

Agreement between the Government of the People's Democratic Republic of Algeria and the Government of the Federal Republic of Nigeria on the reciprocal promotion and protection of investments

Preamble

The Government of the People's Democratic Republic of Algeria and the Government of the Federal Republic of Nigeria (hereinafter referred to as the "Contracting Parties").

Desiring to enhance economic cooperation and to create conditions to promote investment between Algeria and Nigeria;

Recognizing the right of each Contracting Party to establish the conditions for the establishment of a foreign investment of the investor and the need to respect the sovereignty and the laws of the host country;

Convinced that the promotion and protection of investments will stimulate the release of capital, the flow of investment and transfer of technology between the two Contracting Parties in the interest of development and mutual economic prosperity;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) "investment" shall mean any element of assets which includes in particular, though not exclusively:

I. movable and immovable property and other property rights, such as leasing, liens or pledges;

II. shares, assessments and obligations in a company and any other form of participation in a company;

III. monetary claims or any performance under contract having an economic value;

IV. intellectual property rights in particular copyrights, patents, models and invention designs, trademarks, trade names, and know-how and goodwill;

V. rights or permits conferred by law or under contract, including concessions in the field of agriculture and for research, extract and exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investments.

b) "investor" refers with regard to either Contracting Party:

I. nationals of one Contracting Party, being those natural persons who have their status as nationals of a Contracting Party, the latter;

II. companies of one Contracting Party, as well as any legal person, corporation, firm or association established or constituted in accordance with the law of that Contracting Party.

c) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes income from capital gains, profits, dividends, royalties.

d) "territory":

With regard to Algeria: in the geographical sense, it means the territory of the People's Democratic Republic of Algeria, including the territorial sea and, beyond it, the other maritime areas over which, in application of its national legislation and/or in accordance with international law, the People's Democratic Republic of Algeria exercises jurisdiction and/or

sovereign rights for the purpose of exploring and exploiting the natural resources, whether living or non-living, of the waters superjacent to the bed of the sea, of the bed of the mother of its subsoil.

For Nigeria: it means the land area of the Federal Republic of Nigeria, the territorial sea, as well as the continental shelf over which the Federal Republic of Nigeria exercises, in accordance with international law, sovereign rights and jurisdiction.

Article 2. Scope of Application of this Agreement

This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. However, this Agreement shall not apply to disputes which occurred prior to its entry into force.

Article 3. Investment Promotion

1. Each Contracting Party shall encourage in its territory, subject to its general policy in the field of foreign investment, the investments of investors of the other Contracting Party and admit them in accordance with its domestic law.
2. Each Contracting Party shall, in accordance with its domestic law, grant the necessary authorizations relating to investments referred to in paragraph 1 of this article, including the carrying out of licensing agreements and contracts for commercial, administrative, or technical assistance.
3. In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of a Contracting Party, the latter, notwithstanding its own requirements for bookkeeping and auditing, shall permit the investment to be subject also to bookkeeping and auditing standards according to which the investor is subjected in accordance with its national laws or rules of internationally accepted accounting and drawn up by the International Accounting Standards Committee. The results of such accountancy and audit shall be transferred to the investor free of charge.

Article 4. Protection of Investments

1. Returns of investments and investors of either Contracting Party shall benefit at all times of fair and equitable treatment and full protection in the territory of the other Contracting Party. Neither Contracting Party shall impair in its territory by unreasonable or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments made by investors of the other Contracting Party.
2. Each Contracting Party shall accord in its territory to returns of investments and investors of the other Contracting Party treatment no less favourable than that accorded to investments and of its own returns to investments or investors and returns of a third State.
3. Each Contracting Party shall accord to investors in its territory of the other Contracting Party treatment no less favourable than that accorded to its own investors to investors or of any third State.
4. The provisions of paragraphs 2 and 3 of Article 4 shall not be construed so as to oblige one contracting party to extend to investors of the other Contracting Party any treatment, preference or privilege resulting from:
 - a) Any present or future customs union, free trade area, common market, any international agreement or any similar interim arrangement leading up to such free trade area, customs union or common market, to which either of the contracting parties is or may become a party;
 - b) Any international agreement on arrangements relating wholly or partially to taxation or any domestic legislation relating wholly or partially to taxation;
 - c) Any law or other measure aimed at ensuring equality in its territory or to protect or assist individuals disadvantaged by unfair discrimination in its territory.
5. If a Contracting Party accords special advantages to development finance institutions with foreign participation and based solely on development assistance, in particular through non-lucrative activities, such Contracting Party will not be obliged to accord such advantages to development finance institutions or other investors of the other Contracting Party.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to

war or other armed conflicts, revolution, state of national emergency, revolt, riot or insurrection in the territory of the latter Contracting Party, shall be accorded by that Contracting Party on the recovery, compensation or other settlement, a treatment no less favourable than that which the latter Contracting Party accords to its own investors to investors or of any third State.

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 in the territory of the other Contracting Party resulting from requisitioning of loss or damage to their property by its authorities should be accorded fair and adequate compensation for the losses sustained during the period of the requisitioning or as a result of damage to their property. Such compensation shall represent the present value of the investment concerned and shall include interest at the prevailing commercial rate until the date of payment. It shall be paid without delay and shall be transferred to the country designated by the beneficiary in the currency used for the investment or in another convertible currency and accepted by the beneficiary.

Article 6. Nationalisation or Expropriation

1. Investments made by investors of either Contracting Party shall not be nationalized or expropriated or subjected to measures having effects equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose, under due process, on a non-discriminatory basis and against payment of prompt, fair and adequate compensation.

Such compensation shall be at least equal to the commercial value of the expropriated investments, and immediately before the expropriation, or before the expropriation decided upon is made public, whichever occurs first, such compensation shall bear interest at a normal commercial rate until the date of payment and shall be paid without delay and be effectively realisable.

2. An investor affected by expropriation shall have the right, within the framework of the domestic law of the contracting party which has decided on expropriation, to a prompt review of its case for the purpose of the evaluation of its investment by a court or other independent and impartial legal body of the latter contracting party, in accordance with the principles mentioned in paragraph 1 of this Article.

Article 7. Transfers of Investment Income

1. Each Contracting Party shall permit investors of the other Contracting Party which have fulfilled all their tax obligations to freely transfer payments related to their investments and returns, including compensation paid pursuant to Articles 5 and 6.

2. All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to domestic investment, and in the absence of an exchange rate for investments are to be used on the most recent exchange rate for conversion of currencies into Special Drawing Rights.

3. The transfer shall be effected in accordance with the domestic laws of the country in which they are made. Such laws shall not impair or derogate as regards their requirements and their application to the free and immediate transfer as authorized under the terms of paragraphs 1 and 2 of this article.

4. The provisions for transfers and returns of investments referred to in this article shall not apply in favour of Algerian nationals who have obtained the Nigerian or permanent residence in one of the two countries.

5. The restrictions referred to in paragraph 4 shall be automatically lifted after their annulment by the domestic laws or of Algeria or Nigeria, as the case may be.

Article 8. Settlement of Investment Disputes

1. For the purpose of solving disputes with respect to investments between a Contracting Party and nationals and companies of the other Contracting Party, consultations will take place between the parties concerned to settle the dispute amicably.

2. If the consultations do not lead to a solution within six months of the request for settlement, the national or company may submit the dispute for settlement at its discretion:

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

b) The International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the

Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965; or

c) To an ad hoc arbitral tribunal, which unless otherwise agreed by the parties to the dispute, it shall be established on the basis of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3 - Each Contracting Party shall give consent to submit the investment dispute to conciliation or arbitration.

4 - The Contracting Party which is a party to the dispute may not, at any stage of the arbitration proceedings, assert its immunity or declare that the investor has received pursuant to an insurance contract, compensation covering the whole or part of any alleged loss or damage.

5. Neither Contracting Party shall pursue the dispute submitted to international arbitration through diplomatic channels unless the other Contracting Party has failed to comply with the arbitral decision.

Article 9. Settlement of Disputes between the Contracting Parties

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

2. If both Contracting Parties are unable to resolve it within a period of twelve (12) months from the date on which it was born, it shall be submitted at the request of either Contracting Party to which an arbitral tribunal shall be composed of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a Chairman who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not responded to the invitation of the other contracting party to make within two (2) months of such designations, the arbitrator shall be appointed upon request of the latter Contracting Party by the President of the International Court of Justice.

4. If within two (2) months after their appointment, both arbitrators have not agreed on the appointment of the Chairman and in the absence of any other agreement, the latter shall be appointed upon request of either Contracting Party by the President of the International Court of Justice.

5. In the cases referred to in paragraphs 3 and 4 of this article, if the President of the International Court of Justice is a national of either Contracting Party or is prevented from discharging this task, the designations shall be made by the Vice-President. If the Vice-President is a national of either Contracting Party or is also prevented from carrying out the function, the member of the International Court of Justice next in seniority and who is not a national of either Contracting Party, make those appointments.

6. The Tribunal shall determine its own rules of procedure.

7. Each Contracting Party shall bear the costs related to the designation of its arbitrator within its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

8. The decisions of the Tribunal shall be final and binding on both Contracting Parties.

Article 10. Subrogation

If one Contracting Party or its agency, makes a payment to one of its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize the assignment by law or by legal process, in respect of the first party, all the rights and claims of the investor indemnified. It shall also recognise that the party or the agency representing it is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the investor.

Article 11. Application of the other Provisions

1. If the provisions of the domestic law of either Contracting Party or obligations under international law existing at present or established by the Contracting Parties in addition to this Agreement contain rules whether general or specific, for returns of investments and investors of the other Contracting Party to more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

2. Investments which are covered by a specific agreement between one of the Contracting Parties and an investor of the

other Contracting Party shall be governed by the provisions of the said agreement insofar as these provisions are more favourable than those set out in this Agreement.

Article 12. Amendment and Revision

Any amendment or revision of this Agreement shall be in writing and shall enter into force after the approval of the competent authorities of the contracting parties through an exchange of notes through diplomatic channels.

Article 13. Entry Into Force

This Agreement shall enter into force on the date of the exchange of letters confirming that the Agreement was ratified by law, in accordance with the respective constitutional procedures of each of the Parties.

Article 14. Duration and Termination

This Agreement shall remain in force for an initial period of ten (10) years. It shall remain in force until the expiration of a period of twelve (12) months from the date of the written notification by either Contracting Party from the other Contracting Party of its intention to denounce this Agreement, bearing in mind that investments made prior to the termination of this Agreement shall continue to be covered by the provisions of this agreement for a period of ten (10) years from the date of expiry.

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

Done at Abuja on 14 January 2002 in two originals in the Arabic and English languages, both texts being equally authentic.

For the Government of the People's Democratic Republic of Algeria's

Minister of Commerce

Hamid TEMAR

For the Government of the Federal Republic of Nigeria

Minister of Industry

Chief Kola JAMODU