

# **Agreement on the promotion and protection of investments Between The Government of the Republic of the Congo And The Government of the Republic of Namibia**

The Government of the Republic of the Congo and the Government of the Republic of Namibia, hereinafter referred to as the contracting parties;

Wishing to strengthen economic cooperation between the two States and fair and create favourable conditions for investments by investors of one Contracting Party in the territory of the other contracting party;

Recognising that the encouragement and reciprocal protection of investments needed to stimulate private initiative and to increase prosperity of both countries, thereby contributing to their development;

Recognising the important complementary role of foreign investment in the process of economic development and the right of each Contracting Party to determine the role and to define the conditions under which foreign investment may participate in this process.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1) The term means every kind of investment assets invested reinvested or 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 in force of the other contracting party. these include but are not limited to:

- a) Movable and immovable property and any other property rights such as mortgages, privileges and guarantees;
- b) Actions and interest and other forms of participation in a company;
- c) The claims which have been used to establish having an economic value, or to any performance under contract having an economic value and associated with an investment;
- d) Intellectual and industrial property rights, such as patents, copyrights, trademarks, industrial designs and models and utility, processes, technical know-how, the commercial reasons and intangible assets;
- e) The concessions granted by law or in the framework of a contract, including concessions to search for, the ext' action or exploitation of natural resources.

Any change in the form of an investment in accordance with the law in force, shall be considered as a new investment.

2) The term means investor in respect of either Contracting Party:

(a) Any legal person established or constituted in accordance with the legislation of one Contracting Party and having its registered office in the territory of that Party;

(b) Any legal person established or CONSI ituée in accordance with the legislation of one Contracting Party and having its head office in a third country with the interest of investments in the territory of the other contracting party.

3) The term means income returns arising out of investments. it shall cover in particular, though not exclusively, interests, capital gains, profits, dividends, royalties and fees.

4) The term territory shall mean either Contracting Party in respect of the territory of the latter and merines and submarine areas which extend beyond the limits of the territorial waters and upon which it exercises, in accordance with international

law, sovereign rights and jurisdiction.

## **Article 2. Promotion and Protection of Investments**

(1) Each Contracting Party admits to encourage and promote, within the framework of its laws and regulations, investments made by investors of the other contracting party in its territory protecting them.

(2) Investments admitted in accordance with paragraph (1) of article 2 shall be accorded at all times, in the territory of the other contracting party fair and equitable treatment and full protection and security. neither Contracting Party shall in any way by compromettre Arbitrary or Discriminatory Measures The management, use, enjoyment or cession of investments made in its territory by investors of the other contracting party.

## **Article 3. Treatment of Investments**

1) Each Contracting Party shall accord to investments of the other contracting party treatment no less favourable than that accorded in situations similar to its own investors investors or of any third State ajx, subject to the right of each party to: contrac ante, in accordance with its domestic law:

a) To respond to specific sectors and special economic activities; and

b) Specific grants advantages to its own investors to stimulate the creation of local industries.

2) Neither Contracting Party in its territory shall impose mandatory measures on investments by investors of the other contracting party concerning the purchase of matérielx, means of production, transport, marketing or operation of its products or unreasonable or arbitrary orders having similar effects.

3) The provisions of paragraph (1) of this article shall not be construed so as to oblige one contracting party to extend to the other contracting party investors of the present or future benefit of any treatment, preference or privilege resulting from:

a) Any customs or economic union, common market, free trade area monetary union, or similar institution;

b) Any international agreement or arrangement or any domestic legislation relating wholly or mainly to the Fiscali é; and

c) Any regulations with a view to facilitating the work économique in border regions.

## **Article 4. Expropriation and Compensation for Losses**

1) Neither Contracting Party shall take, or indirectly directerrent, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments made by investors of the other Contracting Party, except in the public interest, on a non-discriminatory basis and in accordance with due process.

2) The amount of the Compensation relating to the expropriation or nationalisation will correspond to the market value of the investments exprop' iés immediately before expropriation became known. l 1 nvestisseur affected shall have a right, under the law of the expropriating contracting party to prompt review by a judicial or other independent authority of that Party, the legality of the measure taken against the evaluation of investments and investment in accordance with the principles set out in paragraph drésent.

3) Investors of one Contracting Party who invest ssements placed in the territory of the other contracting party that have suffered losses due to a war or any other armed conflict, revolution, state of national emergency, revolt, riot or insurrection shall be accorded by the latter, with respect to restitution, compensation, décommagement or other forms of compensation for losses, treatment no less favourable than that accorded to its own investors or to those of a third State.

4) Payments under any provision of this artice shall be made without delay in a freely convertible currency at the rate of exchange applicable on the date of payment with respect to spot transactions in the currency transfer currency and shall include commercial interest at a rate established on a basis for the market and currency shall be effectively realizable and freely transferable.

## **Article 5. Transfers**

(1) Each Contracting Party shall allow without delay the transfer of: (a) The benefits;

b) In case of proceeds of the total or partial. 'sale or disposal of investments;

(c) The funds in repayment of loans on portants investments;

(d) An appropriate portion of the earnings of remuneration and other foreign nationals engaged from abroad, accrued in respect of an investment; additional funds used for the management of the investment.

(2) Money transfers referred to in paragraph 1 above shall be made in the currency of the original investment dawn convertible currency or any agreed by the investor and at the rate of exchange applicable on the date of transfer with respect to spot exchange operations in the currency transfers;

(3) A transfer shall be deemed to have been made without delay "within the meaning of paragraph 3 of Article 4 and paragraph 1 of Article 5 has been made within the period normally required for the completion of formalities transfer. the said period shall commence on the day on which the request for transfer has been submitted and shall not exceed three months.

(4) If and insofar as this is necessitated by the balance of payments difficulties, each party contracted NTEs may, by a decision of the competent authority for a limited period, restrict the transfer of revenue in case of cessation of all or part of the investment. in all cases, an annual transfer at least 20 per cent of such income shall be permitted. the transfers shall be made at the rate of exchange not rroins favourable than the rate of exchange applicable on the date on which the request for transfer is made.

(5) Notwithstanding the provisions of paragraphs (1), (2) and (4) above, either Contracting Party may maintain règlement and laws;

a) Requesting reports of transfers of currency; and

b) As a crélèvement imposing income tax at source applicable to dividends and other transfers.

Each Contracting Party shall protect the rights of creditors; or ensuring compliance with the judgments in judicial proceedings, by implementing fair, non-discriminatory and in good faith to its laws.

## **Article 6. Subrogation**

If one contracting party or its designated bodies shall make payments under a guarantee against non-commercial risks to an investment made by an investor in the territory of the other contracting party, the latter Contracting Party shall recognize dowry any right or action of such an investor to the latter Contracting Party or its designated agency, and the law of that Party or its designated agency to exercise by virtue of any right or subrogation, action to the same extent as its predecessor.

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

1) Any dispute arising directly from an investment between an investor of one Contracting Party and the other Contracting Party shall be settled amicably between the two parties concerned.

2) If such a dispute has not been settled within three (3) months from the date on which it has been notified in writing by the party lésee to the other party, the dispute may, at the choice of the investor, be submitted:

a) The competent courts of the Contracting Party in whose territory the investment has been made; or

b) To arbitration by the additional facility of the International Centre for Settlement of Investment Disputes; or

c) An ad hoc arbitration in accordance with the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL) as currently in force.

(3) Each Contracting Party consents irrévocablem €'NT by this agreement that a dispute is submitted to international arbitration as provided for in paragraph 2 of this article.

(4) During arbitration proceedings or the enforcement of an award, the contracting party involved in the dispute may object that the investor Party to the dispute has received compensation totally or partially by insurance for compensation for the damage suffered.

(5) The award shall be final and enforceable automatically to the parties to the dispute.

## **Article 8. Settlement of Disputes between Contracting Parties**

1) The Contracting Parties agree irrevocably to submit, upon request of either Contracting Party, any dispute concerning the

interpretation or application of this Agreement which is not resolved through consultations to an arbitral tribunal composed of three members in order to agree on a final and enforceable automatically. the Tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these two members shall select a national of a third State who, by mutual agreement between the two Contracting Parties shall be appointed Chairman of the Tribunal.

2) If either contracting party fails to appoint PSS of member of the Tribunal and has not initiated any proceedings cé lai within a period of three months after the other Contracting Party shall be invited to make such an appointment, the latter Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

3) If the two members of the arbitral tribunal arrivert do not agree on the choice of the Chairman within two months after their appointment, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

4) If in the cases specified under paragraphs (2) and article 3 (CEL), the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from carrying out the said function as the most senior judge of the Court who is not a national of either contracting party and not being prevented from carrying out the said function will be invited to make the necessary appointments.

5) The arbitral tribunal may, at any stage of the proceedings to propose the contracting parties to settle the dispute amicably. the foregoing provisions shall not affect the competence of the Tribunal to decide the dispute ex aequo et bono if the parties so agree.

6) Unless the contracting parties agree otherwise, the arbitral tribunal shall determine its own rules of.

7) The arbitral tribunal shall take its decisions by majority vote. such decisions shall be final and enforceable automatically to the contracting parties. each Contracting Party shall bear the cost of its own member of the arbitral tribunal and of its representation in the arbitral proceedings. the costs related to the Chair and any remaining costs shall be shared equally by the contracting parties. the Tribunal may however, in its decision that a higher proportion of direct costs be borne by one of the Contracting Parties, and this decision shall be exécu.oire to both Contracting Parties.

8) Issues subject to dispute referred to in paragraph (1) of this article shall be settled in accordance with the provisions of this Agreement and the principles of international law.

## **Article 9. Amendments or Revisions**

The provisions of this Agreement may be amended or revised at any time by agreement between the contracting parties. such amendment or revision shall come into force in accordance with the provisions of article 11 below.

## **Article 10. Application**

1) This Agreement shall apply to investissements made by investors of one Contracting Party on lei territory of the other contracting party, in accordance with its laws, to compler from the date of its entry into force.

2) It shall also apply to investments made prior to the entry into force of this Agreement, in the territory of one of the Contracting Parties with investors of the other Contracting Party in accordance with the legislation of that Party.

## **Article 11. Entry Into Force**

This Agreement shall enter into force on the first day of the second month following the date on which the contracting parties have notified each other in writing that the constitutionally required procedures in their respective countries for the entry into force of international agreements have been completed Ent.

## **Article 12. Duration**

1) This agreement is concluded for a period of fifteen (15) years.

2) Unless notice of termination of the agreement by one of the Contracting Parties at least six (6) months before the date of expiry, the present Agreement shall be extended for a period of ten (10) years.

Each Contracting Party shall reserve the right to terminate the agreement in the notice to the other party through diplomatic channels at least SX (6) months before the date of expiry.

3) The foregoing provisions shall continue to apply to investments made prior to the date of termination of this agreement for a further period of fifteen years; Te from that date.

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

Done at Windhoek, on 17 July 2007 in two originals in the English and French languages, both texts being equally authentic.