

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ANGOLA AND THE GOVERNMENT OF THE REPUBLIC OF GUINEA-BISSAU ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Angola and the Government of the Republic of Guinea-Bissau, hereinafter referred to as the "Contracting Parties".

Desiring to create favorable conditions for the strengthening of cooperation between them and, in particular, for the reciprocal realization of investments by investors of each Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection of such investments, under international law and the laws and regulations of each of the Contracting Parties, will lead to the promotion and stimulation of business initiatives and will enhance prosperity in the territories of their respective States;

They agree as follows:

## **Chapter I. General Provisions**

### **Article 1. Object**

This Agreement sets out the rules and procedures to be adopted by the Contracting Parties to regulate the promotion and protection of reciprocal investments that investors of each Contracting Party make in the territory of the other Contracting Party.

### **Article 2. Definitions**

For the purposes of this Agreement:

1. "Investor" means any natural or juridical person of a Contracting Party who invests in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party;

(a) "natural person" means a natural person who has the nationality of a Contracting Party in accordance with its laws and regulations;

(b) "legal person" means any entity such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organizations, corporations, or associations formed or incorporated under the laws and regulations of a Contracting Party.

2. "Investment" means any asset, invested by investors of a Contracting Party in the territory of the other Contracting Party in accordance with the law of the Contracting Party in whose territory the such investment was made, and in particular, although not exclusively:

(a) ownership of movable and immovable property and other real rights such as a mortgage, pledge, usufruct and similar rights;

(b) securities, shares, quotas or social parts or other forms of participation in companies or economic interests;

(c) credit rights or any other rights with economic value;

(d) intellectual property rights, including reproduction rights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets, know-how, and clientele;

(e) Business concessions with economic value granted by law, contract or administrative act of a competent public authority, including concessions for prospecting, cultivation, extraction or exploration of natural resources.

Any change in the manner in which the investment is made shall not 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. "returns" means the transfer of values generated by investments, including in particular, but not exclusively, profits, interest, dividends, and all kinds of charges.

4. "territory" means the land territory, airspace and territorial waters of the Contracting Parties, as well as the exclusive economic zone and the continental shelf extending from the outer limits of the territorial waters of each Party, over which the respective States exercise, in accordance with international law, sovereign jurisdiction and rights for the purpose of exploring, exploiting and preserving natural resources.

5. "freely convertible currency" means the currency which is widely used for payment purposes for international transactions and exchanged on the major international exchange markets.

6. "income" means the entire amount generated by an investment, including in particular, although not exclusively, profits, capital gains, dividends, royalties and other income and respective interest and fees.

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

1. This Agreement shall apply to investments made after its entry into force by investors of each of the Contracting Parties in the territory of another Contracting Party.

2. Investments made or authorized prior to the entry into force of this Agreement shall be governed by the provisions of the law and the terms of the specific contracts by which authorization was granted.

## **Chapter II. Investment Provisions**

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

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and permit such investments in accordance with its laws and regulations.

2. Investments made by investors of each Contracting Party will always be treated fairly and equitably, and will enjoy full protection and security in the territory of the other Contracting Party.

3. Neither Contracting Party, nor in any way, shall impair, by arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposition of investments in its territory by investors of the other Contracting Party.

4. Each Contracting Party shall favourably consider in accordance with its laws and regulations, matters concerning the entry into, employment in, and movement within its territory of nationals as well as members of their families.

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

1. Each Contracting Party in its territory shall accord to the investments and returns of investors of the other Contracting Party treatment no less favorable than that accorded to the investments and returns of its own investors or the investments and returns of third states, whichever is more favorable to investors.

2. Each Contracting Party in its territory shall treat investors of the other Contracting Party with respect to the management, maintenance, use, enjoyment, or disposition of their investments no less favorably than it treats its own investors or investors of any other party or state, whichever is more favorable to investors.

3. The treatment referred to in paragraphs 1 and 2 of this article shall not concern privileges that both Contracting Parties grant to investors of other States in view of their present or future status as members of an association with a customs or economic union, a common market, a free trade area or a similar international agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to require a Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference, or other advantages in favor of

investors of the other Contracting Party, or privileges resulting from any international agreement related in whole or in part to taxation or any agreement with a third party that gives special advantages to financial development institutions.

5. If the treatment to be accorded by a Contracting Party to investors of the other Contracting Party under its laws and regulations or other specific provisions is more favorable than the treatment accorded by this Agreement, the more favorable treatment will be accorded.

6. Each Contracting Party shall observe any other obligation which has entered into force in respect of investments in its territory by investors of the other Contracting Party.

7. Each Contracting Party shall determine, in accordance with domestic legislation, the economic areas of reserve where the activities of investors will be excluded or restricted;

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

1. Investors of a Contracting Party whose investments suffer losses due to war or another armed conflict, a state of national emergency, rebellion, insurrection or other situations regarded as similar under international law, in the territory of the other Contracting Party, shall be accorded treatment by that Contracting Party, such as restitution, indemnification, compensation or other forms of settlement, no less favourable than that accorded by the latter Contracting Party to its own investors or to investors of any other State. The resulting payments shall be freely transferable in accordance with the legislation in force.

2. Notwithstanding the provisions of paragraph 1 of this Article, investors of a Contracting Party who, in any of the situations referred to in that paragraph, incur losses in the territory of the other Contracting Party as a result of

a) requisition of your property by your forces or authorities; or

b) If the destruction of their property by their forces or authorities has not been caused by combat action or has not been necessitated by the exigencies of the situation, they will be granted restitution or adequate compensation no less favorable than that given in the same circumstances to an investor of the other Contracting Party or to an investor of any third state. The resulting payments will be freely transferred in accordance with current legislation.

## **Article 7. Expropriation**

1. The investments of investors of a Contracting Party shall not be nationalized, expropriated or otherwise subjected to any measure having equivalent effect to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for public purposes and against prompt, adequate and effective compensation. Expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

2. Investors of a Contracting Party affected by the expropriation shall have the right to an immediate review by a judicial or other independent authority of the other Contracting Party, of its case and of the assessment of its investments according to the principles set out in this Agreement.

3. Compensation shall be for the actual market value of the expropriated investments as of the date immediately preceding the expropriation or before the expropriation became public domain, irrespective of what the previous value of the investment was, shall include the commercial interest rate applicable from the date of expropriation to the date of payment, shall be effectively realizable, and shall be freely transferable in accordance with applicable law. For both expropriation and compensation, treatment no less favourable than that accorded by the Contracting Party to its own investors or to investors of any other State shall be accorded.

4. If a Contracting Party expropriates the assets of a company that is incorporated or formed under its laws and regulations and in which investors of the other Contracting Party hold assets, debentures or other forms of participation, the provisions of this Article shall apply.

## **Article 8. Transfers**

1. Each Contracting Party will guarantee to the investors of the other Contracting Party, after fulfilling its obligations, the free transfer of amounts related to its investments such transfer of its investments. Such transfers shall include in particular, but not exclusively:

(a) net profit, capital gains, dividends, interest, charges and any other income that results from investments;

- (b) income from the sale or liquidation of all or part of investments;
- (c) funds to repay loans related to the investments;
- (d) income of nationals of the other Contracting Party allowed to work in connection with investments in its territory;
- (e) initial capital amounts and the additional funds needed for the maintenance or development of existing investments;
- (f) amounts spent for the management of the investments in the territory of the other contracting party or of a third state.
- (g) Any preliminary payments, which may have been made on behalf of investors in accordance with Article 9, may be made by the investor.

2. All transfers under this Agreement shall be made in a freely convertible currency without undue restriction at the market rate of exchange prevailing on the date of transfer in the territory of the Contracting Party where the investment is made.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may prevent a transfer by applying its laws relating to transfer fairly, nondiscriminatorily and in good faith:

- (a) bankruptcy, insolvency or other legal proceedings to protect creditors' rights;
- (b) issuing shares, trading or handling insurance;
- (c) criminal or administrative violations;
- (d) ensuring the satisfaction of decisions in administrative processes.

## **Article 9. Subrogation**

1. If a Contracting Party or its authorized or designated agency makes a payment to its own investors pursuant to an indemnity given in respect of investments, the latter Contracting Party shall recognize :

- (a) the termination, either at law or pursuant to a legal transaction in such State, of any rights or claims of investors to the latter Contracting Party or its designated agent, and
- (b) that the latter Contracting Party or its designated agency is authorized at byvirtueof of a sub 'rogation, to exercise the rights and demand the credits to such investors.

2. The subrogated rights or claims will not exceed the investor's original rights or claims.

## **Chapter III. Interpreting and Applying the Agreement**

### **Article 10. Dispute Settlement between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of the Agreement shall be settled, if possible, by negotiations or by diplomatic means.

2. If any dispute cannot be settled within 6 (six) months after negotiations have begun, it shall, at the request of either Contracting Party, be referred to a Tribunal Ad hoc Arbitrator in accordance with the provisions of the present article.

3. The Arbitral Tribunal shall be constituted for each individual case as follows: within two (2) months of the date of receipt of the request for arbitration, each Contracting Party shall appoint a member of the Tribunal. These two members shall, in turn, select a national of a third State who, with the approval of both Contracting Parties, shall be appointed as President of the Tribunal. The President shall be appointed within three (3) months of the date of the appointment of the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, a request may be made by either Contracting Party to the President of the International Court of Justice to make such appointments. If the President is a national of one of the Contracting Parties or is otherwise precluded from performing such function, the Vice-President shall be invited to make the appointments. If the Vice-President is also a national of one of the Contracting Parties or is otherwise prevented from performing such a function, the Member of the International Court of Justice who is next in seniority to him/her and who is not a national of either of the two Contracting Parties shall be invited to make the appointments.

5. The President of the Arbitration Tribunal shall be a national of one of the States with which the Contracting Parties have

diplomatic relations.

6. The Arbitral Tribunal shall take its decisions by a majority vote. The decision shall be binding on both Contracting Parties.

7. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitration proceedings. The costs of the Chairman and other costs shall be borne equally by the Contracting Parties. The Arbitration Tribunal shall determine its own procedures.

## **Article 11. Investment Dispute Resolution 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 in connection with an investment of the former in the territory of the latter shall be settled amicably by negotiations between the parties to the dispute.

2. If the disputes cannot be resolved in accordance with the provisions of paragraph 1 of this article, within six (6) months from the date on which one of the disputing parties has raised it, the investor may, at his request, refer the dispute:

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

(b) to an international tribunal or ad hoc tribunal to be appointed by special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

(c) to the International Centre for Dispute Settlement concerning Investments in conciliation or arbitration under the Convention for the Settlement of Disputes between States and Nationals of Other States done at Washington D.C. on March 18, 1965;

(d) through the rules guiding the Additional competence for the administration of processes by the ISCD Secretariat;

(e) to any other arbitration institution or in accordance with any other arbitration rules.

3. Once the dispute is submitted to one of the procedures referred to in the previous paragraph, the selection will be defined.

4. The Contracting Party that is party to the dispute will not, at any time during the settlement of a case or the enforcement of a judgment, be able to rely on the fact that the investor has received, by virtue of an insurance contract, an indemnity covering all or part of any damage caused.

5. The investor, despite being able to submit the dispute to international arbitration in accordance with the second paragraph of this Article, may seek domestic judicial relief not involving the payment of damages, before the judicial or administrative courts of the Contracting Party that is a party to the dispute, in order to preserve its rights and interests.

6. Neither Contracting Party may resort to diplomatic channels to settle any matter relating to arbitration, unless the proceedings have already been concluded and the Contracting Party has neither accepted nor complied with the award.

7. The judgment shall be binding on both parties and shall not be subject to any appeal other than as provided for in the said Convention or, in the case of paragraph (a) of this Article, the procedural law applicable to the court of the Contracting Party. The decision shall be binding according to the domestic law of the Contracting Party in whose territory the relevant investment is located.

8. Each Contracting Party shall ensure the recognition and enforcement of the decision in accordance with its laws and regulations.

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

If there are legal provisions of international law or of the domestic law of the States of each of the Contracting Parties which contain special rules more favorable than those provided for in this Agreement, those provisions shall prevail or apply cumulatively.

## **Article 13. Consultations**

Representatives of the Contracting Parties shall, whenever necessary, consult with each other on any matter concerning the implementation of this Agreement at a place and time to be agreed through diplomatic channels.

## **Chapter IV. Final Provisions**

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

1. This Agreement shall enter into force thirty (30) days after the date on which the Contracting Parties notify each other that the legal requirements for its entry into force have been fulfilled.
2. This Agreement shall remain in force for a period of ten (10) years and shall be automatically renewed for additional periods of fifteen (15) years, unless either Contracting Party notifies the other in writing through diplomatic channels, of its intention to terminate the Agreement one year before the end date of its duration.
3. Where necessary, any Contracting Party may propose in writing, at least twelve (12) months prior to the expiration of the period during which the Agreement remains in force, another Contracting Party to revise the Agreement for subsequent periods.
4. As regards investments made before the termination of this Agreement, the provisions of Articles 1 to 14 of this Agreement will remain in force for a period of ten (10) years from the date of termination.
5. Either Contracting Party may, at any time, denounce this Agreement in writing. The termination shall take effect twelve (12) months after receipt of notification by the other Contracting Party.
6. Investments by investors which are made after receipt of the notification of termination or the admission to terminate the Agreement at the end of its term, will not be considered to be based on this Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized by their respective Governments, sign this Agreement.

Done at Bissau, on October 11, 2007, in two original copies, in the Portuguese language, both texts being equally authentic.

#### **FOR THE GOVERNMENT OF THE REPUBLIC OF ANGOLA**

FRANCISCO HIGINO LOPES CARNEIRO

GENERAL

MINISTER FOR PUBLIC WORKS

#### **FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA-BISSAU**

MARIA DA CONCEIÇÃO NOBRE CABRAL

MINISTER OF FOREIGN AFFAIRS, INTERNATIONAL COOPERATION AND COMMUNITIES