Agreement between the Government of the Republic of Mali and the Government of the Democratic People's Republic of Korea on the Reciprocal Encouragement and Protection of Investments

The Government of the Republic of Mali and the Government of the Democratic People's Republic of Korea (hereinafter referred to as "Contracting Parties"),

Desiring to secure favourable conditions for investments by one Contracting Party in the territory of the other Contracting Party,

Convinced that the reciprocal encouragement and protection of investments will promote the development of mutually beneficial trade and economic, scientific and technical cooperation,

Have agreed to the following:

Article 1. Definitions

For the purposes of this Agreement:

(A) The term "investor" means, with respect to each Contracting Party, any natural or legal person who is a citizen of one of the Contracting Parties and who has his registered office in its territory in accordance with the laws of one of the Contracting Parties.

(B) The term "investments" covers all categories of assets invested by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the laws of the latter and in particular

- movable and immovable property and property rights such as mortgages, usufruct, liens and pledges;

- shares, private papers, investments of funds and other forms of participation in companies;

- funds invested to create economic value or rights to any benefits of financial value;

- copyrights, patents, industrial designs, trademarks, trade names, technical processes and know-how;

- business concessions, including concessions for the prospecting, extraction or exploitation of natural resources, and any other right conferred by law or by contract.

(C) The term "income" means all sums derived from an investment made in accordance with paragraph (B) of this Article, such as profits, dividends, interest, commissions, fees for technical assistance and services and other bonuses.

D) The term "territory" includes the territory, territorial waters, exclusive economic zone and continental shelf of each Contracting Party over which it exercises sovereign rights and jurisdiction in accordance with national and international law.

Article 2. Encouragement and Protection of Investments

(A) Each Contracting Party shall encourage investors of the other Contracting Party to make the investment in its territory and shall admit such investments in accordance with the laws and regulations in force in its country.

(B) Each Contracting Party shall guarantee absolute and unconditional legal protection for investments made by investors of the other Contracting Party in accordance with the laws and regulations in force in its country.

Article 3. National Treatment and Most-favoured Nation Clause

(A) Each Contracting Party shall ensure fair and equal treatment and protection for investments made by investors of the other Contracting Party in its territory and activities relating to such investments.

(B) The conditions specified in paragraph 1 of this Article shall not, however, be less favourable than those accorded to investments or related activities of investors of its own country or of any third State.

C) Each Contracting Party shall, however, have the right to define or retain, in accordance with its fiscal legislation, exceptional provisions for the project of domestic investors only.

D) The most-favoured-nation treatment granted in accordance with paragraph B) of this Article shall not extend to the privileges granted to a Contracting Party in the framework of a free trade area, a customs union or any other form of economic organization.

Article 4. Expropriation and Compensation

Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall not be subject to expropriation, nationalisation or other procedures of an equivalent nature or effect. Such measures may be taken only in the public interest, without discrimination and on condition that they give rise to prompt, equivalent and effective compensation.

The amount of compensation shall be identical to the real value of the investments expropriated or nationalized at the time of their actual expropriation or nationalization. The relevant payments shall be transferred in convertible currency and without undue delay.

The compensation shall be additional to the interest calculated up to the time of payment, in accordance with the interest rate of one of the Contracting Parties where the investments are made.

Article 5. Free Transfer

Each Contracting Party shall grant investors of the other Contracting Party free transfer of the amounts relating to their investments, once they have paid the taxes, charges and fees concerned:

(A) income relating to paragraph (C) of Article 1;

(B) payments made for the repayment of loans recognised by the Contracting Parties as investment amounts;

(C) amounts obtained by investors as proceeds of the partial or total liquidation or sale of investment projects;

(D) compensation resulting from Article 4.

Transfers shall be made in the convertible currency in which the investment was made or in any other convertible currency with the agreement of the investor and at the exchange rates prevailing on the date of transfer.

Article 6. Subrogation

In the event that a Contracting Party or its authorised establishments make payments to its investors under any financial guarantee against non-commercial risks granted by it for an investment made by one of its investors in the territory of the other Contracting Party, the latter shall recognise the following provisions;

(A) assignment to its own country or to an authorized establishment in that country of all rights such as the right of investors to claim;

(B) the acquisition by a Contracting Party or by an authorised establishment of that country of competence to exercise the principle of subrogation.

Article 7. Disputes between a Contracting Party and an Investor of the other Contracting Party

Disputes relating to investments between a Contracting Party and an investor of the other Contracting Party, such as the scope, conditions and formalities for the payment of compensation, shall be settled by consultation to the extent possible.

If the consultations do not lead to a solution within six months of the dispute arising, the disputes shall be submitted for examination;

(A) to the competent court or arbitral tribunal of the Contracting Party in whose territory the investment was made;

B) to an ad hoc tribunal to be constituted under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Article 8. Disputes between the Contracting Parties

(A) Disputes arising between the Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall be settled by means of consultations.

If the two Contracting Parties fail to reach a settlement of the dispute in this way, it shall, at the request of either Contracting Party, be submitted for consideration by an arbitral tribunal.

(B) The arbitral tribunal shall be constituted for each case of dispute in the following manner;

Each Contracting Party shall nominate one arbitrator and the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State having diplomatic relations with both Contracting Parties.

The arbitrators shall be appointed within two months and the chairman within three months from the date on which one of the Contracting Parties expresses its intention to submit the dispute to the arbitration tribunal.

(C) If the time limits specified in paragraph (B) of this Article are not complied with and no consensus is reached, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

(D) The arbitral tribunal shall take its decisions by majority vote.

Such decisions shall be final and binding on each Contracting Party.

Each Contracting Party shall bear the costs of its arbitrator and the other common costs, including those of the chairman, shall be borne equally by the two Contracting Parties.

For other matters, the arbitral tribunal shall lay down its own rules of procedure.

Article 9. Retroactivity of the Agreement

This Agreement shall also apply to all investments made before its entry into force by investors of one of the Contracting Parties in the territory of the other Party.

Article 10. Final Provisions

A) This Agreement shall enter into force on the date of receipt of the last written notification by one of the Contracting Parties that the internal legal procedures required for the entry into force of this Agreement have been completed.

B) The two Contracting Parties may, by mutual agreement, make any modification or amendment to the provisions of this Agreement.

Such modifications and/or amendments shall enter into force in accordance with the provisions of this Article.

C) This Agreement shall be concluded for a period of ten (10) years and shall be tacitly renewable for the same period, unless terminated in writing by one of the Contracting Parties one (1) year before the expiry of the current period.

D) The provisions of this Agreement shall continue to apply to investments made prior to the termination of this Agreement for an additional period of ten (10) years after such termination.

Done at PYONGYANG on October 11, 1999 (Juche 88) in two originals, in the French and Korean languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF MALI

The Minister of Foreign Affairs and Malians Abroad

MODIBO SIDIBE

FOR THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

The Minister of Foreign Trade

KANG JONG MO