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

The Republic of the Congo and the Republic of Tunisia (hereinafter referred to as "Contracting Parties"),

Desiring to create favourable conditions for strengthening economic cooperation between the two countries,

Convinced that reciprocal investment protection under a bilateral agreement is likely to stimulate private economic initiative and increase the prosperity of both countries,

Conscious of the need to accord fair and equitable treatment to investments by investors of one Contracting Party in the territory of the other Contracting Party

Have agreed as follows:

Article 1. Definitions

Under the terms of this Agreement:

1. the term "investment" means any asset of any kind invested by an investor of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the laws and regulations in force in the host Contracting Party investment, and includes in particular, but is not limited to, the following not exclusively to :

(i) movable and immovable property and any other rights such as mortgages, liens, pledges, encumbrances, usufruct and other similar rights ;

(ii) shares, partnership shares and other forms of participation in equity in companies ;

(iii) obligations, claims and entitlements to any benefits having an economic value ;

(iv) intellectual property rights such as copyrights and other related rights, patents, licences, designs or models, trademarks, technical processes, know-how, clientele and goodwill ;

(v) any rights conferred by the laws and regulations of the Party; and contracting party in whose territory the investment is made, including prospecting, extraction and mining rights. 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 "income" means all amounts generated by an investment and includes in particular profits, capital gains, dividends, interest, royalties or commissions.

3. The term "investor" means:

(i) a natural person who is a national of one of the Contracting Parties and who makes an investment in the territory of the other Contracting Party,

(ii) a legal person formed in accordance with the laws and regulations in force in one of the Contracting Parties and making an investment in the territory of the other Contracting Party,

4. The term "territory" means in respect of each Contracting Party, the territory of the latter as well as the areas navies and submarines that extend beyond the limit of the territorial waters and over which it exercises, in accordance with to international law, sovereign rights and jurisdiction.

Article 2. Encouragement and Protection of Investments

1. Each Contracting Party shall, within the framework of its laws and regulations, admit and encourage investments in its territory by investors of the other Contracting Party.

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

Article 3. National Treatment and Most-favoured Nation Treatment

1. Each Contracting Party shall accord in its territory to investments of investors of the other Contracting Party treatment no less favourable than that accorded to investments of its own investors or of investors of a third State; the treatment which is most favourable to 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 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 paragraphs 1 and 2 of this Article:

(i) a customs union, free trade area, free trade zone, a common market or other similar international agreement establishing such unions, one of the Parties of which is or could be a signatory as well as all other forms of regional economic cooperation ; and

(ii) double taxation conventions or treaties for the avoidance of double taxation or any other international tax treaty.

Article 4. Compensation for Losses

Investors of one of the Contracting Parties whose investments will have been made in the territory of the other Party contracting losses due to an armed conflict, a revolution, a state of national emergency, revolt, insurrection, or to of the disturbances, will benefit from the latter Party's share treatment no less favourable than that provided for in the that it grants to its own investors or to investors of any third State with regard to compensation, compensation, restitution or other form of settlement.

Article 5. Expropriation

1. Investments made by investors from one of the Contracting Parties shall not be nationalized, of expropriation or any other measure whose effect is equivalent to nationalization or expropriation (hereinafter referred to as designated "expropriation") in the territory of the other Contracting Party, except in the public interest, in accordance with to legal proceedings and provided that such measures do not are not discriminatory.

Expropriation measures must give rise to the payment of prompt and adequate compensation, the amount of which must 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 realisable, paid without delay and freely transferable. The compensation shall include an amount to compensate for any unjustified delay in payment.

2. The investor concerned shall be entitled, under the law to the Contracting Party which carried out the expropriation, to a prompt consideration by judicial or administrative authorities independent of the other Contracting Party, of the legality of the expropriation measures and the valuation of its investments in the light of the principles set out in this Article.

Article 6. Transfer of Funds

1. Each Contracting Party shall grant investors of the other Contracting Party, the free transfer of funds related to their investments and particularly but not exclusively:

(i) The initial capital and any additional capital for the maintenance and development of the investment;

(ii) Income;

(iii) Payments made for the reimbursement of loans contracted regularly;

(iv) the proceeds of sale or liquidation of all or part of the investment;

(v) Compensation payable pursuant to articles 4 and 5 of this Agreement.

(vi) an appropriate proportion of the remuneration of workers authorised to work in the territory of the other Contracting Party in connection with an investment.

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

Article 7. Subrogation

1. In the event that one of the Contracting Parties or its representative would make payments to its own investors by virtue of a guarantee given to an investment carried out in the territory of the other Contracting Party, the latter recognizes:

(i) the transfer to the first Contracting Party or its representative of all the rights and claims of these investors by legal or contractual means.

(ii) the subrogation of the other Contracting Party or of its representing in all rights that the first Party or its representative is entitled to practise, and assumes all obligations relating to investments.

2. The rights or claims subrogated cannot be higher than those of the investor.

Article 8. Settlement of Disputes between the Contracting Parties

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

2. If the dispute between the Contracting Parties has not been settled within six months from the date of the start of negotiations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal referred to in paragraph 2 of this Article shall be constituted ad hoc, on a case-by-case basis, as follows: within three months from the date of receipt of the request, each Contracting Party shall appoint one arbitrator. The two arbitrators shall designate, by common agreement within two months, a third arbitrator, who shall be a national of a third country, as President of the arbitral tribunal.

4. In the event of the arbitral tribunal not being constituted within two months of the date of its constitution, the two arbitrators shall appoint a third arbitrator, who shall be a national of a third country, as Chairman of the arbitral tribunal. 4. the time limits provided for in the preceding paragraph, both Parties shall In the absence of any other provision, the contracting parties may, in the absence of any other provision, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the Contracting Parties or if he or she is otherwise unable to perform that function, he will be requested the Vice-President of the International Court of Justice to Justice to make the necessary appointments. If the Vice-Chairperson is a national of one of the Contracting Parties or if he is also unable to perform that function, the member of the International Court will be asked to Justice coming immediately afterwards in the hierarchy and if he is not a national of one of the Contracting Parties, of make the required appointments.

5. The arbitral tribunal shall decide on the basis of respect for the law, the provisions of this Agreement and the applicable principles and rules of international law. The Arbitral Tribunal shall decide by a majority of votes. The awards shall be final and binding on the Contracting Parties. The arbitral tribunal shall establish its own procedure.

6. Each Contracting Party shall bear the costs of the arbitrator appointed by it and the costs of his representation in the arbitral proceedings. The expenses of the chairman of the tribunal and of the arbitral proceedings shall be borne equally by the two Contracting Parties.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party relating to an investment shall, as

far as possible, be settled amicably.

2. If the dispute has not been settled within six months of the date of entry into force of this Agreement, the Contracting Party concerned shall be informed of the decision of the other Contracting Party. from the date on which it was raised by either of the parties to the dispute, it shall be submitted, at the choice of the investor :

- to the national courts of the Contracting Party involved in the dispute;

- to an ad-hoc arbitration tribunal, established in accordance with the rules of the United Nations Commission on International Trade Law (UNCITRAL);

- to the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965,

Once the investor has submitted the dispute either to the courts of the Contracting Party concerned, to the ad-hoc arbitration tribunal or to ICSID, the choice of one of these three procedures remains final.

3. No Contracting Party, party to a dispute, shall raise an objection at any stage of the arbitration proceedings or the enforcement of an arbitration award on the ground that the investor, party to the dispute, has received compensation covering all or part of its losses under the guarantee provided for in Article 7 of this Agreement.

4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party party to the dispute in whose territory the investment is located, including the rules on conflict of laws, the provisions of this Agreement, the terms of any special agreement relating to the investment, and the principles of international law.

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 10. Application of other Provisions

If the national laws and regulations of the Contracting Parties or international agreements in existence at the date of entry into force of this Agreement or subsequently between the Contracting Parties, in addition to this Agreement, contain provisions granting to investments made by investors of the other Contracting Party, a more favourable treatment for the favourable than that granted by this Agreement, such laws and regulations, and regulations or agreements, to the extent that they are more favourable to the investor, will prevail.

Article 11. Implementation of the Agreement

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

It also applies to existing investments, existing investors of the other Contracting Party on the date of entry in force of this Agreement and carried out in the territory of one of the Contracting Parties in accordance with its laws, and regulations from 1 January 1957.

Article 12. Entry Into Force, Duration and Termination of the Agreement

1. This Agreement shall enter into force on the date of receipt of the second of the two notifications by which one of the Contracting Parties informs the other Contracting Party of the completion of its internal procedures.

2. This Agreement shall be concluded for a period of ten years from the date of its entry into force. It shall be tacitly renewable for further successive periods of ten years.

Each Contracting Party may at any time communicate through diplomatic channels to the other Contracting Party its decision to terminate this Agreement. In such a case, this Agreement shall be terminated six months after the date of such notification to the other Party.

3. In the case of investments made before the date of expiry, the Agreement shall be terminated six months after the date of such notification to the other Party. of this Agreement, the provisions of Articles 1 to 11 will continue to apply for a period of 10 years to As of that date.

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

Done at Tunis on 4 October 2005 in two originals in the Arabic and French. both texts being equally authentic. In the event of any divergence in interpretation, the English text shall prevail.

For the Republic of Congo,

Justin BALLAY-MEGOT

Minister at the Presidency in charge, of Development Cooperation,

For the Republic of Tunisia

Mohamed Nouri Jouini

Development Minister and International Cooperation.