AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE CONGO AND THE GOVERNMENT OF THE STATE OF QATAR ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of the Congo

And

The Government of the State of Qatar, hereinafter referred to as "the Contracting Parties".

Recognizing the need for investment promotion and protection to stimulate the flow of capital and technology between the two Contracting Parties in the interest of economic development ;

Desiring to create favourable conditions for the pro-movement of very large investments by investors of one "Contracting Party" into the territory of the other "Contracting Party",

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement, unless otherwise specified, the following terms shall mean :

(1) Investor

(a) with regard to the State of Qatar

(i) any natural person having the nationality of the State of Qatar in accordance with the laws and regulations in force ;

(ii) the Government, agencies, companies and governmental corporations or business associations controlled or incorporated in accordance with the laws and regulations in force in the State of Qatar and having their headquarters in the territory of the State of Qatar.

(b) with regard to the Republic of the Congo

(iii) any natural person having Congolese nationality and any legal person constituted under Congolese law and having its registered office in the Republic of Congo

2) Investment: all kinds of assets, including :

(a) movable and immovable property as well as other assets such as mortgages, rights of retention or pledges ;

(b) shares in securities and bonds of a company and any other similar form of participation in a company ;

(c) the right to money or to any benefit under a contract that has a financial value ;

(d) intellectual property rights;

(e) commercial concessions granted by law or under contract, including the concession to explore for and extract oil and other natural resources.

(3) Revenues: the proceeds of an investment com- taking in particular, and not exclusively, profit, interest, capital income, dividends, royalties and fees. Reinvested revenues should enjoy the same protection as an investment ;

(4) Territory means the land, internal and territorial waters including their bed and subsoil, airspace, the continental shelf over which both Parties exercise sovereignty, sovereign rights and jurisdiction in accordance with the provisions of international law and their laws and regulations.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments of investors of either Contracting Party recognized, in the territory of the other Contracting Party, as such under its laws and regulations, made before or after the entry into force of this Agreement.

It shall not apply to any dispute or claim relating to an investment made before the entry into force of this Agreement.

Article 3. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and admit investments from the other Contracting Party in accordance with its laws and regulations in force and shall ensure a sound environment for such investments;

(2) The investments and proceeds of such investments of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Treatment

(1) Each Contracting Party shall, subject to its laws and regulations, accord to investments of investors of the other Contracting Party a treatment no less favourable than that accorded to investments of its own citizens or to investments of a third State.

(2) In addition, each Contracting Party shall accord to investors of the other Contracting Party, including the income from their investments, treatment no less favourable than that accorded to investors of a third State.

(3) The provisions of the above-mentioned paragraphs shall not be construed as permitting investors of the Contracting Parties to enjoy the privileges granted by either Contracting Party to investors of a third State by virtue of its participation in the following fields:

(a) Agreements relating to existing or future Customs Unions; to free trade areas; to Regional Economic Organizations or to similar international agreements;

(b) Fiscal charges (taxation).

Article 5. Expropriation and Compensation

(1) The investment must not be the object, either directly or indirectly, of an act of expropriation or nationalisation, or of any other procedure having a similar effect, unless it is in the public interest and without discrimination, in return for fair and equitable compensation, paid in accordance with the judicial procedures and general principles stipulated in paragraph 1 of this Article;

(2) Such compensation shall be equivalent to the actual market value of the expropriated investment at the time of its expropriation or declaration and shall be estimated in accordance with normal economic conditions prevailing before any threat of expropriation. Compensation must be paid within a reasonable period of time and the proceeds must be freely transferable. It must include interest calculated at a fair and equitable rate. However, it must not be less than the market rate for euro-currencies of the last six months;

(3) Without prejudice to the rights of the investor under Article 8 of this Agreement, the investor shall have the right under the law of the Contracting Party expropriating it to obtain from the judicial or independent authority of that Contracting Party an estimate of its loss in accordance with the principles set out in this Article. The expropriating Contracting Party shall ensure that such an assessment is made promptly;

(4) A Contracting Party which expropriates the assets of a company which is under central control or incorporated in accordance with the laws and regulations in force in the other Party shall comply with the provisions of paragraph 1 of this Article ;

(5) Each Party shall accord to investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses as a result of an armed conflict, a state of national emergency or civil disturbance in the country of the other Contracting Party, treatment relating to restitution, compensation, indemnification or any other settlement no less favourable than that which that Contracting Party accords to its own investors or to investors of any other third State. The resulting payments shall be freely transferable.

Article 6. Repatriation of Investments and Revenues

Each Contracting Party shall permit investor funds from the other Contracting Party in its territory to be freely transferred within a reasonable time and on a non-discriminatory basis. Such funds shall include :

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

(b) income;

(c) repayment of claims including interest on investment;

(d) income from the sale of such shares;

(e) income from liquidation;

(f) earnings of citizens who are nationals of a Contracting Party and who work in connection with an investment in the territory of the other Contracting Party;

(g) payments resulting from an investment dispute;

(h) compensation in accordance with Article 5 of this Agreement.

Unless otherwise agreed by the Parties, transfer under paragraph (1) means currency converted into the original currency of the investment or any other convertible currency. Such transfer shall be made at the exchange market rate on the date of such transfer.

Chaque Partie contractante permet aux fonds d'in- vestisseur ont de l'autre Partie contractante sur son territoire d'étre librement transférés dans un délai raisonnable et sur une base non discriminatoire. Lesdits fonds comprennent :

a) le capital et le capital additionnel utilisés pour maintenir et augmenter les investissements ;

b) les recettes ;

c) les remboursements de prét y compris les intéréts liés a l'investissement ;

d) les revenus des ventes de ces actions ;

e) les revenus provenant de la liquidation ;

f) les gains de citoyens, ressortissants d'une Partie Contractante qui travaillent en rapport avec un investissement sur le territoire de l'autre Partie Contractante ;

g) les paiements résultant d'un différend sur l'in- vestissement ;

h) le dédommagement conformément 4a l'article 5 du présent accord.

Sauf disposition contraire des Parties, le transfert de l'alinéa (1) désigne les devises converties dans la mon- naie d'origine de l'investissement ou dans toute autre devise convertible. Un tel transfert doit étre fait au taux du marché d'échange 4 la date dudit transfert.

Article 7. Subrogation

Where a Contracting Party or its designated Agency has guaranteed the investments of its investors made in the territory of the other Party against the non-commercial risks of the investment made by its investors in the territory of the other Contracting Party and grants compensation for such investments, the other Contracting Party shall accept that the first Contracting Party or its Agency exercises its right of subrogation.

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

(1) Any dispute arising out of this Agreement relating to an investment shall be settled amicably.

(2) If the dispute cannot be resolved in accordance with the provisions of paragraph 1 of this Article within six months from the date of the written request for settlement, either Contracting Party may submit the dispute to the other Contracting Party:

(a) to the competent tribunal of the host Contracting Party, if the investor consents;

(b) to the International Centre for Settlement of Investment Disputes established by the Washington Convention of 18 March 1965, if that Convention is applicable to the Contracting Parties;

(c) an ad hoc arbitral tribunal. Either party to the dispute which chooses one of the above-mentioned channels for the settlement of the said dispute may no longer use the other channel.

(3) The ad hoc arbitral tribunal specified in paragraph 2 shall be established as follows:

(a) each Party shall nominate one arbitrator and the two (2) arbitrators so nominated shall choose by mutual consent a third arbitrator who shall be a citizen of a third country and who shall be appointed as chairman of the tribunal by both Parties. All arbitrators shall be appointed within two (2) months of notification by one Party to the other Party of its intention to submit the dispute to arbitration;

(b) if the time-limits specified in paragraph 3 above are not observed, either Party, in case of disagreement, shall invite the Secretary-General or the Deputy Secretary-General of the Arbitral Tribunal at The Hague who is not a national of the Contracting Parties to make the necessary appointments;

c) the ad hoc arbitral tribunal shall take decisions by a majority of votes. Decisions which are final and binding on the Parties shall be executed in accordance with the national law of the Contracting Party concerned. Decisions shall be taken in accordance with the provisions of this Agreement and the laws of the Contracting Party concerned (Party to the dispute).

(d) The Tribunal shall be obliged to render and give reasons for its decision taken at the request of either Party.

It shall apply the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

Article 9. Settlement of Disputes between the Contracting Parties

(1) The two Contracting Parties shall endeavour, in good faith and in mutual cooperation, to reach a fair and prompt settlement of any dispute which may arise between them concerning the interpretation or application of this Agreement. In this connection, the two Parties agree to enter into direct objective negotiations to reach such a settlement. If the disagreement is not settled within six months from the date on which the matter was raised by either Party, the matter may, at the request of either Party, be submitted to an arbitral tribunal composed of three members.

(2) Within two (2) months from the date of receipt of the said request, each Contracting Party shall appoint one arbitrator, and the two arbitrators so appointed shall, within two months and with the approval of both Contracting Parties, appoint a national of a third country as President of the Tribunal.

(3) If within the time limits specified in paragraph (2) of this Article the necessary appointments have not been made, either Contracting Party may, in case of disagreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from doing so, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also prevented from attending, the senior and most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to take up the task.

(4) The Arbitral Tribunal shall render its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs of its arbitrator of the Tribunal and of his representation in the arbitration proceedings. The costs of the chairman and other expenses shall be borne by the Contracting Parties in equal shares. The Tribunal may, however, in its decision, order that a higher proportion of the costs be borne by one of the Contracting Parties and that decision shall be fully binding on both Contracting Parties. The court shall determine its own procedure.

(5) All actions and procedures for the investigation or preparation of the case shall be submitted and shall be completed within eight (3) months from the date the third member is appointed, unless otherwise provided. The Tribunal shall render its decision within two months from the date of submission of the final submissions or the date of closure of the General Sessions.

(6) A dispute may not be submitted to an Arbitration Tribunal under the rules of this Article if the same dispute has already been submitted to an Arbitration Tribunal under the rules of Article 8 and is still being dealt with by that Tribunal. However, the Contracting Parties may still, for all practical purposes, enter into direct negotiations for the purpose of an amicable settlement of the dispute.

Article 10. Entry and Soujourn of Personnel

A Contracting Party shall, subject to the laws and regulations in force relating to the entry and stay of aliens in its territory, permit natural persons of the other Contracting Party, appointed or employed by investors of the other Contracting Party, to enter and stay in its territory for the purpose of carrying on investment-related activities.

Article 11. Applicable Law

(1) Except as otherwise provided in this Agreement, all investments shall be governed by the laws and regulations in force in the territory of the contracting party in which such investments are made;

(2) Notwithstanding the stipulation of the first paragraph, notwithstanding paragraph 1 of this Article, the host Contracting Party reserves the right to protect vital interests affecting public order, public safety and public morals and in cases of extreme urgency to comply with its laws which shall normally be applied in a non-discriminatory manner.

Article 12. Application of other Rules

This Agreement shall not derogate from it:

(1) the laws and regulations, administrative practices and procedures, administrative or extra-judicial decisions of either Contracting Party ;

(2) the obligations assumed by either Contracting Party, including those contained in an investment agreement or investment authorization.

(3) to treatment more favourable than that offered by this Agreement in like situations.

Article 13. Amendement

The provisions of this Agreement or any Article may be amended by written Agreement between the Contracting Parties. Any amendment shall enter into force in accordance with the provisions of Article 14.

Article 14. Entry Into Force

This Agreement shall enter into force on the date of receipt by the Contracting Parties of the last written notification confirming the completion of their respective internal legal procedures required for the entry into force of this Agreement.

Article 15. Validity

(1) This Agreement shall remain in force for a period of 10 years and shall be automatically renewed for the same period unless either Contracting Party gives the other Party written notice of its intention to denounce it. The Agreement shall be terminated within one (1) year from the date of receipt of such notice.

(2) Notwithstanding the termination of this Agreement in accordance with paragraph (1) of this Article, the Agreement shall be renewed for a further period of 10 years from the date of termination by reason of investments made or acquired prior to the date of termination.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done 4 Brazzaville, 28 March 2010

In two (2) originals, in the Arabic, English and French languages, the three (3) versions being equally authentic.

In the event of any discrepancy in the interpretation or implementation of this Agreement, the English version shall prevail.

For the Government of the Republic of the Congo :

Basile IKOUEBE,

Minister for Foreign Affairs and Cooperation

For the Government of the State of Qatar:

KHALID BIN MOHAMMAD AL-ATTIYAH,

Minister of State for International Cooperation, Minister of Economic Affairs and Trade, a.i.