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# Standard Investment Agreement (Draft Translation)

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**STANDARD INVESTMENT AGREEMENT**

(Draft Translation by PROFESSOR A. FATOUROS)

*Preamble*

The parties, namely, the Government of the State of....., hereinafter referred to as "The Government", and X company, hereinafter referred to as "The Company",

*Recognizing* the importance of the establishment of a local cotton textile industry for the development of.....

*Considering* that such an industry would make possible the utilization of cotton produced in ....., the substitution of locally manufactured goods for imported consumer goods, the provision of employment for many local nationals,

*Considering* . . .

*Seeing* that X Company agrees to undertake the production of cotton threads and tissues,

*Recognizing* moreover the importance of the capital needed for such an undertaking,

*Agrees* on the following :

*Article 1*

The object of the present agreement is to define the obligations of the Company and of the Government in order to determine the conditions of

- (1) the establishment of the Company
- (2) its operation
- (3) its contribution to the development of the State

*Article 2*

This agreement is concluded for a duration of ....., starting from the date of its signature by the two parties. To this will be added the time necessary for the construction of plants and installations and for their testing but the delay cannot exceed five years. The testing period will be deemed to have ended when the first commercial sale takes place ; the date will be established by an affidavit prepared by the two parties.

If the parties do not decide to terminate the agreement at the end of the said period, their relations will be governed thereafter by the national and international law normally applicable to the treatment of aliens. The change of legal regime is automatic.

#### *Article 3*

##### **First solution :**

Total omission

##### **Second solution :**

Every five years, from the date of entry in force of the present agreement, the parties will meet to review the state of their relationships and to adapt if necessary the agreement to new conditions. However, no modification is possible without the express agreement in writing of both parties.

##### **Third solution :**

In case of profound change in the circumstances existing at the time of the conclusion of the agreement, the parties, at the request of one of them, will proceed to make the necessary adjustments. In case of disagreement, they may have recourse to arbitration procedure. The arbitrators themselves are empowered to make the adjustments they deem necessary.

#### *Article 4*

In case of change in the control over the company, that is to say, in the exercise of the power that a physical or juridical person exercises over the company by virtue of ownership or of contractual right, namely concerning prices, investments, markets or commercial policy, the Government will have the right to purchase the Company's local installations on the following basis :

Value of investments and reinvestments at the time they were made, as corrected by the variations in the value of the currency in which they were made between the moment of the completion of the investment and the moment of effective payment, as this value is established in accordance with the regulations of the International Monetary Fund. Payment will be immediate. With respect to currency of transfer, reinvestments will be assimilated *pro rata* to investments.

In case of extinction of the International Monetary Fund, the value will be determined by agreement of the parties with possible appeal to arbitration in case of disagreement.

The company will therefore inform the Government of any change which may entail a change in the exercise of power. The Government will then have a period of six months to exercise its right of purchase.

*Note* : Some members of the Committee consider that it is necessary to seek other modalities allowing the State to exercise its right of purchase or a right leading to an analogous result without its being bound to pay immediately a sum of money which may exceed its immediate possibilities.

#### *Article 5*

The agreement may be freely assigned by the Company if the assignee is a company belonging to the same group as the contracting Company. In this case the assigning company will guarantee the good execution of its obligations by the assignee. On the other hand, the agreement cannot be assigned to a third company without the authorization of the Government.

Two companies belong to the same group if another company exercises simultaneously, directly or indirectly, by virtue of ownership or contractual relationship, decision-making power over them, namely concerning prices, investments, markets or commercial policy or if one of the two companies exercises this kind of power over the other.

#### *Article 6*

The relations between the parties are governed by this agreement, by the professional usages generally admitted in the textile industry, by the law of the host country and by the principles of international law applicable to investments.

#### *Article 7*

1. The company undertakes to construct a factory which will include a unit for spinning and a unit for weaving within a period of..... from the date of signature of the present agreement.

[Variant: from the date on which the site for the company's installations was placed at the company's disposal by the local authorities.]

2. The factory will correspond to the following specifications :  
[provision to be made, in particular, for : final production, levels (stages) of production, materials.]

3. Equipment will correspond to the most developed techniques existing at the time of the entry in force of the agreement.

[Note : Mention of the most developed techniques was included merely for reference. In many cases less developed techniques may be more useful. It is for the parties to specify the techniques they wish to be utilized.]

4. The Company undertakes to invest a minimum of ..... and a maximum of ....., taking into consideration the costs at

the time of conclusion of the agreement. The necessary capital will be furnished exclusively by the Company and will be sought outside the local financial market.

[Variant : Local enterprises will participate to the extent of.....]

5. The factory will be constructed in such a manner as to allow for later extension as market developments dictate. The Company will make the necessary replacements of fixed and movable equipment and the modifications or additions considered desirable or necessary to assure efficient operation of the factory and maintenance of the above mentioned specifications. The provisions of this agreement will apply to these extensions and modifications and to the resulting additional or different production.

#### *Article 8*

1. The Company will employ persons whose habitual residence is in the host country and will not have recourse to foreign personnel unless it cannot find locally sufficiently qualified persons. When the Company has reached its normal production capacity, as defined in Article 7, it will be able to employ foreign personnel only in the following maximum percentages, calculated on the basis of total personnel :

##### **Staff**

X% during the first two years of operation ;  
X<sub>1</sub>% during the next three years ;  
X<sub>2</sub>% after that time.

##### **Employees and Labourers**

Y% during the first two years ;  
Y<sub>1</sub>% during the next three years ;  
Y<sub>2</sub>% after that time.

This provision does not apply to general management and to top-level staff.

2. To facilitate access of local personnel to the positions offered by the firm, the Company undertakes to organize courses of professional training locally within the limits of the above-mentioned proportions.

[Variant : To facilitate access of local personnel to the positions offered by the firm, the Company undertakes to contribute annually to local professional training schools a sum equal to N% of its pay-roll within the territory of the host State.]

3. The Company agrees to accept every year, if it is so requested, a national of the host State as a paid trainee. The trainee must

be a graduate of a secondary school or its equivalent. The training period will not exceed one year.

4. The Company undertakes to establish a medical dispensary corresponding to the needs of the employees of the firm and of their families.

[Variant: In order to contribute to the improvement of the sanitary conditions of its employees, the Company undertakes to pay annually a sum equal to  $N_1\%$  of its pay-roll within the territory of the host State.]

#### *Article 9*

1. The Company will have free choice of its suppliers in the host State as well as abroad.

2. However, with respect to products of the same kind and of equal quality, the Company will supply itself in the local market provided that the terms of such supply, and in particular the prices, remain compatible with an economically sound business operation for the investor as well as for the host country.

#### *Article 10*

1. The directions of the Company's sales will conform to the host country's development policy.

2. However, the Company will have free choice of its individual customers and no prices or other terms of sale will be imposed on it which are not compatible with an economically sound business operation.

#### *Article 11*

1. The Company will submit annually to the Minister :

(a) a report of its activities ;

(b) the documents which, in accordance with the law applicable to it and with its own charter, it must communicate to its associates(?).

After submission of this report and of the aforesaid documents, the Minister may request the clarifications which he deems necessary to make sure that the Company fulfils its obligations.

2. In addition to the powers of inspection which the Government of the host State may have with respect to local enterprises, by virtue of local law, the officials delegated by the Minister of..... have, until execution of the affidavit provided for in Art. 2 above, access to the enterprise to determine the fulfilment by the investor of his contractual obligations and in particular those provided for in Art. 7.

*Article 12*

1. The Company will be exempted from all customs duties on the importation of essential capital equipment and of the equipment and replacement parts necessary for its operation. To this effect, after conclusion of the present agreement and before completion of plant construction, the Company will establish and submit to the host State's Government for approval :

(a) a detailed list of essential equipment to be imported prior to the start of operation of the enterprise, and'

(b) a list of parts and replacements likely to be needed in the future.

Approval of these lists by the Government will bind the customs and exchange control authorities at the time of importation of the goods. Supplements to the initial lists may be established according to the same procedures.

2. The Company will be exempted from all customs duties on the importation of raw materials necessary for its operation for a period of .....years. That period may be further extended by agreement for no more than .....years.

3. For the first five years after the beginning of its operations, the Company will be exempted from all taxation. Beginning with the sixth year, the Company will be subject to all regular taxes and other charges, with the exception of those referred to in para. (1) and (2) of this Article.

4. For every reinvestment of benefits and/or extension of the enterprise's operation the Company will be able to deduct from its profits and within their annual limits for three years a sum equal to the invested or reinvested capital, provided that the operation has been approved by the Ministry of .....

5. The Company will be subjected for the whole duration of the agreement to the charges stemming from social legislation.

*Article 13*

The Government of the host State undertakes to place at the Company's disposal (at a non-discriminatory exchange rate) the foreign exchange necessary for :

(a) the transfer abroad, in the currency of origin, of the company capital, distributed benefits, possible repurchase compensations, the proceeds of the liquidation of the enterprise in whatever form if the latter occurs at the expiration of the present agreement.

If liquidation occurs earlier, the freedom to transfer remains guaranteed. However, the Government may authorize only transfer of an annual proportion the amount of which will not be inferior to the total sum to be transferred divided by the time remaining until the agreed date of expiration of the agreement.

In the case of liquidation of the enterprise, at whatever time, the Government may limit its transfer authorisation to a sum equal to that which would result from the application Article 4, paragraph 2.

(b) the amount of its supplies of foreign origin.

(c) the payment, at the agreed dates and in the stipulated currency, of interest and reimbursement of capital of all loans contracted with a view to the fulfilment of the obligations undertaken by virtue of Article 7 of the present agreement as well as of all foreign loans contracted with the consent of the Minister of ..... Such consent will not be required if the loan has been contracted with an international financing agency, such as the International Bank for Reconstruction and Development, the Inter-American Development Bank, the European Investment Bank, etc.

(d) the monthly payment in their respective countries of origin of a maximum of X per cent of remunerations and indemnities acquired in the host State by the foreign members of its personnel as well as the payment of the sums contributed to foreign pension funds by or on behalf of such personnel ; and the transfer to their country of origin of local savings accumulated by members of its foreign personnel at the time of their final departure.

The total of authorized transfers to the benefit of a member of the Company personnel cannot exceed Y per cent of the total remunerations and indemnities of which that person has benefited during his period of activity in the service of the Company in the host State.

(e) the transfer of fees and royalties for technical assistance, use of techniques and processes, studies, and cession of industrial property rights due by virtue of contracts approved by the Minister of .....

#### *Article 14*

1. If the Company has its headquarters (*siège social*) in the territory of the host State, it is subjected to that State's legislation concerning companies. However, if changes made to that legislation after the conclusion of the agreement seriously affected



the Company's structure and organization, the latter has the right to demand the purchase of its enterprise under the conditions of Article 4, paragraph 2, of the present agreement.

2. If the Company has its headquarters (*siège social*) outside the territory of the host State, its establishment within that State is subject to all laws of territorial application which are in effect there. However, if changes made to that legislation after the conclusion of the agreement seriously affected the structure and organization of the Company's establishment, the Company has the right to demand its purchase under the conditions of Article 4, paragraph 2, of the present agreement.

3. In no case will the host State intervene in the individual designation of the directors or representatives of the Company or of its establishment, unless this is done by virtue of provisions in effect at the time of conclusion of the agreement.

#### Article 15

The host State's Government assures the Company generally that the latter will not be the object of any unfavourable discrimination *de facto* or *de jure*.

#### Article 16

1. In the case of failure by one of the parties to fulfil its contractual obligations, the arbitral tribunal may either order the performance of the agreement, with or without damages (*dommages-intérêts*), or allocate damages (*dommages-intérêts*).

2. If the failure is serious, the arbitral tribunal may, at the request of either party, order rescission of the agreement, with or without damages (*dommages-intérêts*). In the case of rescission, the arbitral tribunal may order or authorize the purchase of the enterprise by the State and determine the conditions thereof.

3. The arbitral tribunal will have the power to order provisional measures, namely, to suspend the performance of obligations, or, on the contrary, to order performance of such obligations pending its decision, with or without other conditions, etc.

#### Article 17

1. No liability will attach if the failure has been caused by a case of *force majeure*.

2. Any event independent of the will of the parties which makes impossible or exceedingly difficult the execution of the agreement constitutes *force majeure*.

3. In the case of *force majeure*, the agreement is suspended as long as the situation continues, and it returns in force when the situation is over, its duration being extended by a period of time equal to that of its suspension.

4. If the situation continues for more than X months, the parties, at the request of either of them, will proceed to make the necessary adjustments. In case of disagreement, they may have recourse to arbitration. The arbitral tribunal itself has the power to make the adjustments it deems necessary.

5. To determine whether a case of *force majeure* exists, the responsibilities of the State to its nationals and to the international community, in particular in case of economic difficulties, political troubles, etc., will be taken into consideration. The arbitral tribunal may accord to the Company an indemnity intended to compensate in whole or in part for losses which it has suffered, whenever it finds such indemnity justified.

#### Article 18

All disputes between the parties concerning the validity of the agreement, its interpretation or its execution will be settled by arbitration.

#### I. Institutional Arbitration

(a) The parties will submit their dispute to the International Centre for the Settlement of Disputes Relating to Investments created by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965.

*Note.* The International Centre for the Settlement of Disputes Relating to Investments is not the only arbitral institution which may be competent to decide investment disputes. The parties may also have recourse, for instance, to the International Chamber of Commerce, the American Arbitration Association or the Permanent Court of Arbitration. All these organizations have considerable experience of this kind of dispute.

(b) To this effect, the Government of the State of ..... agrees to consider as fulfilled by the Company and its shareholders the condition of nationality provided by Article XXV (2b) of that Convention because of the control exercised over them by interests of ..... nationality.

*Note.* The International Centre for the Settlement of Disputes Relating to Investments has established models of compromissory clauses adapted to the various situations which may arise. It is

better to consult them. The same observation can be made as to the arbitral institutions mentioned in the note accompanying the preceding paragraph of this Article.

## II. *Ad Hoc Arbitration*

1. The party wishing to have recourse to arbitration will notify the other party by registered letter with receipt of delivery.

2. In this letter, the claimant indicates the subject in dispute and designates an arbitrator.

3. The defendant must, within ..... months from the date of receipt of the letter, designate in his turn an arbitrator.

4. The two arbitrators must designate by agreement a third arbitrator (within ..... months after the designation of the second arbitrator) and the three arbitrators will form an arbitral tribunal deciding by majority vote.

5. If the designations are not made by the parties or by the arbitrators within the periods provided for in the preceding paragraphs, the more diligent party may appeal to [the President of the International Centre for the Settlement of Disputes Relating to Investments, the President of the International Court of Justice, the President of the Swiss Federal Tribunal, the President of the International Chamber of Commerce or any other person to be designated by the parties] who will be allowed ..... months from receipt of the appeal to make the necessary appointment. He will notify the parties and the arbitrators already appointed by registered letter with receipt of delivery.

6. In the event of objection being taken to an arbitrator, the question will be decided by the person mentioned in para. 5 and he will, in such a case, appoint a substitute.

7. In case of the death or resignation of the third arbitrator, he will be replaced by agreement of the two other arbitrators within the same period. In the absence of such appointments, the provisions of paragraph 5 will apply.

8. The arbitral tribunal will sit in ..... and will be convened as soon as possible after its constitution at the initiative of the third arbitrator who will preside.

9. The tribunal will freely establish its rules of procedure and may proceed to take any measure for its inquiry (*mesure d'ins-*

*truction*) which it may deem necessary. The proceedings will take place in the ..... language.

10. The arbitral award will be made within ..... months from the date the tribunal was seized. This period will be extended by the duration of the measures of inquiry ordered. The award will be binding and without appeal. The State will insure the award's execution within its territory and it waives the invocation of any immunity, in domestic or international law, which might impede the execution.

11. The arbitration expenses will be allocated by the arbitral tribunal.

*Article 19*

The present agreement must be executed in good faith.