

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Sweden and the Government of the Federal Republic of Nigeria (hereinafter referred to as "the Contracting Parties);

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal promotion and protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement the term:

(1) "investment" shall mean any kind of asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

(b) a company or enterprise, or shares, stocks or other kinds of interest in a company or enterprise;

(c) title to money or any performance having an economic value;

(d) intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

(e) business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

Goods, that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party shall be treated not less favourably than an investment.

A change in the form in which assets are invested does not affect their character as investments.

(2) "investor" of a Contracting Party shall mean:

(a) In respect of Nigeria:

(i) any natural person who is a national of Nigeria in accordance with its law; and

(ii) any legal person not recognized under the law of Nigeria but controlled by an investor as defined under (i); and

(iii) any legal person recognized under the law of Nigeria.

(b) In respect of Sweden:

(i) any natural person who is a national of Sweden in accordance with its law; and

- (ii) any legal person or other organisation organized in accordance with the law applicable in Sweden; and
- (iii) any legal person not organized under the law of Sweden but controlled by an investor as defined under (i) or (ii).
- (3) "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include profit, interest, capital gains, dividends, royalties or fees.
- (4) "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone, the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Application of the Agreement

- (1) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.
- (2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 3. Promotion and Protection of Investments

- (1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.
- (2) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.
- (3) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.
- (4) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection of this

Agreement and in no case shall a Contracting Party award treatment less favourable than that required by international law. Each Contracting Party shall observe any obligation it has entered into with investors of the other Contracting Party with regard to their investment.

- (5) Returns yielded from an investment shall be given the same treatment and protection as an investment.

Article 4. National and Most Favoured Nation Treatment of Investments

- (1) Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is the more favourable.
- (2) Notwithstanding the provisions of Paragraph (1) of this Article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a customs union, a common market or a free-trade area shall be free to grant, by virtue of such agreements, more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.
- (3) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation

- (1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with:

(a) the measures are taken in the public interest and under due process of law;

(b) the measures are distinct and not discriminatory; and

(c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "Valuation Date").

Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(3) The provisions of Paragraph (1) and (2) of this Article shall also apply to the returns from an investment as well as and, in the event of liquidation, to the proceeds from the liquidation.

(4) Where a Contracting Party expropriates the assets of a company or an enterprise in its territory in which investors of the other Contracting Party have an investment, including through the ownership of shares, it shall ensure that the provisions of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of

Their investment to such investors of the other Contracting Party.

Article 6. Compensation

(1) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.

(2) Without prejudice to paragraph (1) of this Article, investors of a Contracting Party who in any of the situations referred to in that paragraph, suffer losses 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 were not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

Article 7. Transfers

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency of payments in connection with an investment, and shall include in particular though not exclusively:

(a) the returns;

(b) the proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;

(c) funds in repayment of loans;

(d) a compensation according to Article 5 and 6; and

(e) the earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred.

Article 8. Subrogation

Where the investments of an investor of one Contracting Party are insured against non-commercial risks or otherwise give

rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognized by the other Contracting Party.

Article 9. Disputes between an Investor and a Contracting Party

(1) For the purpose of solving any dispute with respect to investments between a Contracting Party and investors 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 a written request for settlement, the investor

May submit the dispute, at its choice, for settlement to:

(i) the competent court of the Contracting Party in the territory of which the investment has been made, however, an investor's invocation of local remedies does not extinguish the right to international arbitration, neither is it a requirement to exhaust local remedies before invoking international arbitration; or

(ii) 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, on 18 th March, 1965; provided both Contracting Parties have adhered to the said Convention; or

(iii) an ad hoc tribunal which, unless otherwise agreed upon by the Parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission of International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration as provided for in paragraph (2) of this Article. If the Parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(4) For the purpose of this Article and Article 25 (2) (b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other Contracting Party.

(5) Any arbitration under the UNCITRAL Arbitration Rules shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbi

Tral Awards, done at New York, June 10, 1958 (the New York Convention).

(6) The consent given by each Contracting Party in paragraph (3) and the submission of the dispute by an investor under paragraph (2) shall constitute the written consent and written agreement of the Parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre) and for the purpose of Article 1 of the UNCITRAL Arbitration rules and Article II of the New York Convention.

(7) The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures assert as a defence, counterclaim, right of set-off or otherwise that the investor has received compensation under an insurance or guarantee contract covering the whole or part of the incurred damage or loss.

(8) Once a dispute is submitted to international arbitration neither Contracting Party shall pursue the dispute through diplomatic channels unless the other Contracting Party does not abide by and comply with the award rendered by such an arbitration tribunal or the arbitration tribunal has decided that it has no jurisdiction in relation to the dispute in question.

(9) Any arbitral award rendered pursuant to this Article shall be final and binding on the Parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award.

Article 10. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by

either

Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party, has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph

(3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 11. 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 12. Entry Into Force

The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

Article 13. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of fifteen years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Stockholm on 18 April 2002 in duplicate in the English language.

For the Government of the Kingdom of Sweden Lena Hjelm-Wallen

For the Government of

The Federal Republic of Nigeria

Atiku Abubakar