

Agreement between the Government of the Republic of Congo and the Government of the Republic of Italy for the promotion and protection of investments

The Government of the Republic of Congo and the Government of the Italian Republic (hereinafter referred to as the Contracting Parties), wishing to create favorable conditions for greater economic cooperation between them, in particular with regard to investor capital investments of a Contracting Party in the territory of the other Contracting Party.

Recognizing that the promotion and mutual protection of such investments under international agreements will help stimulate entrepreneurial initiatives that are conducive to the prosperity of the two Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1. The term "investment" means, irrespective of the legal form chosen and the legal system, any property invested, before or after the entry into force of this Agreement, by a natural or juridical person of a Contracting Party in the territory of the other Party, in accordance with the laws and regulations of that Party:
 - (a) movable and immovable property, as well as any other real rights, including security interests in the property of others, provided that they may be used for investment purposes ;
 - b) shares, bonds, stocks or other credit instruments, as well as government bonds and public securities in general
 - c) financial credits or other rights or obligations to continue the performance and economic value related to an investment, as well as reinvested income as defined in paragraph 5 of this Article ;
 - d) copyrights, trademarks, patents, industrial designs and other intellectual property rights and industrial know-how, trade secrets, society and goodwill ;
 - e) economic rights, conferred by law or by contract and any license and franchise is in accordance with the applicable provisions for the exercise of economic activity, including exploration, cultivation, extraction and exploitation of natural resources.
2. The term "investor" means a natural or legal person of a Contracting Party who has made, or intends to make, investments in the territory of another Contracting Party.
3. The term "national" means
 - (a) with respect to the Italian Republic, persons whose status as Italian citizens is derived from the laws in force in the Italian Republic
 - b) with respect to the Republic of the Congo, persons whose status as Congolese citizens derives from the laws in force in the Republic of the Congo;
4. The term "legal person" means, with respect to each Contracting Party, any entity established in the territory of the latter, and they have recognized, that public institutions, enterprises, in person or company, foundations, associations and regardless of whether their liability is limited or not.
5. The term "income" means amounts obtained or to be obtained from an investment, including, in particular, profits or gains, interest, income, dividends, royalties, fees for technical services and other rights, including reinvestment of income and capital gains.

6. The term "territory" means, in addition to the areas enclosed by land borders also the "maritime areas". These include the maritime and submarine areas over which the contracting states have sovereignty those over which they have exercised or international law, sovereign rights and jurisdiction.

7. The term "establishment" includes the decision to return all or part of the capital made by investors, regardless of the conclusion of the investment plans undertaken.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage investors from the other Contracting Party to make investments in their territory and shall authorize such investments in accordance with their legislation.

2. Each Contracting Party shall always ensure fair and equitable treatment of investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment, processing, termination and liquidation (including the sale) of investments made in its territory by investors of the other Contracting Party, as well as by Companies and companies in which such investments have been made, are in no way affected by unjustified or discriminatory measures. Each Contracting Party shall comply with the commitments it has entered into with respect to investments made by nationals or companies of the other Contracting Party.

Article 3. National Treatment and the Most Favored Nation Clause

1. Each Contracting Party shall, in its territory, grant investment and related incomes to investors of the other Contracting Party, no less favorable treatment than that reserved for investments and the income of its nationals or investors of a third State.

2. The treatment reserved for investments in investors of each Contracting Party shall not be less favorable than that accorded to similar activities connected with the investments of investors of the Contracting Party or of any other third State.

3. The provisions of paragraphs 1 and 2 of this Article do not relate to the advantages and privileges that one of the Contracting Parties reserves or reserves to a third State on the basis of its departure from a customs or economic union to a common market, a free trade area, a regional or sub-regional agreement, an international multilateral economic agreement or agreements concluded to avoid double taxation or to facilitate cross-border trade. Paragraphs 1 and 2 of this Article do not refer to the advantages and privileges that one of the Contracting Parties reserves or reserves to a third State on the basis of its departure from a customs or economic union, a common market, a free trade area, a regional or sub-regional agreement, to an international multilateral economic agreement or on the basis of agreements to avoid double taxation or to facilitate trade border.

Article 4. Compensation for Losses

1. Where investors of one of the two Contracting Parties suffer losses in their investments in the territory of the other Party due to a war or other armed conflict, a state of national emergency or revolution, revolt, insurrection or tumult which has occurred in the territory of that other Contracting Party, they shall receive adequate compensation from the Contracting Party in which the investment was incurred.

2. Subject to paragraph 1 of this Article, the nationals or companies of a Contracting Party who, in one of the cases referred to in the preceding paragraph, incur losses in the territory of the other Contracting Party due to the requisition of their assets by the armed forces or authorities of that Contracting Party, shall be entitled to repayment or adequate compensation. Payments made under this Title shall be freely transferable.

3. The payments referred to in paragraphs 1 and 2 shall be made without undue delay and shall be freely transferable in convertible currency. Paragraphs 1 and 2 shall be made without undue delay and shall be freely transferable in convertible currency.

4. The investors concerned will have the same treatment as the citizens of the compulsory contracting party and will in any case have a treatment no less favorable than those accorded to investors of a third state.

Article 5. Nationalization and Expropriation

1. The investments referred to in this Agreement shall not be subject to any restriction, fixed or indefinite, to the ownership, possession, control and enjoyment rights inherent to them, except as provided for by law or effect of judgments and orders

issued by competent judicial authorities.

2. Investment by investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated or subject to measures having similar effects in the territory of the other Party except for the public interest for reasons of national interest and against Immediate, full and effective compensation and provided that such measures are taken on a non-discriminatory basis and in accordance with legal provisions and procedures.

3. Adequate compensation will be equivalent to the actual market value of the investment immediately before the nationalization or expropriation decision has been announced or made public and will be determined on the basis of internationally accepted benchmarks.

If the market value is difficult to determine, the compensation will be determined on the basis of a fair assessment of the constituent elements and distinctive features of the undertaking, as well as the components and results of the undertaking's activity connected. Compensation will include interest accrued on the date of payment, calculated at the normal commercial rate and from the date of nationalization or expropriation. In the absence of an agreement between the investors and the obliged party, the amount of compensation shall be determined in accordance with the dispute settlement procedures referred to in Article 9 of this Agreement. The compensation, once determined, will be promptly paid and will be authorized for repatriation.

4. The provisions of paragraph 1 of this Article shall also apply to income arising from an investment and, in the case of liquidation, to the proceeds arising from this investment. Paragraph 1 of this Article shall also apply to income arising from an investment other than 'In the case of liquidation, the proceeds of the latter.

Article 6. Repatriation of Capital, Profits and Wages

1. Each Contracting Party shall guarantee to the investors of the other, after the investors have fulfilled all tax obligations, the transfer abroad in any convertible currency and without unjustified delay of the following:

- a) Capital and additional capital shares used to maintain and increase investment;
- b) Net income, dividends, royalties, fees for assistance and technical services, interests and other profits;
- c) Sums deriving from total or partial sale or liquidation of an investment;
- d) Funds for the repayment of loans relating to an investment and the payment of interest arising therefrom;
- e) Remuneration and allowances received by citizens of the other Contracting Party for subordinate employment and for services rendered in the framework of the execution of an investment made in their territory, in the measure and according to the modalities provided for in the laws and regulations in force in force;

2. Having regard to Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same treatment accorded to transfers made by investments made by investors of a third State if it proves to be more favorable.

Article 7. Subrogation

In the event that a Contracting Party or the body designated by it makes a payment under a guarantee given by an investment made in the territory of the other Contracting Party, the other Contracting Party shall recognize the assignment in favor of the first Contracting Party or the body designated by it, both by law and by legal act, of all rights and claims of the indemnified party and the right of the first Contracting Party or its designated body to exercise such rights and to claim such credits by virtue of subrogation, the same credit rating of the indemnified party. With respect to payments to parties or the designated organization pursuant to such assignment, Articles 4, 5 and 6 of this Agreement shall apply, respectively.

Article 8. Transfer Modalities

The transfers referred to in Articles 4, 5, 6 and 7 shall be made without undue delay and in any case within a period of six months, provided that the payment of the tax obligations has in the meantime taken place. Such transfers will be made in currencies convertible to the prevailing exchange rate applicable at the date of the transfer.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1. Disputes between a Contracting Party and investors of the other Contracting Party relating to investments, including

those relating to the amount of compensation, shall, as far as possible, be resolved amicably.

2. Where such disputes can not be resolved amicably within six months of the date of the written request, the investor concerned may submit the dispute:

a) To the court of the Contracting Party competent for territorial jurisdiction and its higher claims;

b) To an arbitral tribunal ad hoc, in accordance with the Arbitration Rules of the International Commission on International Trade Law (UNCITRAL); The arbitration will take place in accordance with the rules of arbitration of international commercial law (UNCITRAL) of the United Nations Commission of 1976:

- the arbitrators will be three, if they are not nationals of the Contracting Parties, they must be citizens of States who have diplomatic relations with the Contracting Parties;

- the decision of the arbitral tribunal shall in any case take account of the provisions of this Agreement and of the principles of general international law recognized by the two Contracting Parties;

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be, as far as possible, amicably composed by diplomatic means.

2. In the event that such disputes can not be made within three months of the date on which one of the two Contracting Parties has made a written request, they shall, at the request of one of the two parties, be subject to the jurisdiction of a court Ad hoc arbitration in accordance with the provisions of this Article.

3. The arbitral tribunal shall be composed as follows: each Contracting Party shall appoint a member of the tribunal within a period of two months from the date of receipt of the request for arbitration. These two members will then choose, as president, a third-country national.

The chairman shall be appointed within two months of the appointment of the other two members.

4. If, within the time limits referred to in paragraph 3 of this article, the appointments have not been made, either Contracting Party may, in the absence of other agreements, request to be specified by the President of the International Court of Justice. If he is a national of one of the contracting parties or for other reasons it was not possible for him to fulfill this function, the vice president of the court will be asked to do so. If therefore also the vice president of the court is a national of one of the contracting parties or was not even possible for him to perform this function, it will be asked to the next and more member of the International Court of Justice who are not of one of the Contracting Parties.

5. The arbitral tribunal will decide by majority vote and its decisions will be binding. Each Contracting Party shall bear the costs of its arbitrator and those of his participation in the arbitration proceedings. The expenses for the president and all other expenses will be borne by the two parties on an equal footing. The arbitral tribunal will establish its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement shall apply regardless of whether diplomatic or consular relations exist between the Contracting Parties.

Article 12. Application of other Provisions

1. Where a matter is governed both by this Agreement and by another international agreement to which the two Contracting Parties are party or by rules of general international law, the Contracting Parties and their investors shall apply the provisions which are more favorable to their case.

2. Where a Contracting Party, by virtue of laws, regulations or other specific provisions or contracts, has adopted, for investors of the other Contracting Party, more favorable rules than those laid down in this Agreement, the most favorable treatment shall be applied.

Article 13. Entry Into Force

This Agreement shall enter into force on the date on which the two Contracting Parties have been notified of the completion of their respective constitutional procedures.

Article 14. Duration and Expiration

1. This Agreement shall remain in force for a period of 10 years from the date of completion of the notification procedures set forth in Article 13 and shall be renewed automatically for periods of five years, unless either party denounces it in writing one year prior to the expiration date.

2. For investments made prior to the expiration date referred to in Article 14, the provisions of Articles 1 to 12 shall remain in effect for a further period of five years from the above date

Done in duplicate at Brazzaville on 17 March 1994 in the French and Italian languages, both texts being equally authentic.

For the Government of the Italian Republic

For the Government of the Republic of Congo