

AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Arab Republic of Egypt and the government of the Federal Republic of Nigeria (hereinafter referred to as "the Contracting Parties");

Recognising that the reciprocal promotion and protection of investments will be conducive to the stimulation of private business initiative, contribute to development and increase prosperity of both parties;

Recognising the right of each Contracting Party to define the conditions under which foreign investment can be received and the investor's duty to respect the host country's sovereignty and laws;

Determined to create favourable conditions for greater Investment by nationals and companies of one Contracting Party in the territory of the other;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

- A) "investment" means every kind of asset and in particular though not exclusively: 1. Movable and immovable property and other property rights such as mortgage, liens or pledges;
2. Rights derived from shares, stock, debentures and other kinds of interests in companies and joint ventures;
3. Claims to money or to any performance under contract having a financial value;
4. Intellectual property rights, technical processes, know-how and business goodwill;
5. Business concessions conferred by law including rights to prospect, explore, or extract natural resources;
- B) "returns" means the amount yielded by an investment and includes in particular, though not exclusively, profits, interests, capital gains, dividends, royalties and fees.
- C) "national" means, with regard to either Contracting Party, natural persons having the nationality of that Contracting Party;
- D) "companies" means with regard to either Contracting Party, corporation, firms and associations incorporated or constituted under the law in force in the territory of that Party;
- E) "territory" means the land area of the Contracting Parties the territorial sea, as well as the maritime zones and exclusive economic zone over which the state concerned exercises in accordance with international law, sovereign or jurisdictional right.

Article 2. Promotion and Protection of Investments

- 1) Either Contracting Party shall within the framework of its laws and regulations, promote economic cooperation through the protection, in its territory, of investments of nationals and companies of the other Contracting Party, subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.
- 2) Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals and companies of the

other Contracting Party and shall not impair by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals and companies.

3) More particularly, each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded either to investments of its own nationals and companies or to investments of nationals and companies of any third State, whichever is more favourable to the nationals and companies concerned.

4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article, either Contracting Party may grant within the framework of its development policy to its own nationals and companies special incentives in order to stimulate the creation of local industries, provided they do not significantly affect the investment and activities of nationals and companies of the other Contracting Party.

5) Where a Contracting Party has accorded special advantages to nationals and companies of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantage to nationals and companies of the other Contracting Party.

6) Notwithstanding the provisions of this Agreement, each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals and companies of the other Contracting Party.

7) Where the provisions of law of either Contracting Party or obligations under international law existing at present, in addition to this Agreement, contain a regulation, whether general or specific, entitling investments by nationals and companies of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

Article 3. Compensation for Losses

1) Nationals and companies of one Contracting party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot, shall be accorded by the latter Contracting Party, treatment as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals and companies or to nationals and companies of any third State, whichever is more favourable.

2) Neither Contracting Party shall take any measures depriving nationals and companies of the other Contracting Party of their investment except under the following conditions:

- a) The measures are taken in the public interest and under due process of law;
- b) The measures are not discriminatory or contrary to any undertaking which the Contracting party may have given;
- c) The measures are accompanied by provisions for the payment of just compensation. Such compensation shall represent the current value of the investments affected, shall include interest at the prevailing commercial rate until the date of payment and shall be paid and made transferable, without undue delay, to the country designated by the claimant concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

Article 4. Transfers

The Contracting Parties shall guarantee that payment relating to an investment, may be transferred. The transfers shall be made in a freely convertible currency, without undue restriction or delay. Such transfers include in particular though not exclusively:

- 1) Profits, interests, dividends and other income;
- 2) Funds necessary: a- For the acquisition of raw or auxiliary materials, semi-fabricated or finished products; or
b- To replace capital assets in order to safeguard the continuity of an investment; or
c- For expansion and/or improvement of an investment;
- 3) Funds in repayment of loans;
- 4) Royalties or fees;

- 5) Earnings of nationals;
- 6) The proceeds of sale or liquidation of the investment.

Article 5. Subrogation

Where the investment of a national or company of one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said national or company pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 6. Settlement of Investment Disputes

- 1) For the purpose of solving disputes with respect to investments between a Contracting Party and nationals and companies of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case amicably.
- 2) Where these consultations do not result in a solution within six months from the date of request for settlement, the nationals or company may submit the dispute, at its choice, for settlement to:
 - a- The competent court of the-Contracting Party in the territory of which the investment has been made; or
 - b- The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, D.C. on 18th March, 1965; or
 - c- An ad-hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);
 - d- Regional Centre for International Commercial Arbitration in Cairo or Lagos.
- 3) The dispute shall be settled in accordance with:
 - a- The provisions of this Agreement;
 - b- The national law of the Contracting Party in whose territory the investment was made; and
 - c- The principles of International law
- 4) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.
- 5) The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures assert as a defence, its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.
- 6) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by such an arbitral tribunal.

Article 7. Settlement of Disputes between Contracting Parties

- 1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- 2) Where the Contracting Parties cannot reach an agreement within six months, the dispute shall upon request of either Contracting Party, be submitted to an arbitral tribunal of three members, each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a Chairman who shall be a citizen of a third State.
- 3) Where one of the Contracting Parties has not appointed its arbitrator and followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.
- 4) Where both arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment and in the absence of any other agreement the later shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5) Where in the cases specified under paragraphs (3) and (4) of this article, the President of the International Court of Justice is a citizen of either Contracting Party or is otherwise prevented from carrying out the said function, the appointment shall be made by the Vice-President. Where the Vice-President is a citizen of either Contracting Party or is otherwise prevented from discharging the said function, the appointment shall be made by the most senior Judge of the Court who is not a citizen of either Contracting Party.

6) The Tribunal shall determine its procedure.

7) Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

8) The decisions of the tribunal are final and binding on the Contracting Parties.

Article 8. Applicability

The provisions of this Agreement shall from the date of entry into force thereof, also apply to investments which have been made before that date, but shall not apply to any dispute concerning investments, which has arisen before its entry into force.

Article 9. Amendment or Revision

Any amendment to or revision of this Agreement shall be in writing and shall come into effect when confirmed by both Contracting Parties in an Exchange of Notes through diplomatic channels.

Article 10. Entry Into Force

This Agreement shall come into force on the date of Exchange of Notes through diplomatic channels confirming that it has been approved in accordance with the constitutional procedures of the Contracting Parties.

Article 11. Duration and Termination

This Agreement shall remain in force for an initial period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other through diplomatic channels, provided that in respect of investments made at any time before the termination of the agreement, its provisions shall continue in effect with respect to such investments for a period of ten years from the date of termination.

In Witness Whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at on this day of 2000 in the English and Arabic languages, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

Mr. Steven Akiga, Minister of Industry, for and on behalf of Nigeria

Dr. Yousef Boutros - Ghali, Minister of Economy and Foreign Trade, for and on behalf of the Arab Republic of Egypt