partially, for the purpose, the owner or this assignees are entitled to repurchase the goods at market price.

## **Article 6. Transfers of Capital, Profit and Income**

1. Each of the Contracting Parties shall guarantee that, after investors have complied with all their fiscal obligations, they may transfer the following abroad, without undue delay, in any convertible currency and at the prevailing exchange rate applicable on the date of transfer:

(a) Capital and additional capital amounts used to maintain and increase investments;

(b) Net income, dividends, royalties, payments for assistance and technical services, interest and any other profits;

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

(d) Funds to repay loans relating to an investment and interest due thereon;

(e) Remuneration and allowances paid to nationals of the other Contracting Party in respect of subordinate work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by current national legislation and regulations;

(f) Payments deriving from the provisions of Articles 4 and 5 of this Agreement. Articles 4 and 5 of this Agreement.

2. Notwithstanding the provisions of paragraph 1, of this Article, either Party may maintain laws and regulations:

(a) Prescribing procedures to be followed concerning transfers permitted by this Article, provided that such procedures are completed without undue delay by the Party concerned and do not impair the substance of the rights set forth in paragraph 1, of this Article;

(b) Requiring reports of currency transfers.

The fiscal obligations under paragraph 1 of the Article are deemed to be complied with when the investor has fulfilled the proceeding provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

## **Article 7. Subrogation**

In the event that one Contracting Party or any of its institutions has provided an insurance guarantee in respect of non-commercial risks for investments effected by its investors in the territory of the other Contracting Party, and has made payments on the basis of that guarantee, the other Contracting Party shall recognize the assignment of the rights of the insured investor to the Contracting Party guarantor and its subrogation shall not exceed the original rights. In relation to the transfer of payments to the Contracting Party or its institution by virtue of such subrogation, the provisions of Articles 4, 5 and 6 of this Agreement shall apply.

## **Article 8. Settlement of Investment Disputes between Investors and Contracting Party**

1. Any disputes arising between a Contracting Party and any investors of the other, including disputes relating to compensation for expropriation, nationalization, requisition or similar measures and disputes relating to the amount of their relevant payments, shall be settled amicably, as far as possible.

2. In the event that such a dispute cannot be settled amicably within six months of the date of a written application, the investor in question may submit the dispute, at this choice, for settlement to:

(a) The Contracting Party's Court, at all instances, having territorial jurisdiction;

(b) An Arbitration Tribunal, in accordance with the Arbitration Rules of the "UN Commission on International Trade Law" (UNCITRAL). In relation to UNCITRAL arbitration, it shall be conducted in accordance with Arbitration Standards of the United Nations Commission on International Trade Law (UNCITRAL), pursuant to Resolution 31/98 of December 15th, 1976 adopted by United Nations General Assembly;

(c) The "International Centre for the Settlement of Investment Disputes" for the application of the arbitration procedures provided by the Washington Convention of March 18th, 1965 on the "Settlement of Investment Disputes between States and Nationals of other States".

3. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to any arbitration procedure of judicial procedures that may have been instituted until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the judgement of the court of law within the terms prescribed by the ruling or the judgement.

4. A legal person which is an investor of one Contracting Party and which before such a dispute arises, has its majority shares controlled by nationals of the other Contracting Party, shall in accordance with Article 25 (2) (b) of the Washington Convention of March 18th, 1965 be treated as an investor of the other Contracting Party.

5. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceeding or enforcement of an award the fact that the investor which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of its damages or losses.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute between the Contracting Parties cannot be settled within six months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of them, be laid before an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the receipt of the request for arbitration, each Contracting Party shall appoint a member of the Arbitration Tribunal. The two members shall then select a national of a Third State to act as Chairman. The Chairman shall be appointed within three months from the date on which the other two members are appointed.

4. If the appointments have not been agreed within the time provided by paragraph 3 of this Article, either of the Contracting Parties may, in default of any other arrangement, apply to the President of the International Court of Justice to make the appointments within three months. In the event that the President of the Court is a national of one of the Contracting Parties or he is otherwise prevented from discharging the said function, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties or he is equally prevented from discharging the said function for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointments.

5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be final and binding. Both Contracting Parties shall pay the costs of their own arbitrator and of their own other costs at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties.

6. The Arbitration Tribunal shall lay down its own procedures.

## **Article 10. Application of other Provisions**

1. Whenever any issue is governed both by this Agreement and by another International Agreement to which both the Contracting Parties are signatories, or whenever it is governed otherwise by general international law, the most favourable provisions shall be applied to the Contracting Parties and to their investors.

2. Whenever, as result of laws, regulations, provisions or specific contracts, one of the Contracting Parties has adopted a more advantageous treatment for the investors of the other Contracting Party than that provided in this Agreement, they

shall be accorded that more favourable treatment.

## **Article 11. Entry Into Force**

This Agreement shall enter into force on the date on which the Contracting Parties have notified each other in writing that the required legal procedures in their respective Countries have been complied with.

## **Article 12. Amendment or Revision**

The provisions of this Agreement may be amended by an Exchange of Notes between the Contracting Parties.

Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

## **Article 13. Duration and Termination**

1. This Agreement shall remain effective for 10 years as from the date of coming into force and it shall be tacitly renewed for further periods of 5 years, unless either Party terminates it by giving prior written notice thereof one year before any expiry date.

2. In the case of investments effected prior to the expiry date of this Agreement, as provided in this Article the provisions of Article 1 to 10 shall remain effective for a further period of five years after the aforementioned date.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this agreement.

DONE at ROME this 27th day of September two thousand in two originals, each in the English language, both texts being authentic.

Sen. Rino Serri

Deputy Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

Mr. Steven Akiga

Honourable Minister of Industry

FOR THE GOVERNMENT OF FEDERAL REPUBLIC OF NIGERIA