

Agreement on Reciprocal Promotion and Protection of Investments between the Government of the Arab Republic of Egypt and the Government of the Democratic Republic of Congo

The Government of the Arab Republic of Egypt on the one hand, and the Government of the Democratic Republic of the Congo, on the other hand; hereinafter referred to as "the Contracting Parties";

Desiring to strengthen their economic cooperation in setting up conditions conducive to fulfil the investments of the other Contracting Party,

Considering the beneficial influence that such an agreement could have in improving business contacts and strengthening confidence in the field of investment;

Recognizing that such an agreement on the treatment of investments is likely to stimulate the flow of capital and technology and the economic development of the contracting parties;

Having regard to the General Cooperation Agreement concluded between the two parties on December 1998

Have agreed as follows:

Article 1. The Definitions

1. Investments

For the purposes of this agreement the term investment shall comprise:

a) Any contribution in cash or in-kind done at an enterprise or having to exercise its activity in the Arab Republic of Egypt or the Democratic Republic of Congo in order to create a new production capacity of goods or services in the territory of the other Contracting Party.

c) Any contribution in cash or in-kind in order to enhance the capacity of production be located in an existing business, to streamline the methods of production and improving the quality of extending the range of its products or services in the territory of the other Contracting Party and concerning particularly, though not exclusively:

- movable and immovable property and property rights such as mortgages and pledges and similar rights.
- rights to money or any other undertaking having an economic value;
- intellectual property rights, especially copyrights, patents for inventions, patents for specific models, design patents, trademarks, original applications, industrial and trade secrets, technical processes, know-how and goodwill;
- concessions granted by law, including concessions granted for research or exploitation of natural resources.

Such investments shall be carried out in accordance with the laws and regulations in force in the country hote.

2. Investor:

Any natural or legal person making contributions in cash or in-kind to an enterprise in order to create a new production capacity of goods or services or to enhance the capacity of production installed in an existing business in the other Contracting Party.

3. Returns:

The net amounts of profits realized after taxes and by investments as defined above.

4. Territory:

The term territory means:

- For the Democratic Republic of the Congo, the territory of the Democratic Republic of the Congo including any maritime area beyond the territorial waters of the Democratic Republic of the Congo and which has been or might be subsequently appointed by the legislation of the Democratic Republic of the Congo, in accordance with International Law, as an area within which the rights of the Democratic Republic of the Congo with respect to the seabed and subsoil and natural resources may be exercised. It also includes the airspace covering the land and maritime areas as defined above.

- For the Arab Republic of Egypt, the territory of the Arab Republic of Egypt from including any maritime area beyond the territorial waters of the Arab Republic of Egypt and which has been or may hereafter be designated by the legislation of the Arab Republic of Egypt in accordance with International Law, as an area within which the rights of the Arab Republic of Egypt on the seabed or the subsoil and natural marine resources may be exercised.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and admits such investments in accordance with its laws and regulations.

The extension, modification or conversion of an investment carried out in accordance with the laws and regulations in force in the host country are considered as a new investment.

2. The investments made by the investors of one of the contracting parties in the territory of the other contracting party shall benefit from fair and equitable treatment by the latter, as well as, subject to the measures strictly necessary for the maintenance of public order, from full protection and security. Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal within its territory of the Investments of the other Contracting Party shall not hinder by unjustified or discriminatory measures.

3. The investment and its reinvestment in accordance with the legislation of one of the Contracting Parties shall enjoy the same protection as the original investment.

Article 3. Treatment of Investments

Each Contracting Party shall accord in its territory to investments of the other Contracting Party treatment no less favorable than that accorded to investments of its own investors.

Article 4. Expropriation and Compensation

1. Investments carried out in the territory of one of the Contracting Parties from investors of the other Contracting Party cannot be made the subject of expropriation, nationalization or any other measures having the same nature or the same effect, except for public interest purposes.

2. Measures for direct or indirect expropriation that could be taken by the authorities of one of the Contracting Parties in respect of such investment shall not be discriminatory nor contrary to a specific arrangement.

3. The Contracting Party having taken such measures shall pay to the right holder, without undue delay, fair and equitable compensation in an amount corresponding to the market value of the investment concerned on the day before the measures are taken or made public.

4. The procedure for the fixing and payment of the compensation shall be done by mutual agreement and in a timely manner at the moment of the expropriation.

5. The payment of the compensation paid to the investors must be made in a freely convertible currency.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments suffer damage or losses due to war or any other armed conflict, revolution, national, state of emergency, revolt, insurrection, or any other similar event in the territory of the other Contracting Party shall benefit, on the part of this latter of a treatment that is equal to that accorded to its own investors as regards restitution, indemnification, compensation or other indemnities.

Article 6. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party, shall guarantee to the latter, after the payment of fiscal duties, the free transfer in convertible currency without unjustified delay of the liquid assets related to these investments and in particular:

- a) A capital or additional amount to maintain or increase the investment.
- b) The benefits, dividends, interest, royalties and other current income.
- c) The amounts required for the repayment of loans relating to investment.
- d) The proceeds from a total or partial liquidation of the investment
- e) Other compensations payable pursuant to Articles 4 and 5.
- f) An appropriate quota of the wages and other remuneration accruing to citizens of that Contracting Party who have been authorised to work in the territory of the first Contracting Party in respect of an investment.

2. The transfers referred to in paragraph 1 of Article 6 above must be carried out at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Subrogation

1. If under a guarantee or legal contract covering non-commercial risks of an investment, compensation is paid to an investor of one Contracting Party, the other Contracting Party shall recognize the subrogation into the insurer of the rights of the indemnified investor.

2. The insurer is authorized to claim all the rights that the investor might exercise if the insurer had not been subrogated in accordance with the guarantee received by the investor concerned.

3. The subrogation shall include also to the transfer of rights referred to in Article 6 above.

4. Any dispute between one Contracting Party and the insurer of the other Contracting Party shall be settled in accordance with Articles 8 and 9 of this Agreement.

Article 8. Settlement of Investment Disputes

1. Any dispute with respect to investments between a Contracting Party and an investor of the other Contracting Party shall as far as possible be settled amicably through consultations and negotiations between the parties to the dispute.

2. Where there is no amicable settlement has been achieved through a direct arrangement between the parties to the dispute within a period of six months, from the date of its written notification, the dispute shall be submitted, at the choice of the investor:

- a) Either to the competent court of the Contracting Party in whose territory the investment has been carried out,
- b) Or to arbitration at the International Centre for the settlement of disputes related to investment (ICSID), (whose agreement had been signed in Washington on 18 March 1965), provided that both Contracting Parties are members.
- c) Or to arbitration by a special arbitral tribunal that shall decide on the basis of the national law of the disputing Contracting Party in whose territory the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreements to be concluded in connection with the investment, as well as the principles of international law.

4. The arbitral awards shall be definitive and binding on the parties to the dispute, each Contracting Party undertakes to execute its award in accordance with its national legislation.

5. Neither of the Contracting Parties, party to a dispute, can raise an objection, at any phase of the arbitration proceedings or of the execution of an arbitral award, on account of the fact that the investor opposing party to a dispute has collected compensation covering the whole or part of its losses by virtue of an insurance policy.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled between both Contracting Parties through diplomatic channels.

In the absence of an agreement, the dispute shall be submitted to a Joint Commission, consisting of representatives who have reunited at the request of either Contracting Party.

2. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations, it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties, parties to the dispute.

3. The Tribunal shall be constituted as follows.

Each Contracting Party shall designate one arbitrator and the two arbitrators shall set a third arbitrator who is a national of a third State as Chairman of the Tribunal.

If one of the parties has not appointed its arbitrator or has not responded to the invitation addressed to it by the other Contracting Party to make such appointment within two months, the arbitrator shall be appointed at the request of the latter party by the President of the International Court of Justice.

- If the two arbitrators cannot reach an agreement within two months after their appointment on the choice of the third arbitrator shall be appointed at the request of a Contracting Party by the same President.

- If in the cases provided for in the first and the second paragraph of this article the President of the International Court of Justice respect or if he is a national of one of the Parties to the dispute, the appointment shall be made by the Vice-President and if the latter is respect or if he is a national of one of the Parties to the dispute, the appointment shall be made by the most ancient Member of the Court who is not ressortissant of any Contracting Party, Party to the dispute.

4. The arbitral tribunal shall fix its own rules of procedure unless the Contracting Parties have decided otherwise. It shall decide on the basis of the provisions of the Agreement, the rules and principles of international law. The decision of the arbitral tribunal shall be adopted by a majority of votes and it shall be final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration procedure. The costs of the Chairman and the remaining costs shall be borne, in equal parts, by the Contracting Parties.

Article 10. Final Clauses

1. If the provisions of the law of either of the Contracting Parties or their obligations under international agreements in force, and what those that are ratified in addition to this Agreement, contain provisions of public order or private law that accord to investments and interests of investors of the other Contracting Party a treatment more favourable than that provided by this agreement, In such case, these provisions shall remain in effect as a matter of priority under this Agreement.

2. This Agreement covers also, as regards its future implementation, investments made prior to its entry into force that are not contrary to the spirit of this Agreement, by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations.

3. This Agreement may be amended or revised at the request of either Contracting Party by means of negotiations.

The requesting party shall notify the other Contracting Party of its proposals for amendment three months before the opening of negotiations. Any amendment shall be the subject of a protocol of understanding taking place in the Arab Republic of Egypt or in the Democratic Republic of the Congo.

Article 11. Entry Into Force

1. This Agreement shall enter into force on the date of exchange of the last notification confirming the completion of the constitutional procedures necessary for its entry into force for both Contracting Parties.

2. The present Agreement shall be valid for a period of ten years, and it shall be automatically renewed for the same period. However, each Contracting Party reserves the right to denounce it by written notification to the other Contracting Party. The denunciation shall take effect upon the expiry of a period of 12 months from the date of notification by the other party.

Done at Ouagadougou on 18 December 1998, in four originals in the Arabic and French languages, both texts being equally authentic.

For the Government of the Arab Republic of Egypt

Amre Mussa

Minister of Foreign Affairs

For the Government of the Democratic Republic of Congo

Jean-Charles Okoto Lolakombe

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