

# **Agreement between the Government of the French Republic and the Government of the Republic of Angola on mutual encouragement and protection of investments, signed in Paris on June 24, 2008**

The Government of the French Republic,

And the government of the Republic of Angola,

Hereinafter referred to as the "Contracting Parties",

Motivated by the desire to develop economic cooperation, financial and commercial relations between their countries,

Desiring to create, in accordance with international law, favourable conditions for strengthening their cooperation and, in particular, to the implementation, within the framework of their legislation of investments by investors from each of the two countries. of the Contracting Parties in the territory of the other Party,

Recognizing that reciprocal encouragement and protection investments are likely to stimulate transfers capital and business initiatives, and will contribute economic development and the improvement of well-being of their populations,

Have agreed on the following provisions:

## **Chapter I. General Provisions**

### **Article 1. Object**

This Agreement governs the encouragement and protection of investments by investors of each Contracting Party in the territory of the other Contracting Party.

### **Article 2. Definitions**

For the application of this Agreement :

1. "Investor" means, in respect of each Contracting Party :

- a) any natural person holding the nationality of one of the Contracting Parties, in accordance with its laws, and making investments or carrying on investment-related activities in the territory of the other Contracting Party ;
- b) Any legal person incorporated in the territory of one of the Contracting Parties in accordance with its laws and having its registered office therein, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with its laws.

2. "Investment" means any assets of investors of one of the Contracting Parties in the territory of the other Party in accordance with the legislation of the latter Party, in particular, but not exclusively :

- a) movable and immovable property and all other rights in rem such as mortgages, sureties, usufruct and similar rights ;
- b) securities, shares, quotas, interests or other forms of participation in the capital of companies ;
- c) Debts or any other rights of economic value linked to investments;
- d) Intellectual property rights, such as reproduction rights, copyrights, utility models, trademarks, licences, trade and industrial secrets, patents, registered trademarks, trade names, industrial property rights, technology, commercial information, know-how, and goodwill;

e) Concessions granted by law or by virtue of a contract, in particular concessions relating to the prospecting, cultivation, extraction or exploitation of natural resources.

No change in the form of the investment shall affect its qualification as an investment, provided that such change is made in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made.

3. "Territory" means the land territory, airspace and territorial waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf which extend beyond the limits of the territorial waters of each of the Contracting Parties and over which they exercise, in accordance with the provisions of international law, sovereign rights or jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

4. A "freely convertible currency" means a currency widely used for the settlement of international transactions and commonly traded on the principal international exchange markets.

5. "Income" means all sums produced by an investment, including but not limited to profits, dividends, royalties and related interest, royalties, management payments, technical assistance and related fees.

Income from the investment and, in the event of reinvestment, income from its reinvestment shall enjoy the same protection as the investment.

6. The term "legislation" means laws and other normative legal acts applicable in the domestic legal order of a Contracting Party.

### **Article 3. Scope of Application**

This Agreement shall apply to legally constituted investments by investors of one Contracting Party in the territory of the other Contracting Party made before or after its entry into force. However, this Agreement shall not apply to claims and disputes relating to facts occurring before its entry into force, nor to claims and disputes resolved before its entry into force.

## **Chapter II. Investment Provisions**

### **Article 4. Investment Promotion and Protection**

1. Each Contracting Party shall, within the framework of its laws and the provisions of this Agreement, encourage and admit, within the framework of its laws and the provisions of this Agreement, investments made by investors of the other Party in its territory.

2. Investments made by investors of each Contracting Party shall always be treated fairly and equitably, in accordance with the principles of international law, and shall enjoy full protection and security in the territory of the other Contracting Party.

3. Neither Contracting Party shall prejudice in its territory, by arbitrary or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments made by investors of the other Contracting Party.

4. In accordance with the provisions of its legislation, each Contracting Party shall give sympathetic consideration to applications for entry and permission to reside, work and move freely in its territory by nationals of the other Contracting Party who are engaged in investment-related business activities, and by members of their families.

### **Article 5. Treatment of Investments**

1. Each Contracting Party shall apply in its territory to investors of the other Contracting Party in respect of the management, maintenance, use, benefit or enjoyment of their investments treatment no less favourable than that accorded to its investors or to investors of the Most-Favoured-Nation, whichever is the more favourable.

2. The provisions of paragraph 1 of this Article shall not be construed as obliging either Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which it grants or will grant in the future as a result of its participation in a customs or economic union, a common market, a free trade area or any other form of regional economic organisation.

3. If the legal and regulatory provisions of a Contracting Party or international agreements signed by both Contracting Parties are more favourable to the interests of investors than the provisions of this Agreement, the provisions which are more favourable to the interests of investors shall prevail.

4. The provisions of this Article shall not apply to taxation matters.

5. Nothing in this Article shall prevent either Contracting Party from making any provision to regulate investments by foreign investors and the conditions of their activities, in the context of measures designed to preserve and encourage cultural and linguistic diversity.

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

Investors of one of the Contracting Parties whose investments made in the territory of the other Contracting Party have suffered casualties from one war or another armed conflict, a state of national emergency, a revolution, of an insurrection or other similar events will benefit of treatment no less favourable than that accorded to its investors or to investors from the most important nation in the world. favoured by the Contracting Party receiving such investments, if this one is more favorable.

## **Article 7. Expropriation and Compensation**

1. Investments made by investors in a Contracting Party shall not be nationalized, expropriated, or expropriated. subject to any other measure having equivalent effect in the territory of the other Contracting Party, if not for reasons of usefulness public, under the conditions laid down by law, and to provided that such measures are not discriminatory. All any dispossession measures that may be taken must prompt, adequate and adequate compensation, and effective.

2. The amount of the compensation referred to in the preceding paragraph shall be is equal to the real value of the investment, evaluated by a normal economic situation and prior to any threat of dispossession.

This compensation, its amount and the terms and conditions for its payment shall be fixed no later than the date of dispossession. This compensation is actually practicable, paid without delay, and freely transferable. Any delay will produce, until the date of payment, interest calculated at the commercial rate fixed at the market conditions.

## **Article 8. Free Transfer**

1. Each Contracting Party shall permit the free transfer of income related to the investment to investors of the other Party; and contractor. This free transfer is made in accordance with the legislation and after the fulfilment of their tax obligations.

This free transfer concerns in particular but not exclusively :

a) Net profits, capital gains, dividends, interest, royalties and any other income resulting from an investment;

(b) Proceeds from the disposal or liquidation, whether in whole or in part, of partial, of an investment;

(c) The funds required to repay loans related to to investments ;

(d) The initial capital and additional sums required the maintenance or development of investments ;

(e) The amounts of investment management expenditure in the territory of the other Contracting Party ;

(f) Compensation and indemnification provided for in the Articles 6 and 7 of this Agreement ;

(g) Payments arising from the resolution of disputes relating to investments in accordance with Article 11 of the this Agreement.

2. Nationals of a Contracting Party shall be authorised to transfer their remuneration received in respect of an investment carried out in the territory of the other Contracting Party.

3. All transfers under this Agreement shall be made in freely convertible currency without delay at the market rate of exchange prevailing on the date of transfer in accordance with the provisions of the law of the Contracting Party in whose territory the investment is made.

4. Where, in exceptional circumstances, movements of capital coming from or going to countries cause or threaten to cause a serious imbalance to For balance of payments purposes, each of the Contracting Parties may temporarily apply safeguard measures relating to transfers, provided that such measures are strictly necessary, applied on an equitable, non-discriminatory basis and in good faith and that they do not exceed a period of six (6) months.

5. The provisions of the preceding paragraphs of this Article shall not prevent a Contracting Party from exercising in good faith its international obligations and its rights and obligations under its participation in, or association with, a free trade

area, customs union, common market, economic and monetary union or any other form of regional cooperation or integration.

## **Article 9. Subrogation**

1. If a Contracting Party or one of its agencies, authorized or designated, has granted a guarantee against risks related to of the investments made by one of its investors in the territory of the other Contracting Party, that Contracting Party shall or that agency is subrogated to the rights and actions of the investor.
2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.
3. Investments by investors of one of the Parties the territory of the other Party shall not be allowed to obtain the guarantee referred to in the preceding paragraphs only if they have first obtained the approval of the latter Party.
4. Payments made under the guarantee shall not affect not the rights of the beneficiary of the guarantee to use the procedure arbitration referred to in Article 11 of this Agreement or to continue the actions thus brought until the conclusion of the proceedings. of the procedure.

## **Chapter III. Interpretation and Application of the Agreement**

### **Article 10. Settlement of Disputes between Contracting Parties**

1. Disputes between Contracting Parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled by diplomatic negotiation.
2. If a dispute has not been settled within six (6) months from the beginning of the negotiations, it shall, at the request of either Contracting Party, be submitted to an ad hoc arbitration tribunal in accordance with the provisions of this Article.
3. The arbitration tribunal shall be constituted for each particular case in the following manner: within two (2) months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator from the tribunal. The two members so designated shall in turn select a national of a third State who, with the approval of both Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.
4. If the designations referred to in paragraph 3 of this Article have not been made within the prescribed time limit, either Party may, in the absence of any agreement, invite the President of the International Court of Justice to make the said designations. If the President of the International Court of Justice is unable to perform this function or if he is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President. If the Vice-President is unable to perform this function or if he is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President.

If he is a national of one of the Contracting Parties, appointments shall be made by the most senior member of the International Court of Justice who is not a national of one of the Contracting Parties.

5. The President of the Arbitration Tribunal shall be a national of a State with which the Contracting Parties maintain diplomatic relations.
6. The Arbitration Tribunal shall take its decisions by a majority of votes. Its decisions shall be final and enforceable by operation of law for both Contracting Parties.
7. Each Contracting Party shall bear the fees of the arbitrator appointed by it and the costs incurred in respect of his representation in the arbitration proceedings. The fees of the chairman and other expenses shall be borne equally by the two Contracting Parties. The Arbitration Tribunal shall determine its own procedures.

### **Article 11. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes arising between an investor of one Contracting Party and the other Contracting Party relating to an investment of that investor in the territory of the other Contracting Party shall be settled amicably by negotiation between the parties to the dispute.
2. If the dispute cannot be resolved in accordance with the provisions of paragraph 1 of this Article within six (6) months

from the date of its notification by one of the parties to the dispute, the investor may submit the dispute according to its choice :

(a) To the competent courts of the Contracting Party in whose territory the investment is made; or

(b) An ad hoc international tribunal constituted under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) To the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on 18 March 1965, provided that it has entered into force for both Contracting Parties. If the Contracting Parties or one of the Contracting Parties is not a signatory to the Convention, disputes may be settled under the supplementary mechanism (for the administration of conciliation, arbitration and fact-finding procedures by the Secretariat) of ICSID.

3. Once the dispute is submitted to one of the procedures referred to in paragraph 2 above, the choice is final.

4. The Contracting Party party to the dispute may not at any time, in the settlement of a dispute or in the enforcement of an award, assert that the investor has received from the other Contracting Party, pursuant to a contract of insurance, compensation covering, in whole or in part, any damage.

5. Neither Contracting Party may resort to diplomatic channels to settle any question relating to arbitration unless the procedure has already been completed and the Contracting Party has not accepted or executed the award.

6. The arbitral award shall be final and binding on the parties to the dispute. Each Contracting Party shall be responsible for ensuring that the decision is enforced in accordance with its legislation.

## **Article 12. Application of other Provisions**

If the provisions of the legislation of the Contracting Parties or international conventions in force which are binding on the Parties Contracting Parties shall lay down general or special rules which provide for more favourable treatment for investments of investors of another Contracting Party, such rules shall take precedence over the provisions of this Agreement.

Investments subject to a special commitment of one of the Contracting Parties in respect of investors of the other Contracting Party shall be governed, without prejudice to the the provisions of this Agreement, by the terms of this Undertaking to the extent that it contains more favourable than those provided for in this Agreement. The provisions of Article 11 of this Agreement shall apply to even in the case of a special undertaking providing for waiver to international arbitration or designating an arbitral body different from that referred to in Article 11 of this Agreement.

## **Article 13. Consultations**

The representatives of the Contracting Parties shall consult each other, in as necessary, on any matter relating to the application and the interpretation of this Agreement, at the agreed place and time through diplomatic channels.

## **Chapter IV. Final Provisions**

### **Article 14. Entry Into Force, Duration, Review and Termination**

1. The present Agreement shall enter into force thirty (30) days after the date of receipt of the last of the two notifications from the Contracting Parties informing that the legal requirements for its entry into force have been met.

2. This Agreement shall remain in force for a period of ten (10) years and shall be automatically renewed for additional periods of five (5) years, unless one of the Contracting Parties notifies the other Party, in writing through diplomatic channels, of its intention to terminate the Agreement, with twelve (12) months' notice.

3. After the initial period of ten (10) years, a Contracting Party may propose in writing to the other Party the revision of this Agreement, with a minimum of twelve (12) months' notice.

4. At the end of the period of validity of this Agreement, investments made during the period of validity of this Agreement shall continue to benefit from the protection of its provisions for an additional period of ten (10) years.

5. Investments of investors made after the effective termination of this Agreement shall not be considered as being covered

by this Agreement.

In witness whereof, the undersigned, being duly authorized by the Parties, have signed this Agreement.

Done at Paris, this 24th day of June 2008, in two originals, each in the French and Portuguese languages, both texts being equally authentic.

For the Government of the French Republic :

ANNE-MARIE IDRAC

State Secretary for Foreign Trade

For the Government of the Republic of Angola :

JOSÉ PEDRO DE MORAIS JÚNIOR

Minister of Finance