

**Annex II**

**Agreement**

**Between**

**The Government of the  
Arab Republic of Egypt**

**and**

**The Government of the  
Republic of Botswana**

**For the Promotion and Reciprocal Protection  
of investments**

---

*1b. An.*

*DB*

## PREAMBLE

The Government of the Arab Republic of Egypt and the Government of the Republic of Botswana (hereinafter referred to as the "Contracting Parties");

DESIRING to create favourable conditions for a greater flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party; and

RECOGNISING that the promotion and reciprocal protection of such investments will stimulate the development of business initiatives and will increase prosperity in the territories of both Contracting Parties;

HAVE agreed as follows:

*1b. An.*

*DB*

## ARTICLE 1

### DEFINITIONS

(1) In this Agreement:

- (a) **"investment"** means every kind of ~~asset~~ **admissible under the relevant laws and regulations** of the Contracting Party in whose territory the respective business undertaking is made, and in particular, though not exclusively, includes:
- (i) movable and immovable property as well as other rights in rem such as mortgages, liens or pledges;
  - (ii) shares, debentures and any other form of participation in a company;
  - (iii) claims to money, or to any performance under contract having an economic value;
  - (iv) industrial and intellectual property rights, in particular copyrights, patents, utility-model patents, designs, trade-marks, trade-names, technical processes, know-how, and goodwill;
  - (v) economic value of concession rights or permits conferred in accordance with the law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;
- (b) **"returns"** mean the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees;
- (c) **"investor"** means in respect to either Contracting Party:
- (i) the "national", that is a natural person deriving his or her status as a national of that Contracting Party from the relevant laws of that Contracting Party; and
  - (ii) the "company" that is a legal person, such as a corporation, firm or association, incorporated or constituted in accordance with the law of that Contracting Party;

16. An.

De

(d) "territory" means -

(1) in the case of the Arab Republic of Egypt -

the land territory, air space and territorial waters of the Arab Republic of Egypt, as well as the exclusive economic zone and the continental shelf that extends outside the limits of the territorial waters of the Arab Republic of Egypt, over which it has jurisdiction and sovereign rights pursuant to international law;

(2) in the case of the Republic of Botswana: the present territory of the Republic of Botswana including any area which might in the future be designated under the national law of the Republic of Botswana in accordance with international law as an area within which the Republic of Botswana may exercise sovereign rights or jurisdiction.

(2) Any change in the form in which assets are or have been invested does not affect their character as investments as defined in this Agreement.

## ARTICLE 2

### SCOPE OF THE AGREEMENT

This Agreement shall ~~only apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party in conformity with the host Contracting Party's laws~~

## ARTICLE 3

### PROMOTION AND PROTECTION OF INVESTMENTS

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment encourage investments in its territory by investors of the other Contracting Party, and, subject to compliance with the provisions of its laws, shall ~~admit~~ such investments.

(2) Each Contracting Party shall use its best endeavours to ~~grant~~ in accordance with its laws, ~~the necessary permits~~ in connection with the carrying out of such investments and, whenever necessary, ~~licensing agreements and contracts for technical, commercial or administrative assistance.~~

(3) Investments shall be accorded ~~fair and equitable protection~~ in accordance with this Agreement.

1b. An.

DB

## ARTICLE 4

### TREATMENT OF INVESTMENTS

- (1) Investments and returns of investors of either Contracting Party shall at all times be accorded ~~fair and equitable treatment~~ in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable nor discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.
- (2) Each Contracting Party shall in its territory ~~accord to investors~~ ~~investments and returns~~ of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of investors of any ~~third State~~.
- (3) The provisions of paragraph (2) of this Article shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
  - (a) any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area, or common market of which either of the Contracting Parties is a member or may become a member; or
  - (b) any international agreement or arrangement relating wholly or mainly to ~~taxation~~ or any domestic legislation relating wholly or mainly to taxation.
- (4) Each Contracting Party ~~may~~, in accordance with its laws and regulations, ~~grant incentives, treatment, preferences or privileges through special policies or measures to its nationals only for the purpose of promoting small and medium-sized enterprises and infant industries~~, persons or areas in its territory subject to the condition that these shall not significantly affect the investments and activities of the investors of the other Contracting Party.
- (5) Each Contracting Party shall observe the obligations under its laws and under this Agreement which bind the Contracting Party and its investors and the investors of the other Contracting Party in matters relating to investments.

16. An.

DB

## ARTICLE 5

### COMPENSATION FOR LOSSES

Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

## ARTICLE 6

### EXPROPRIATION

- (1) Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation except for public purposes, ~~under due process of law, on a non-discriminatory basis,~~ and against ~~prompt, adequate and effective compensation.~~ Such compensation shall be made without delay, and be effectively realizable. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.
- (2) The investor affected by the expropriation shall have a ~~right~~ under the law of the expropriating Contracting Party ~~to prompt review,~~ by a court of law or other independent and impartial forum of that Contracting Party of the expropriation case.
- (3) Where a Contracting Party expropriates, nationalises or takes measures having effect equivalent to nationalisation or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation as specified therein to such investors of the other Contracting Party who are owners of those shares.

16. An.

83

## ARTICLE 7

### TRANSFER OF INVESTMENT CAPITAL AND RETURNS

- (1) Each Contracting Party shall, in accordance with its relevant laws, allow investors of the other Contracting Party the ~~free transfer of funds~~ relating to their investments and returns, including compensation paid pursuant to the provisions of Articles 5 and 6 of this Agreement.
- (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 such a market exchange rate, the ~~rate~~ to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

## ARTICLE 8

### SUBROGATION

- (1) If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party of all the rights and claims of the indemnified investor, and shall also recognise that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims arising from subrogation, to the same extent as the original investor.
- (2) Any payment made by one Contracting Party or its designated agency to its own investor as provided for in paragraph (1) shall not affect the right of such investor to make his claims against the other Contracting Party in accordance with Article 9 provided that the exercise of such a right does not overlap, or is not in conflict with, the exercise of a right under that paragraph.

16. An.

28

## ARTICLE 9

### SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

- (1) Disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which has not been amicably settled shall, after a period of six months from written notification of a claim, be submitted at the first instance to a competent court of the Contracting Party accepting the investment for a decision, for by mutual consent between the parties to international arbitration.
- (2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:
  - (a) the International Centre for the Settlement of Investment Disputes (ICSID) (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between states and nationals of other states, opened for signature at Washington D.C. on 18<sup>th</sup> March, 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings); or
  - (b) an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement between the parties or established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
- (3) If after a period of six (6) months from written notification of the claim there is no agreement to one of the above alternative procedures, the dispute shall at the request in writing of either party be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as then in force. The parties may agree in writing to modify these Rules.

## ARTICLE 10

### SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the Governments of the two Contracting Parties.
- (2) If the dispute cannot be settled within a period of six months following the date on which such negotiations were requested by either Contracting Party, it may upon the request of either Contracting Party, be submitted to an arbitral tribunal.



- (3) Such an arbitral tribunal shall be constituted for each individual case in the following manner: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator for the tribunal. Those two arbitrators shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two arbitrators.
- (4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President 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 Party and not prevented from discharging such functions shall be invited to make the necessary appointments.
- (5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator to the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne equally by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on, and executed by, both Contracting Parties.
- (6) Apart from the above, the tribunal shall determine its own procedure.

## ARTICLE 11

### APPLICATION OF OTHER RULES

- (1) If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, ~~prevail over the present Agreement,~~
- (2) Each Contracting Party shall, however, honour any obligation it may have entered into with regard to investments from the other Contracting Party.

1b. An.

OB

## ARTICLE 12

### PROHIBITIONS AND RESTRICTIONS

The provisions of this Agreement shall ~~not~~ in any way ~~limit the right~~ of either Contracting Party to ~~apply non-discriminatory prohibitions or restrictions~~ of any kind or ~~take any other action which is directed to the protection of its essential security interests~~, or to the protection of ~~public health~~ or the prevention of ~~diseases and pests in animals or plants~~.

## ARTICLE 13

### ENVIRONMENTAL PROTECTION

- (1) ~~Recognising the right~~ of each Contracting Party to ~~establish~~ its own levels of domestic environmental protection and environmental development policies and priorities, and to ~~adopt or modify accordingly its environmental legislation~~, each Contracting Party shall strive to ensure that its legislation provides for ~~high levels of environmental protection~~ and shall strive to continue to improve this legislation.
- (2) The Contracting Parties recognise that it is ~~inappropriate to encourage investment by relaxing~~ domestic environmental legislation. Accordingly, each Contracting Party shall strive to ensure that it ~~does not waive or otherwise derogate~~ from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion of an investment in its territory.
- (3) The Contracting Parties reaffirm their ~~commitments under the international environmental agreements~~ which they have accepted. They shall strive to ensure that such commitments are fully recognised and implemented in accordance with their domestic legislation.
- (4) The Contracting Parties recognise that ~~co-operation~~ between them ~~provides enhanced opportunities to improve environmental protection standards~~. Upon request by either Contracting Party, the other Contracting Party shall accept to hold ~~expert consultations~~ on any matter falling under the purview of this Article.

## ARTICLE 14

### PREVIOUS INVESTMENTS.

This Agreement shall also apply to ~~investments made before its entry into force~~ by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations, provided that it does ~~not apply to disputes~~ that arose prior to its entry into force.

16.Au.

ES

ARTICLE 15

CONSULTATIONS

Either Contracting Party may propose to the other Party that ~~consultations~~ be held on any matter concerning the ~~interpretation or application~~ of this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

ARTICLE 16

ENTRY INTO FORCE, DURATION AND TERMINATION

- (1) The Contracting Parties shall ~~notify~~ each other promptly of the fulfillment of their legal procedures required for entry into force of this Agreement. This Agreement shall enter into force on the ~~day following the date of receipt of the last notification.~~
- (2) This Agreement shall remain in force for a period of ~~ten years~~. Thereafter it shall ~~continue in force~~ until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.
- (3) In respect of ~~investments approved or made prior to the date the notice of termination~~ of this Agreement becomes effective, the provisions of the preceding articles shall remain in force with respect to such investments for a further period of ~~ten years~~.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement in ~~English and Arabic~~, on this ..... day of ..... of the year of ~~2003~~, both texts being ~~equally authentic!~~

.....

.....

.....  
For the Government of the Arab Republic of Egypt

.....  
For the Government of the Republic of Botswana

16. An.

OB