

Agreement between the Federal Republic of Germany and the Government of the Republic of Guinea on the Promotion and Reciprocal Protection of Investments

The Federal Republic of Germany and the Government of the Republic of Guinea,

Hereinafter referred to as the "Contracting Parties",

Desiring to strengthen economic and industrial cooperation between the two States,

In order to create favourable conditions for investments of investors of one of the two States in the territory of the other party,

Recognizing that the promotion and protection of such investment contract is likely to stimulate private business initiative and will increase prosperity of both peoples,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" includes all categories of property, including but not limited to:

- (a) ownership of movable and immovable property and any other real rights such as mortgages and pledges;
- (b) rights of participation in companies and other forms of participation in companies;
- (c) claims to capital that has been used to create economic value or claims to services that have an economic value
- (d) intellectual and industrial property rights, in particular copyrights, patents, utility models, industrial designs, trademarks, trade names, company and business secrets, technical processes, know-how and surplus value
- (e) public law concessions, including exploration and exploitation concessions.

Changes in the form in which the assets are invested do not affect their investment status;

2. The term "income" means amounts paid for a specified period in respect of an investment, such as profits, dividends, interest, license fees or other remuneration

3. The term "investor" means the following persons of one of the Contracting States who under this Agreement make investments in the territory of the other State:

(a) natural persons:

- in the case of the Republic of Guinea, Guineans within the meaning of the Basic Law of the Republic of Guinea
- in the case of the Federal Republic of Germany, Germans within the meaning of the Basic Law of the Federal Republic of Germany

(b) legal persons as well as commercial companies or other companies or associations, with or without legal personality, having their seat in the territory of one of the respective Contracting States, irrespective of whether their activity is for profit or not.

Without prejudice to other methods of determining nationality, a person shall be deemed to be a national of a Contracting State if he holds a national passport issued by the competent authorities of that Contracting State.

4. Territory" means the national territory of each Contracting State, including the territorial waters and the exclusive economic zone and the continental shelf to the extent that international law authorizes each Contracting State to exercise in these territories rights or powers of sovereignty, in particular for the purpose of exploring, exploiting and conserving natural resources.

Article 2. Investment Promotion and Protection

(1) Each contracting State shall, to the extent possible, encourage investments by investors of the other contracting State in its territory and shall admit such investments in accordance with its laws.

(2) In each case, each Contracting State shall treat the investments of investors of the other Contracting State in a fair and equitable manner and afford them the full protection provided by this Agreement.

(3) Neither contracting State shall interfere in an arbitrary or discriminatory manner with the administration, maintenance, use, enjoyment or disposal of investments of investors of the other contracting State in its territory.

(4) The income from the investment and, in the case of reinvestment, the income from the reinvestment shall enjoy the same protection as the investment.

Article 3. National Treatment and Most-Favored-Nation Treatment

(1) No Contracting State shall subject investments in its territory owned or influenced by investors of the other contracting State to treatment less favorable than that accorded to investments of its own investors or of investors of third States.

(2) Neither Contracting State shall, in its territory, subject investors of the other Contracting State to treatment less favorable than that accorded to its own investors or to investors of third States in respect of any activity carried on by them in connection with investments. Measures taken for reasons of public safety, order, health or morality shall not be considered "less favorable treatment" within the meaning of this Article.

(3) Such treatment does not extend to privileges granted by a Contracting State to investors of third States by reason of its membership in or association with a customs or economic union, a common market or a free trade area.

(4) The treatment accorded by this Article shall not extend to advantages granted by a Contracting State to investors from third States under a double taxation agreement or any other arrangement in the field of taxation.

(5) The provisions of this Article shall not require a Contracting State to extend to investors resident in the territory of the other Contracting State the benefits of tax advantages, exemptions and reductions which, under its tax laws, are accorded only to investors resident in its own territory.

(6) The Contracting States shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and residence permits submitted by nationals of one of the Contracting States who wish to enter the territory of the other Contracting State in connection with an investment. The same applies to employees of one of the contracting States who wish to enter the territory of the other contracting State in connection with an investment and reside there in order to carry out a paid activity. Applications for work permits shall also be given sympathetic consideration.

(7) In the case of transportation of goods or persons in connection with an investment, a Contracting State shall not exclude or hinder transportation enterprises of the other Contracting State and, where necessary, shall grant the necessary permits for such transportation.

Article 4. Compensation for Losses

(1) Investors of a Contracting State whose investments have suffered losses as a result of war or other armed conflict, revolution, national emergency or riot in the territory of the other contracting State shall be accorded by the latter State treatment no less favourable than that accorded to its own investors with respect to restitution, compensation, indemnity or other consideration. Such payments shall be freely transferable.

(2) With respect to matters governed by this Article, investors of one of the Contracting States shall enjoy in the territory of the other most-favored-nation treatment.

Article 5. Compensation for Expropriation

(1) The investments of investors of one Contracting State shall enjoy full protection and security in the territory of the other

Contracting State.

(2) Investments of investors of a contracting State may not be subject, in the territory of the other contracting State, directly or indirectly, to expropriation, nationalization or other measures the effects of which would be equivalent to those of expropriation or nationalization, except for reasons of public utility and in return for compensation. The compensation must correspond to the value of the expropriated investment immediately prior to the date on which the actual or impending expropriation, nationalization or similar measure was made public. The compensation shall be paid without delay and shall bear interest until the date of payment at the usual bank rate; it shall be effectively realizable and freely transferable. At the latest at the time of expropriation, nationalization or similar measure, adequate provision must be made for the determination and payment of compensation. The legality of the expropriation, nationalization or similar measure and the amount of the compensation must be capable of being verified by ordinary judicial proceedings.

(3) With respect to the matters regulated by this Article, investors of one of the Contracting States shall enjoy in the territory of the other the most-favored-nation treatment.

Article 6. Transfers

(1) Each Contracting State shall guarantee to investors of the other Contracting State the free transfer of payments made in connection with an investment, including:

- (a) capital and additional amounts for the maintenance or increase of the investment;
- (b) income;
- (c) payments for the repayment of loans;
- (d) proceeds from the liquidation or disposition of the investment, in whole or in part
- (e) the compensation provided for in sections 4 and 5 of this Agreement.

(2) Transfers under article 4, paragraph 1, article 5, paragraph 2, article 6 or article 7 of this Agreement shall be made without delay at the market price on the date of the transfer. For the purposes of this article, a transfer shall be considered to be effected "without delay" if it is effected within the time period normally required for compliance with the transfer formalities. The period shall begin to run on the date on which the application for transfer is made and shall in no case exceed two months.

(3) In the absence of a currency market, the cross rate resulting from the exchange rates that would be applied by the International Monetary Fund on the date of payment shall be used to convert the respective currencies into special drawing rights.

Article 7. Subrogation

If a Contracting State, by virtue of a guarantee given for an investment in the territory of the other contracting State, makes payments to its own investors, the other contracting State shall, without prejudice to the rights of the first-mentioned contracting State under Article 8 of this Agreement, recognize the transmission by operation of law or contract of all rights or claims of such investors to the first-mentioned contracting State. In addition, the other Contracting State shall recognize the subrogation in favor of the first Contracting State in all such rights and claims (transmitted claims) which the first Contracting State shall be entitled to exercise to the same extent as its predecessor. With respect to the transfer of payments in respect of transmitted claims, the provisions of paragraph 1 of Article 4, paragraph 2 of Article 5 and Article 6 of this Agreement shall apply *mutatis mutandis*.

Article 8. Settlement of Disputes between Contracting States

(1) Disputes between Contracting States concerning the interpretation or application of this Agreement should, as far as possible, be settled by the Governments of both Contracting States through diplomatic channels.

(2) If a dispute cannot be settled by diplomatic means, it shall be submitted to an arbitral tribunal at the request of either contracting State.

(3) The arbitration tribunal shall be constituted *ad hoc*; each contracting State shall appoint one member and the two members shall agree to select as chairman a national of a third State who shall be appointed by the governments of both contracting States. The members shall be appointed within two months and the chairman within three months after one of

the contracting States has notified the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time limits provided for in paragraph 3 are not observed and if no other arrangement is made, each contracting State may request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the two contracting States, or if he is prevented from doing so for any other reason, the Vice-President shall make the appointments. If the Vice-President is also a national of one of the two Contracting States or if he is also prevented from acting, the member of the Court next in rank who is not a national of one of the two Contracting States shall make the appointments.

(5) The Arbitration Tribunal shall decide by majority vote. Its decisions are binding. Each Contracting State shall bear the costs of its own arbitrator and of his or her representation in the proceedings before the Arbitration Tribunal; the costs of the chairman and other costs shall be borne equally by the two Contracting States. The Arbitration Tribunal may determine other rules regarding expenses. In other respects, the Arbitration Tribunal shall itself lay down the rules of its procedure.

Article 9. Settlement of Disputes between One Contracting State and Investors of the other Contracting State

(1) Investment disputes arising between one of the Contracting States and an investor of the other Contracting State shall, to the extent possible, be settled amicably between the parties to the dispute.

(2) If a dispute cannot be settled within six months from the date on which one of the parties to the dispute has raised it by written notice, it shall be submitted, at the option of the investor, either to the competent court of the Contracting State in whose territory the investment is made or to international arbitration proceedings in accordance with the provisions of paragraph 3 below.

(3) In the event of recourse to international arbitration, the investor may request referral to

a) the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965,

b) the Court of Arbitration of the International Chamber of Commerce,

(c) an ad hoc arbitral tribunal constituted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitral award shall be binding and shall not be subject to any claims or remedies other than those provided for in the above-mentioned Convention. It shall be enforced in accordance with national law.

(5) In the course of arbitration proceedings or the enforcement of an arbitral award, the Contracting State party to the dispute shall not raise any exception on the ground that the investor of the other Contracting State has been partially or fully compensated by insurance.

Article 10. Application of the Agreement

(1) The application of this Agreement shall not be dependent on the existence of diplomatic or consular relations between the two contracting States.

(2) This Agreement shall also apply to investments made by investors of one of the contracting States in the territory of the other contracting State in accordance with the laws of the latter before the entry into force of this Agreement. However, the provisions of this Agreement shall not apply to disputes and claims arising before its entry into force.

Article 11. Application of other Provisions

(1) If the laws of a contracting State or obligations under international law now existing or hereafter arising between the contracting States outside this Agreement provide for general or special treatment of investments of investors of the other contracting State that is more favorable than that provided for in this Agreement, such general or special treatment shall, to the extent that it is more favorable, prevail over this Agreement.

(2) Each Contracting State shall respect any other commitments it has entered into with respect to investments in its territory by investors of the other Contracting State.

Article 12. Consultations

Representatives of the contracting States shall consult with each other, as necessary, on matters relating to the operation of this Agreement.

Article 13. Entry Into Force, Duration and Termination of the Agreement

(1) This Agreement shall be ratified and enter into force one month after the exchange of instruments of ratification. It shall remain in force for ten years and shall be extended thereafter for an unlimited period unless it is terminated through diplomatic channels by either Contracting State subject to twelve months' notice before its expiration. At the expiration of the ten-year period, this Agreement may be terminated at any time upon twelve months' notice.

(2) For investments made prior to the date of expiration of this Agreement, Articles 1 through 12 above shall continue to apply for a period of fifteen years from the date of expiration of this Agreement.

(3) Upon the entry into force of this Agreement, the Treaty of 19 April 1962 between the Federal Republic of Germany and the Republic of Guinea on the Encouragement of Capital Investments, the Protocol thereto and the exchange of letters of the same date shall cease to have effect.

Done at Berlin on 8 November 2006 in duplicate in the French and German languages, both texts being equally authentic.

For the Federal Republic of Germany

Georg Boomgaarden

For the Republic of Guinea

Kazaliou Baldé