

# **AGREEMENT ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE FEDERAL REPUBLIC OF NIGERIA**

The Kingdom of Spain and the Federal Republic of Nigeria, hereinafter referred to as "the Contracting Parties",

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

Intending to create favourable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

And

Recognizing that each Contracting Party has the right to determine, through its laws and regulations, the entry of foreign investments into its territory,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

1. The term "Investor" means any national or company of either Contracting Party who makes investments in the territory of the other Contracting Party:

a) The term "national" means physical persons who, according to the law of that contracting Party, are considered to be its nationals.

b) The term "company" means juridical persons or any other legal entity constituted or otherwise duly organized under the applicable law of that Contracting Party and having its seat in the territory of that same Contracting Party, such as corporations, partnerships or business associations.

2. The term "investment" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party including, in particular, although not exclusively, the following:

a) Movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;

b) A company or business enterprise or shares, stocks and debentures of a company or any other form of participation in a company or business enterprise;

c) Claims to money or to any performance under contract having economic value and associated with an investment;

d) Intellectual and industrial property rights; technical processes, know-how and goodwill;

e) Rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party which is actually owned or controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments provided that such a change has been made in conformity with the laws and regulations of the host Contracting Party.

3. The term "returns" means the amounts yielded by an investment and includes, in particular although not exclusively, profit, dividends, interest, capital gains, royalties and fees.

4. The term "territory" means the land territory, the internal waters and the territorial sea of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial sea of each of the Contracting Parties over which they have or may have jurisdiction and/or sovereign rights pursuant to international law.

## **Article 2. Scope of Application of the Agreement**

This Agreement shall be applicable to investments made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party.

The treatment granted under this Agreement shall not apply to tax matters.

## **Article 3. Promotion and Admission of Investments**

1. Each Contracting Party shall in its territory promote, as far as possible, investments by investors of the other Contracting Party. Each Contracting Party shall admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

3. Each Contracting Party shall, whenever needed with respect to any admitted investment, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons, regardless of their nationality.

## **Article 4. Protection**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall a Contracting Party accord to such investments treatment less favourable than that required by international law.

2. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. Each Contracting Party shall observe any obligation it may have entered into in writing with regard to investments of investors of the other Contracting Party and which is clearly according to the internal applicable law.

## **Article 5. National and Most Favoured Nation Treatment**

1. Each Contracting Party shall accord, in its territory, to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State whichever is more favourable to the investor concerned.

2. Each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, treatment no less favourable than that which it accords to its own Investors or to investors of any third State whichever is more favourable to the investor concerned.

3. The treatment granted under paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from its membership of, or association with, any existing or future free trade area, customs union, economic union, monetary union or other regional economic integration organisation.

4. Measures that have to be taken for reasons of public security and order or public health shall not be deemed treatment "less favourable" within the meaning of this Article.

## **Article 6. Expropriation**

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date").
3. Such fair market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest at a commercial rate established on a market basis for the currency of valuation from the date of expropriation until the date of payment. Compensation shall be paid without delay, be effectively realizable and freely transferable.
4. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial authority or other competent and independent authority of that Contracting Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.
5. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

## **Article 7. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.
2. Notwithstanding paragraph (1), an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:
  - a) Requisitioning of its investment or part thereof by the latter's forces or authorities; or
  - b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and be freely transferable.

## **Article 8. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments. Such transfers shall include, in particular, though not exclusively:
  - a) The initial capital and additional amounts to maintain or increase the investment;
  - b) Investment returns, as defined in Article 1;
  - c) Funds in repayment of loans related to an investment;
  - d) Compensations provided for under Articles 6 and 7;
  - e) Proceeds from the total or partial sale or liquidation of an investment;
  - f) Earnings and other remuneration of personnel engaged from abroad in connection with an investment;
  - g) Payments arising out of the settlement of a dispute.
2. Transfers under the present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

## **Article 9. Application of other Provisions**

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.
2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.
3. Nothing in this Agreement shall affect the provisions established by international Agreements relating to the intellectual and industrial property rights in force at the date of its signature.

## **Article 10. Subrogation**

If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency and the right of the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title. This subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation to which the investor could be entitled.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.
2. If it were not possible to settle the dispute through diplomatic channels, within six months from the start of the negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to an arbitral tribunal.
3. The arbitral tribunal shall be set up in the following way: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third country as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence, of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, 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 too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall issue its decision on the basis of respect for the law, the provisions contained in this Agreement or in other agreements in force between the Contracting Parties, as well as the generally accepted principles of international law.
6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.
7. The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.
8. Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman, shall be borne in equal parts by the two Contracting Parties.

## **Article 12. Disputes between One Contracting Party and an Investor of the other Contracting Party**

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard

to an investment, in the sense of the present Agreement, shall be notified in writing, including a detailed information, by the investor to the former Contracting Party. As far as possible, the parties concerned shall endeavour to settle these disputes amicably.

2. If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:

- a) The competent court of the Contracting Party in whose territory the investment was made; or
- b) An ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- c) The international Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington D.C. on 18th March 1965, in case both Contracting Parties become members of this Convention, As long as a Contracting Party which is party in the dispute has not become a Contracting State of the Convention mentioned above, the dispute shall be dealt with pursuant to the rules of the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings of the ICSID.

3. The arbitration shall be based on:

- a) The provisions of this Agreement and of the other agreements in force between the Contracting Parties;
- b) The rules and the universally accepted principles of international law;
- c) The national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law.

4. A Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the alleged damages has been received or will be received by the investor pursuant to a guarantee or insurance contract.

5. The arbitration decisions shall be final and binding on the parties to the dispute.

### **Article 13. Entry Into Force**

This Agreement shall enter into force on the date on which the Contracting Parties shall have notified each other that their respective constitutional formalities required for the entry into force of international agreements have been completed. The date of entry into force shall be the date of receipt of the last notification.

### **Article 14. Duration and Termination**

1. This Agreement shall remain in force for an initial period of ten (10) years. Thereafter it shall remain in force unless one of the Contracting Parties gives six (6) months written notice of termination through diplomatic channels.

2. With respect to investments made prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten (10) years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries duly authorised have signed this Agreement.

DONE in two originals each in the Spanish and English languages both texts being equally authentic, at Abuja, on this 9th day of July, 2002.

FOR THE KINGDOM OF SPAIN

A. Portabales

ALFONSO MANUEL PORTABALES

Ambassador of Spain

FOR THE FEDERAL REPUBLIC OF NIGERIA

CHIEF KOLAJAMODU, MFR

Minister of Industry