

Agreement on the promotion and protection of investments between each other with the Government of the Republic of China and the Government of the Republic of Senegal

Signed on 24 October 1997 entered into force on 17 May 1999

The Government of the Republic of China and the Government of the Republic of Senegal, hereinafter referred to as the contracting parties;

Recognizing the essential role investments in the development of their respective countries;

Desiring to intensify economic cooperation by increasing the flow of investments between the two countries;

Convinced that a reciprocal protection of investments laid down in the context of a bilateral agreement is likely to stimulate private initiative and to increase prosperity of both countries;

Have agreed as follows:

Article 1. Definitions

1. The term investments means every kind of assets invested in accordance with the laws and regulations in force in the Territory, including (non-exhaustive) list:

- a) Movable and immovable property and any other property rights as well as any relevant security, such as mortgages, liens and values;
- b) Assets of companies, shares, securities and obligations;
- c) All loans and services subject to certain commitments under a contract;
- d) Tangible and intangible assets of a business enterprise;
- e) Trade concessions granted by law or under contract, including concessions to search for, extract or exploit natural resources;
- f) Intellectual property rights, such as copyrights and industrial property rights, without limitation, including patents, technical processes, trade marks, labels, industrial designs, know-how and business reputation.

2. The term "proceeds" means the product resulting from an investment and, in particular, any profits, interest, dividends, royalties, this list is not exhaustive;

3. The term "investor" means:

- a) Natural persons having the nationality of one of the contracting parties;
- b) Legal entities, including companies, business corporations constituted associations or any other entity or otherwise organized under the laws of the Contracting Parties.

4. The term "territory" means the territory of either Contracting Party, including its territorial sea and any maritime area situated beyond the territorial waters of the Contracting Parties, in accordance with international law, is designated as an area within which the contracting party may exercise its sovereign rights or jurisdiction.

Article 2. Investment Promotion

Each Contracting Party shall encourage, through its own, investment promotion strategy from the territory of the other contracting party to its own territory.

Article 3. National Treatment and Most-favoured Nation

1. Neither Contracting Party shall, in its own territory nationals of other contracting party to the treatment less favourable than that granted to nationals of any other third State with respect to the maintenance, use, enjoyment or disposal of their investments.

2. Neither Contracting Party shall in its territory or subject investments returns of nationals of other contracting party to the treatment less favourable than which it accords to returns of investments or nationals of any third State.

Article 4. Exceptions

If a Contracting Party has accorded special treatment to investments from a third State by virtue of agreements establishing measures for the avoidance of double taxation, free trade area, customs unions, Common Market, economic or monetary unions or similar institutions, that Contracting Party shall not be obliged to accord such treatment to investors or investments of the other contracting party.

Article 5. Compensation

When investments suffer losses owing to war, insurrection, riot, a state of emergency, or any similar event in the territory of a Contracting Party, this Contracting Party shall accord to investors treatment no less favourable than that which it accords to investors of its own nationals or to nationals of any other State, with respect to restitution, indemnification, compensation or other arrangements.

Article 6. Expropriation

Investments from the territory of a Contracting Party shall not be expropriated, nationalized, requisitioned or subjected to any other measures having equivalent effect in the territory of the other Contracting Party, .excepté for reasons of public interest, on a national or legal basis and non-discriminatory manner. If that happens, freely transferable compensation between the two Contracting Parties shall be prompt, adequate and effective delivery.

The foregoing provisions shall also apply to income from investments and proceeds of assets relating to such investments.

Article 7. Transfers of Investments and Proceeds

In accordance with its laws and regulations, each Contracting Party shall allow investors of the other contracting party to proceed immediately and freely transfer of their investments and returns in any convertible currency, including with regard to:

1. The payment of compensation as provided in articles 5 and 6 above;
2. The repayment of loans under contracts between nationals of one Contracting Party and the nationals of the other contracting party;
3. The earnings of nationals of the other Contracting Party who are authorised to work in its territory, in relation to an investment.

Article 8. Subrogation

If a Contracting Party or its agency makes a payment to its own investors by virtue of a guarantee given in respect of an investment in the territory of the other contracting party, the latter shall recognize the transfer in the territory of the contracting party first of all the rights and claims of the investor indemnified and recognize that the first Contracting Party or its agency is entitled to exercise the rights mentioned above and assert such claims subrogation by virtue of any such as those investors.

Article 9. Scope of Application

This Agreement shall apply to all investments made after its entry into force; however, conflicts prior to the entry into force

of this Agreement shall be excluded.

Article 10. Settlement of Disputes between a Contracting Party and a National of the other Contracting Party

1. In the event of a dispute concerning an investment and between a Contracting Party and a national of the other Contracting Party in the territory of that Party; disputing parties undertake to resolve the dispute through negotiation and conciliation

2. If the dispute cannot be resolved in accordance with the provisions of paragraph 1 of this Article within six (6) months from the date of the submission of the request for arbitration and negotiation, each Contracting Party agrees to submit any dispute or difference arising out of investments or thereto found in its territory by a national or an enterprise of the other contracting party for settlement by arbitration of the International Chamber of Commerce. With regard to the arbitration procedure 1988, the Rules of Arbitration of the International Chamber of Commerce shall apply.

Article 11. Settlement of Disputes between Contracting Parties

1. Disputes arising between the contracting parties concerning the interpretation relating to the implementation of this Agreement shall be settled through diplomatic channels.

2. If such a dispute between the contracting parties cannot be settled through the diplomatic channel, it may be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. In this case the arbitral tribunal shall be constituted as follows:

- Within two months after receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator.

- The two arbitrators shall select a national of a third State, with the consent of both Contracting Parties shall be appointed as arbitrator Head of the Tribunal;

The arbitrator shall be appointed within two months following the appointment of the 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 the necessary appointments. If the President is a national of either Contracting Party or, if for any reason, it is unable to ensure that task, 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 unable to perform this function, the member of the International Court of Justice who is next in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

5. The arbitral tribunal shall make its award by a majority of the notice. The award shall initiate the two contracting parties. each Contracting Party shall cover the costs of its own arbitrator and its representation in the arbitration proceedings; the costs related to the chef-arbitre as well as any other costs shall be borne in an equitable manner to the contracting parties.

However, the arbitral tribunal in making its award may reach the idea that a higher proportion of costs be borne by one of the two parties, which will both parties. The Tribunal may decide the procedure to be followed for the enforcement.

Article 12. Final Provisions - Entry Into Force - Duration - Amendments - Termination Notice

1. This Agreement shall enter into force on the date of the latest and to which the respective Contracting Parties shall notify each other in writing that the legal requirements in their respective territories have been fulfilled.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue to be in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.

3. Provided that, in respect of investments made at any time prior to the termination of this agreement its provisions shall continue to take effect with respect to such investments for a further period of ten years from the date of termination.

4. This Agreement may be amended by exchange of notes verbales.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement is drawn up in duplicate in the French and Chinese languages, both texts being equally authentic.

Done at Taipei on the twenty-second day of the tenth year from the date of the Republic of China for the twenty-second day of October in the year one thousand nine hundred and ninety seven.

For the Government of the Republic of China

(signed)

H.E. Mr. Vincent C. Siew

Prime Minister

For the Government of the Republic of Senegal

(signed)

H.E. Mr. Habib Thiam

Prime Minister