

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF BENIN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the United Arab Emirates and the Government of Benin (hereinafter collectively referred to as the "Contracting Parties")

Aware of the excellent friendly and cooperation relationships between both countries,

Desiring to create conditions favorable for fostering greater investment by investors of one Party in the territory of the other Party;

Recognizing that the encouragement and reciprocal protection of such investment, made in accordance with the laws and regulations of the host contracting party will be conducive to the stimulation of individual business initiative and will increase prosperity in both States:-

Have agreed as follows:-

## **Article 1. Definitions**

For the purposes of this Agreement:-

(a) The term 'investment' means every kind of asset invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

- i) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, or usufruct;
- ii) shares, stocks, bonds, debentures and any other similar forms of participation in a company and other debts and loans and securities issued by an investor of a Contracting Party and returns retained for the purpose of reinvestment;
- iii) Rights or claims to money or to any performance under contract having financial or economic value;
- iv) intellectual property rights, goodwill, technical processes, know-how, copyrights, trademarks, trade names and patents in accordance with the relevant laws of the respective Contracting Parties;
- v) any right conferred by law, contract or by virtue of any licenses or permits granted pursuant to law.

Any change of the form in which assets are invested or reinvested does not affect their character as investment provided that the investor will get the legal permission from the competent authorities of the host Contracting Party.

(b) "Investors" means any national, company or government of a Contracting Party;

(c) "nationals" means natural persons holding the nationality of a Contracting Party in accordance with its applicable law;

(d) "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties, management and technical fees;

(e) "territory" means

i) In respect of the Republic of Benin: the territory of the Republic of Benin including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of Benin has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the United Nations Convention on the Law of the Sea and International Law;

ii) In respect of United Arab Emirates: The term " United Arab Emirates" when used in a geographical sense, means the territory of the United Arab Emirates which is under its sovereignty as well as the area outside the territorial water, airspace and submarine areas over which the United Arab Emirates exercises, sovereign and jurisdictional rights in respect of any activity carried on in its water, seabed, subsoil, in connection with the exploration for or the exploitation of natural resources by virtue of its law and international law;

(f) The term "freely usable currency" means the any currency that is widely used to make payments for international transactions and is widely traded in the principal exchange markets.

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

1. This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

2. This Agreement shall not apply to any dispute concerning investments that arise before the entry into force of this agreement nor any claim that was settled before the entry into force of this Agreement.

3. Natural resources are not covered by this Agreement.

## **Article 3. Encouragement of Investments**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and policy.

2. The Contracting Parties shall encourage and facilitate in their territories the formation and establishment of appropriate legal entities by investors in order to establish, develop and execute investment projects in different economic sectors as may be permitted by the laws and regulations of the host Contracting Party.

3. Each Contracting Party shall endeavor in its territory to the necessary measures as may be applicable for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting Party.

## **Article 4. Protection of Investments**

1. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with the provisions of domestic laws of the host Contracting Party this Agreement and applicable rules of international law. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures, the management, maintenance, use, enjoyment, or disposal of investments.

2. Each Contracting Party shall endeavor to make public all laws, regulations, policies and procedures that pertain to or directly affect investments in its territory of investors of the other Contracting Party;

3. Once established, investment shall not be subjected in the host Contracting Party to additional performance requirements which may hinder or restrict the management, maintenance, use enjoyment or disposal of investments unless such requirements are deemed vital for reasons of public order, public health or environmental concerns and are enforced by law of general application

4. Each Contracting Party shall maintain a favorable environment for investments in its territory by investors of the other Contracting Party. Each Contracting Party shall in accordance with its applicable laws and regulations ensure to investors of the other Contracting Party, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority.

5. In case of liquidations of an investment, the proceeds from liquidation shall be accorded the same forms of protection and treatment as the initial investment, including those accorded by virtue of Article 5 hereunder.

## **Article 5. Treatment of Investments**

1. Each Contracting Party shall at all time ensure investments made in its territory by investors of the other Contracting Party, fair and equitable treatment. Such treatment shall not be less favorable than that which it accords to investments of its own investors or investors of any third Party.

2. Each Contracting Party shall accord to investors of the other Contracting Party as regards compensation, transfers,

management, use, enjoyment or disposal of their investments treatment no less favorable than that which it accords to investments by its own investors or by investors of any third Party.

3. Notwithstanding the provisions of any agreement, bilateral investment treaties (BITs) the Contracting States have signed with other countries before or after the entry into force of this Agreement, the Most Favored Nation clause (MFN) shall not apply to procedural or judicial matters.

4. However, the provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from:

a) any customs union, economic union, free trade area, monetary union or other form of regional economic arrangement or other similar international agreement, to which either of the Contracting Parties, is or may become a party, or

b) Any international or regional agreement or any other matter relating wholly or mainly to taxation.

## **Article 6. Compensation for Damage or Loss**

1. When Investment made by investors of either contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third Party.

2. Without prejudice to Paragraph (1) of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

(a) Requisition of their investment or property by its forces or authorities; or

(b) Destruction of their investment or property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation;

Shall be accorded expeditious and adequate compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be in a freely usable currency and be freely transferable without delay.

## **Article 7. Expropriation**

(a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against expeditious adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with the procedures established under law.

b) Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the " valuation date")

In case of payment, the compensation shall include interest at market rate from the date is required until the date of payment and shall be paid to investors in a freely convertible and transferable currency.

c) Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, book value and goodwill. The amount of compensation finally determined shall be expeditiously paid to the investor in a freely convertible currency and allowed to be freely transferable without delay.

2. Without prejudice to his rights under Article 9 of this Agreement the investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph 1. The Contracting Party making the expropriation shall make every endeavor to ensure that such review is carried out promptly.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under its applicable law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, stocks, debentures or other rights of interest it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of such rights or interest.

## **Article 8. Transfer of Payments Related to Investments**

1. Each Contracting Party shall permit investors of the other Contracting Party the transfer of payments in connection with an investment into and out of its territory without any restriction, including the transfer particularly but not exclusively of:

- a) the initial capital and any additional capital for the maintenance, management and development of the investment;
- b) returns;
- c) payments under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;
- d) royalties and fees referred to in Article 1, paragraph 1(d);
- e) proceeds from sale or liquidation of the whole or any part of the investment, including shares;
- f) earnings and other remuneration of personnel engaged from abroad in connection with the investment;
- g) payments of compensation pursuant to Articles 6 and 7;
- h) payments referred to in Article 9; and
- i) Payments arising out of the settlement of disputes.
- j) income and profits of airlines operating in international traffic.

2. Transfers of payments under paragraph 1 shall be affected without delay or restrictions and, except in the case of payments in kind, in a freely convertible currency. In case of such delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay.

## **Article 9. Subrogation**

1) If a Contracting Party, its designated agency or a company or other enterprise constituted or incorporated in that Contracting Party other than an investor (the "Indemnifying Party") makes a payment under an indemnity or guarantee against non-commercial risk it has assumed in respect of an investment in the territory of the other Contracting Party (the host Contracting Party), or otherwise acquires part or all of

The rights and claims of such an investment as a result of the complete or partial default of the investor, the host Contracting Party shall recognize:

- a) the assignment to the Indemnifying Party by law or by legal transaction or part or all of the rights and claims resulting from such an investment;
- b) that the Indemnifying Party is entitled to exercise such rights and claims and shall assume all obligations related to the investment by virtue of subrogation, to the same extent as its predecessor in title or the original investor; and
- c) The subrogated rights or claims shall not exceed the original rights or claims of such investor.

2) The Indemnifying Party shall be entitled in all circumstances to:

- a) the same treatment in respect of the rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above; and
- b) any payments received in pursuance of those rights and claims;

As the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

3) Notwithstanding the provisions of paragraph 1 of this Article, subrogation shall take place in either of the Contracting Parties only after the approval of the Contracting Party, if such an approval is required.

4) Without prejudice to Article 8 any payments received in local currency by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Party for the purpose of meeting any expenditure incurred in the territory of the host Contracting Party.

## **Article 10. Settlement of Disputes between Contracting Party and the Investor**

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. In case of the investor and any entity of a Contracting Party or its local governments or its designated agencies have stipulated an investment the procedure foreseen in such investment agreement shall apply.

3. With respect to paragraph 1 of this Article, if the dispute cannot be settled amicably within the period of six months, the parties to the dispute should pursue the following procedures:

a) If the dispute cannot be settled within six months from the date when the request for the settlement has been submitted, it shall be filled to the competent authorities or arbitration centers thereof, constituted under the laws of the Contracting Party, in whose territory the investment was made exhausting all local resources.

b) If the dispute cannot be settled according to the provisions of subparagraph (a) of this Article within six months from the date submission, either party to the dispute may submit the dispute to the International centre for the settlement of Investment Disputes (the Centre);

c) At any stage during the cooling off period or the proceeding of the tribunals, the parties to the dispute shall withdraw the case if they come to an agreement for settlement of the dispute amicably.

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

1. The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application or execution of this Agreement through consultations or other diplomatic channels.

2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state with whom both the Contracting Parties have diplomatic relations, as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other arrangement, invite the president of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make necessary appointments. If the Vice-President of the International Court of Justice 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 State shall be invited to make the necessary appointments.

5. The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with the provisions of this Agreement and applicable rules of international law and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by the Contracting Party, as well as the costs of its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedures.

## **Article 12. Entry and Sojourn of Personnel**

The Contracting Parties shall within the framework of their national laws regulations gives sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Parties in connection with an investment; the same

shall apply to employed persons of either Contracting Parties who in connection of an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment.

### **Article 13. Application of other Rules**

Without prejudice to article 5, if the provisions of law of either Contracting Party or obligations under international law existing at present or established here after between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments and associated activities by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over the present Agreement

### **Article 14. Applicable Laws**

1. Except as otherwise provided in this agreement, all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2. Nothing in this Agreement precludes the host Contracting Party from taking necessary reasonable measures in accordance with its laws applied generally on a non-discriminatory basis, in circumstances of extreme emergency for the specific purposes of prevention of diseases or pest, for the protection of the environment

### **Article 15. Amendment and Consultation**

This Agreement may be amended at any time at the request of either Contracting Party and the requesting Party has to submit its request in the written form explaining the grounds on which the amendment shall be made.

Either Party may request consultation with the other Contracting Party with respect to any dispute regarding the interpretation, application and execution or any other dispute including investment disputes and the other Party shall respond promptly.

### **Article 16. Entry Into Force**

Each Contracting Party shall notify the other that its constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the later notification.

### **Article 17. Duration and Termination**

1. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.

2. In respect of investment made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination of this Agreement.

3. The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

In witness whereof the undersigned duly authorized thereto by their respective Governments, have signed this Agreement.

Done at this Monday day of 4 March 2013, in three originals, in English, French and Arabic languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Government of the United Arab Emirates

Younis Haji Al Khoori

The Undersecretary

For the Government of the Republic of Benin

Issa Mussa Toure

Ambassador