

Agreement between the Government of the Republic of the Congo and the Government of the Republic of Mauritius on the reciprocal encouragement and protection of investments

The Government of the Republic of the Congo

And

The Government of the Republic of Mauritius

Hereinafter referred to as the "Contracting Parties";

Desiring to create favourable conditions for increasing investment and to intensify economic cooperation for development of both States;

Convinced that the reciprocal promotion and protection of investments under a bilateral agreement is likely to stimulate private business initiative and increasing prosperity in both States;

Recognizing that their respective access to the sea is an important asset for the consolidation of international cooperation in trade and for the Development of Africa;

Recognizing the need to provide fair and equitable treatment to investments of one State in the territory of the other State,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property rights and interests of all kinds and, in particular, though not exclusively:

- a. Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufructs and any other similar rights;
- b. Shares, stocks and other forms of equity participation in a company;
- c. Monetary claims, obligations and rights to any performance under contract having an economic value;
- d. Intellectual property rights, commercial and industrial such as copyrights and related rights, such as patents, licences, designs or models, trademarks, technical processes, know-how, and goodwill;
- e. Concessions granted by law or under contract, including concessions to search for, culture or extract, exploit and regulations of the Contracting Party in whose territory the investment, including the rights of extraction exploration and exploitation of natural resources.

Any change in the form in which the assets are invested shall in no way affect their qualification as investments, provided that such change is not contrary to the laws and regulations of the Contracting Party in whose territory the investment is made;

2. The term "investor" means:

- a. A natural person having the nationality of a Contracting Party and making an investment in the territory of the other Contracting Party;

b. A juridical person set up in accordance with the laws and regulations of one Contracting Party and making an investment in the territory of the other Contracting Party;

3. The term "income" means all amounts generated by an investment and includes, in particular, profits, capital gains, dividends, interest, royalties, or fees.

4. The term "territory" means the land territory according to the respective Constitutions of each Contracting Party, the internal waters and territorial waters of each of the Contracting Parties, as well as the Exclusive Economic Zone and the continental shelf extending beyond the limit of the territorial waters of each of the Contracting Parties and over which they exercise or may exercise, in accordance with international law, sovereign rights, and jurisdiction.

Article 2. Promotion and Protection of Investments

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. Each Contracting Party shall endeavour to issue, in accordance with its laws and regulations, the necessary authorizations in connection with such investments, including for the purpose of carrying out licensing, technical, commercial or administrative assistance contracts, as well as authorizations required for the activities of consultants and experts.

3. Investments made in this way by investors of each Contracting Party shall enjoy at all times in the territory of the other Contracting Party fair and equitable treatment, and full protection and security.

Article 3. National Treatment and Most-favoured-nation Treatment

1. Each Contracting Party shall accord in its territory to investments and income of investors of the other Contracting Party treatment no less favourable than that accorded to investments and income of its own investors or investors of a third State. The most favourable treatment for the investor shall be applied.

2. With respect to the management, maintenance, use and enjoyment of their investments, each Contracting Party shall accord in its territory to investors of the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of a third State. The treatment which is most favourable to the investor shall be applied.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed to require a Contracting Party to extend to investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from the application of the provisions of these paragraphs:

a. a customs union, free trade area, common market or other similar international agreement relating to the establishment of such unions to which either Contracting Party is or may be a signatory, and any other forms of regional economic cooperation; and

b. conventions for the avoidance of double taxation or any other international convention on tax matters.

4. The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and permission to reside, work and travel made by nationals of a Contracting Party in respect of an investment made in the territory of the other Contracting Party.

Article 4. Compensation for Losses

1. Investors of one of the Contracting Parties whose investments have suffered losses in the territory of the other Contracting Party as a result of armed conflict, revolution, national emergency, revolt, insurrection or disturbance shall enjoy from the latter Contracting Party treatment no less favourable than that which it accords to its own investors or to investors of any third State in respect of compensation, indemnification, restitution or other form of settlement.

2. Without prejudice to sub-paragraph (1) of this Article, investors of a Contracting Party who, in one of the situations referred to in that sub-paragraph, have suffered losses in the territory of the other Contracting Party as a result of :

(a) the requisition of their assets by its forces or authorities, or

(b) the destruction of their assets by its forces or authorities, which did not result from no fighting or was not required by the situation,

will be granted adequate restitution or compensation. Resulting payments will be freely transferable at the exchange rate applicable on the date of transfer in accordance with the exchange rules in force.

Article 5. Expropriation

1. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall not be subject to nationalisation, expropriation or any other measure the effect of which is equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except in the public interest or in the social interest in accordance with legal procedures and provided that such measures are not discriminatory.

2. Expropriation measures shall give rise to the payment of prompt and adequate compensation, the amount of which shall correspond to the real value of the investments concerned, on the day before the measures are taken or made known to the public. Such compensation shall be effectively enforceable, paid without delay and freely transferable. The compensation shall include an amount to compensate for any unjustified delay in payment.

3. The investor concerned shall be entitled, in accordance with the law of the Contracting Party which has carried out the expropriation, to a prompt review by the independent judicial or administrative authorities of the other Contracting Party of the legality of the expropriation measures and of the evaluation of its investments in the light of the principles established by this Article.

Article 6. Free Transfer

1. Each Contracting Party shall grant investors of the other Contracting Party the free transfer of such funds related to their investments, in particular, but not exclusively, the following funds:

- a. the initial capital and any additional capital required to maintain and develop the investment ;
- b. income as defined in Article 1;
- c. payments made for the repayment of loans duly contracted;
- d. the proceeds of liquidation or of the total or partial disposal of the investment;
- e. compensation due under Articles 4 and 5 of this Agreement;
- f. an appropriate proportion of the remuneration of the workers authorised to work in the territory of the other Contracting Party in the context of an investment.

2. The transfers referred to in paragraph 1 of this Article shall be effected without delay in a freely convertible currency on the basis of the rate of exchange prevailing on the date of transfer in the territory of the Contracting Party in which the investment is made.

3. Notwithstanding the provisions of this Article, each Contracting Party may, by the equitable, non-discriminatory and good faith application of its laws, delay or prevent a transfer for the purpose of protecting the rights of creditors or of securing the enforcement of criminal offences and of decisions or judgments in administrative and judicial matters.

Article 7. Settlement of Disputes between an Investor and a Contracting Party

1. Any investment dispute between one of the Contracting Parties and an investor of the other Contracting Party concerning matters regulated by this Agreement shall be notified in writing, with particulars, by the investor to the Contracting Party receiving the investment. To the extent possible, the parties to the dispute shall settle the dispute amicably.

2. If the dispute cannot be settled by this means within six months from the date of the written notification referred to in paragraph 1, the dispute may be submitted, at the choice of the investor, to the Contracting Party which receives the investment:

- a. to the competent courts of the Contracting Party in whose territory the investment was made; or
- b. to an ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.); or
- c. To the International Centre for Settlement of Investment Disputes (I.C.S.I.D.), established by the "Convention on the

Settlement of Investment Disputes between States and Nationals of Other Countries", opened for signature at Washington on 18 March 1965, when each State party to this Agreement shall have acceded to the said Convention. If one of the Contracting Parties is not a Contracting State to the said Convention, the dispute may be settled in accordance with the supplementary mechanism and its rules of fact-finding, conciliation and arbitration, of the Secretariat of the I.C.S.I.D.

3. The arbitration shall be conducted on the basis of the provisions of this Agreement, the national law of the Contracting Party whose territory has received the investment, including the rules on conflict of laws and the applicable rules of principles of international law.

4. The Contracting Party which is a party to the dispute shall not be entitled to invoke for its defence is that the investor has received or will receive, under a contract of insurance or a guarantee, indemnity or other compensation for all losses suffered or for a part of them.

5. Arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards in accordance with its national law.

Article 8. Settlement of Disputes between Contracting Parties

1. Disputes relating to the interpretation or application of this Agreement, should be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months from the date on which it was raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The said tribunal shall be constituted for each individual case as follows: each Contracting Party shall designate one member and the two members shall designate, by common accord, a national of a third State who shall be appointed President of the tribunal by both Contracting Parties. All members shall be appointed within two months of the date on which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary General is a national of either Contracting Party or if, for some other reason, he is prevented from performing this function, the most senior Deputy Secretary General who is not a national of either Contracting Party shall make the necessary appointments.

5. The Arbitration Tribunal shall take its decisions by a majority of votes. Its decisions shall be final and binding on the Contracting Parties as of law

6. The Tribunal shall itself determine its own rules. It shall interpret the award at the request of either Contracting Party.

7. Each Party shall bear the expenses of its arbitrator and advisers for the arbitral proceedings. The expenses of the Chairman of the Tribunal for his function, as well as the other expenses of the Arbitral Tribunal, shall be borne equally by each of the parties. The Tribunal may, however, decide in its award that a greater proportion of the costs shall be borne by one of the parties, and the award shall be binding on both parties.

Article 9. Guarantees and Subrogation

1. In the event one of the Contracting Parties or its representative makes payments to its own investors under a guarantee given in respect of an investment made in the territory of the other Contracting Party, the latter recognises:

a. the transfer to the first Contracting Party or its representative of all the rights and claims of such investors by operation of law or by contract ;

b. the subrogation of the other Contracting Party or its representative in all rights which the first Contracting Party or its representative is entitled to exercise and assume all obligations in respect of the investment.

2. The rights or claims subrogated may not exceed those of the investor.

Article 10. Specific Commitments

If the domestic laws and regulations of the Contracting Parties or international agreements existing at the date of entry into force of this Agreement or thereafter between the Contracting Parties, in addition to this Agreement, contain provisions

granting to investments made by investors of the other Contracting Party treatment more favourable than that accorded by this Agreement, such laws and regulations' or agreements, to the extent that they are more favourable to the investor, shall prevail.

Article 11. Prohibitions and Restrictions

Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any measure necessary for the protection of its essential security interests or for reasons of public health or for the prevention of diseases affecting animals and plants.

Article 12. Implementation of the Agreement

This Agreement shall apply to investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with its laws and regulations from the date of entry into force of this Agreement.

It shall also apply to existing investments, of investors of the other Contracting Party on the date of entry into force of this Agreement, made in the territory of one of the Contracting Parties in accordance with its laws and regulations.

Article 13. Entry Into Force

Each of the Contracting Parties shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the day of receipt of the last notification.

The Agreement shall be concluded for an initial period of ten years. It shall remain in force after that period, unless one of the Parties denounces it through diplomatic channels with one year's notice.

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 a further period of 15 years.

In WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Port Louis, on 20 December 2010 in duplicate in the English language

For the Government of the Republic of the Congo

Basile IKOUEBE,

Minister of Foreign Affairs and Cooperation

For the Government of the Republic of Mauritius

Honorable Kumar Pravind Jugnauth,

Deputy Prime Minister and Minister of Finance and Economic Development