

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE REPUBLIC OF GUINEA ON THE PROTECTION AND PROMOTION OF INVESTMENTS**

The Government of the United Arab Emirates and the Government of the Republic of Guinea (hereinafter collectively referred to as the "Contracting Parties");

Desiring to create favorable conditions to further encourage investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of investments, in accordance with the laws and regulations of the Contracting Party, will lead to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Convention:

1. a. The term "investment" means any type of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws governing the Contracting Party in whose territory the investment is made, and in particular, including but not limited to:

i. Movable property, real estate, as well as all other rights of ownership, such as mortgages, liens, pledges, and usufruct;

ii. Stocks, bonds, debentures, and all other similar securities, equity interest in a company, as well as debts and claims against the company held by an investor from a Contracting Party, retained for the purposes of recovery;

iii. Rights or claims to money or any other consideration under the contract having financial or economic value;

iv. Intellectual property rights, goodwill, technical processes, know-how, copyrights, trademarks, and trade names, in accordance with the laws in force in the respective Contracting Parties;

v. Any right conferred by law, a contract, or by virtue of a license or a penalty granted in accordance with the law; natural resources are not covered by the present Agreement.

Any change in the form of the assets invested or reinvested shall not affect their investment status, provided that the investor has received authorization from the competent authorities of the Contracting Party concerned.

b. The term "investors" means any citizen, enterprise, or government of a Contracting Party:

c. The term "national" means any natural person who is a national of a Contracting Party in accordance with the legislation in force.

d. The term "profit" refers to amounts generated by an investment such as profits, interest, capital gains, dividends, royalties, and technical and management fees.

e. The terms "a Contracting State" and "the other Contracting State" refer to the United Arab Emirates or Guinea, as the context requires.

f. The term "United Arab Emirates" when used in a geographical sense, refers to the territory over which the United Arab Emirates exercises sovereignty, as well as areas outside territorial waters, airspace and submarine areas over which the United Arab Emirates exercise sovereign rights and jurisdiction in respect of any activity carried out in accordance with its laws and international law within its waters, the seabed and the subsoil for the purpose of exploiting or the exploitation of

natural resources;

g. The term 'Guinea', when used in a geographical sense, refers to the territory of Guinea which is under its sovereignty as well as the zones within territorial waters, airspace, and submarine areas over which Guinea exercises sovereign rights and jurisdiction in the context of activities carried out pursuant to its laws and international law. within its waters, seabed, and marine areas for the purpose of exploring or exploiting natural resources.

2. The term "freely usable currency" refers to any currency of a contracting country commonly used to make payments for international transactions and currently traded on the major foreign exchange markets.

3. The term "company" refers to corporations, partnerships, and associations registered or incorporated or established under the laws in force in any Contracting State.

## **Article 2. Scope of Application of the Agreement**

This Agreement applies to investments made by investors of one Contracting Party in the territory of the other Contracting Party, whether such investments were made before or after the entry into force of this Convention, but does not apply to any dispute concerning an investment made prior to the entry into force of this Convention, nor to any claim that has been settled prior to its entry into force.

## **Article 3. Protection of Investments**

1. Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favorable than that accorded in similar circumstances to its own investors with respect to establishment, acquisition, expansion, management, operations and sales, or other investment arrangements within its territory.

2. Each Contracting Party shall accord to covered investments treatment no less favourable than that accorded, in similar circumstances, to investments in its territory by its own investors with regard to establishment, acquisition, expansion, management, conduct, operation and sale or other disposal of investments in its territory.

3. Each Contracting Party shall endeavor within its territory: to establish the necessary measures that may be applicable for the provision of appropriate infrastructure, incentives, and other forms of encouragement for investments made by investors of the other Contracting Party.

## **Article 4. Protection of Investments**

1. Investments made by investors of each Contracting Party shall enjoy full protection and security within the territory of the other Contracting Party, provided that comply with the laws and regulations in force in the Contracting Party, the provisions of this Agreement and the rules applicable under international law. Neither of the Contracting Parties shall in any way, through arbitrary or discriminatory measures, infringe upon the management, maintenance, use, enjoyment, or disposal of investments.

2. Each Contracting Party shall endeavor to make public all laws, regulations, policies, and procedures that directly affect or pertain to the investments on its territory, to the investors of the other Contracting Party.

3. Once established, the investments must not be subject in the Contracting State to additional performance requirements that would hinder or restrict the management, maintenance, use, enjoyment, or disposal of investments, unless such requirements are deemed vital for reasons of public health reasons, which are applied in accordance with applicable general law.

4. Each Contracting Party shall maintain an environment conducive to investments in its territory by investors of the other Contracting Party. Each Contracting Party, in accordance with its applicable laws and regulations, shall ensure that investors from the other Contracting Party have the right of access to the courts, tribunals, and administrative agencies, as well as any other existing entity exercising adjudicating authority.

5. In the event of the liquidation of an investment, the proceeds of the liquidation shall be subject to the same forms of protection and treatment granted to the investor, including those granted pursuant to Article 5 below.

## **Article 5. Treatment of Investments**

1. Each Contracting Party shall at all times ensure that investments made in its territory by investors of the other Contracting

Party receive fair and equitable treatment. Such treatment shall not be less favorable than that accorded to investments by its own investors or by third-party investors, with the more favorable treatment prevailing.

2. If a law or regulation of either Contracting Party imposes an obligation under international law, it shall apply unless otherwise agreed upon by both Parties in addition to this Convention. They agree on a regulation that is general or specific investments made by an investor from the other contracting party in the more favorable treatment than that granted under this Convention. This regulation shall, to the extent that it is more favorable, take precedence over the provisions of this Convention.

3. Each Contracting Party shall respect all contractual obligations arising from this Convention concerning an investment made by an investor in the territory of the other Contracting Party.

4. Each Contracting Party shall grant to investors of the other Contracting Party, in matters of compensation, transfer, management, use, and enjoyment of their investments, transfer of their investments, treatment no less favorable than that which it accords to investments by its own investors or by investors of a third party. the most favorable treatment shall prevail.

5. Each Party shall grant, in respect of investments made in its territory, treatment no less favorable than that which it accords to investments by its own investors or by third-party investors favorable to that which it grants to investors within its territory of activity any other right not expressly provided for in matters of establishment, acquisition, expansion, management, operation, and sales, or any other provision regarding investment.

6. However, the provisions of this Article shall not be interpreted as to oblige the Contracting Party to grant to investors of the other Contracting Party any advantages, preferential treatment, or privileges arising from:

a) any customs union, economic union, free trade zone, monetary union, or any other form of agreement of a similar nature, to which one of the Contracting Parties is or may become a member

b) Any international or regional agreement or any other matter concerning entirely or primarily to taxation.

## **Article 6. Direct Investment Agreement between a Government Entity of a Contracting Party and an Investor**

1. Each Contracting Party or its local authorities, entities, or designated bodies may enter into an investment agreement with an investor from the other Contracting Party to govern the specific legal relations pertaining to the investment the investor concerned.

## **Article 7. Compensation for Damages or Losses**

1. When investments made by investors from a Contracting Party suffer losses due to war or civil conflict, the Contracting Party shall be liable for state of national emergency, a revolt, an insurrection, or a similar event similar events on the territory of the other Contracting Party, they shall be accorded by that other Contracting Party treatment with respect to restitution, indemnification, compensation, or any other settlement that is no less favorable than that accorded by that other Contracting Party to its own investors or to investors of any third party, whichever is more favorable.

2. Without prejudice to paragraph (1) of this Article, investors of a Contracting Party who, in any of the events referred to in that paragraph, suffer damage or loss in the territory of the other Contracting Party as a result of:

a) requisition of their investments or assets by the armed forces or authorities of that Party,

b) destruction of their investments or property by its armed forces or authorities, which was not caused by acts of the Government of that country, and by the necessity of the situation.

Prompt and adequate compensation shall be provided for any damage or loss incurred during the period of requisition or as a result of the destruction of the property. The resulting payments must be made in a currency that is freely usable and freely transferable without delay.

## **Article 8. Expropriation**

1. a. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed, or subjected to direct or indirect measures having an equivalent effect. Nationalization, expropriation, or dispossession (hereinafter collectively referred to as "expropriation") by the other

Contracting Party shall not occur, except for public reasons related to the internal needs of that Contracting Party, and subject to prompt, adequate, and effective compensation, provided that such measures are taken on a non-discriminatory basis and in accordance with procedures established by law.

b. This compensation shall be equivalent to the actual value of the expropriated investment. It shall be determined and calculated based on the market value of the expropriated investment during the period immediately preceding the expropriation action or the period in which the expropriation becomes publicly known, whichever occurs first (hereinafter referred to as "Valuation Date"). This compensation must include interest at the current market value rates of the property in question. However, in no case shall it be less than the six-month rate of the LIBOR or its equivalent, calculated from the date of expropriation until the date of payment.

c. When the value -above the current market value cannot be determined, the compensation shall be calculated based on equitable principles, taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investments. In replacement value, accounting and settlement. The amount of the compensation shall be paid promptly to the investor in a freely convertible currency agreed upon and freely transferable without delay.

2. Without prejudice to its rights under Article 9 of this Convention, the investors concerned shall have a right under the law of the Contracting Party carrying out the expropriation to have their case, the circumstances, and the valuation of their investment reviewed by a judicial authority or any other independent authority of that Party in accordance with the principles set forth in paragraph 1. The Contracting State carrying out the expropriation shall make every effort to ensure that such review is conducted promptly.

3. When a Contracting Party expropriates the assets of a company that is incorporated under its laws in force in any part of its own territory, and in which investors of the other Contracting Party hold shares, shares, debentures, or other equity interests, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent possible to provide fair and equitable compensation to the investors of the other Contracting Party who are the owners of such rights or interests.

4. The term "Expropriation" also applies to interventions or measures, regulatory actions by a Contracting Party such as the freezing or confiscation of the investment; the imposition of arbitrary or excessive taxes on the investment; the compulsory sale of all or part of the investment; or other comparable measures that have de facto a confiscatory or expropriatory effect, the effects of which are to deprive the investor of ownership, control, or substantial benefits from the investment, or which may entail penalties or damages to the economic value of the investment.

## **Article 9. Transfer of Payments Related to Investments**

1. Each Contracting Party undertakes to facilitate the transfer of investment proceeds to the investor after the latter has fulfilled all financial obligations, in accordance with local legislation, the transfer of payments related to investments to the investor from outside its territory, including the transfer:

- a) of the capital and interest accrued for the benefit of the investor, as well as the management of the development and investment;
- b) investment income;
- c) payments in foreign currency, including principal repayment and payment of accrued interest under a loan agreement;
- d) royalties and fees specified in Article 1(d);
- e) proceeds from the sale or liquidation of all or part of the investment, including shares;
- f) salaries and other remuneration paid to personnel employed abroad in connection with the investment;
- g) compensation payments pursuant to Articles 6 and 7;
- h) the payment specified in Article 9; and
- i) the payment arising from the settlement of disputes.

2. Transfers of payments under paragraph 1 shall be made without delay or restriction, and, except in the cases provided for, in a freely convertible currency. In the event of a delay in the required transfer, the investor shall be entitled to interest for the period of the delay at the prevailing interest rate.

3. Transfers are made at the prevailing market exchange rate on the date of the transaction. In the absence of a prevailing exchange rate, the rate applied shall be the most favorable rate applied to investments in the market on the date of the

transaction determined in accordance with the rules of the International Monetary Fund or the exchange rate for the conversion of currencies into local special drawing rights according to the most favorable rate for the investor.

## **Article 10. Subrogation**

1. If a Contracting Party, its agency, a company, or any other entity incorporated or registered in the Contracting Party other than an investor (the "Indemnifying Party") makes a payment as indemnity or guarantee against non-commercial risks, provided that it has not acted as an investor in that matter from the other Contracting Party ("Host Contracting Party") or otherwise acquires a party or all rights and claims of such an investor, due to a failure to make full or partial payment to the investor, the Contracting Party hereby agrees to recognize:

- a) The assignment to the indemnifying party, by law or by legal instrument, of all or part of the rights and claims arising from such an investment.
- b) The indemnifying party shall have the right to exercise such rights and claims and shall assume all obligations related to the investment in full. This includes, where applicable, those of the legal predecessors or the original investor; and
- c) The rights or claims under this agreement shall not exceed the original rights or claims of the investor.

2. The indemnifying party is entitled, under all circumstances:

- a) To equal treatment with respect to rights and claims that it is obligated to assume pursuant to the provision referred to in paragraph 1 below.
- b) To any payment received in connection with the exercise of such rights and claims.

As the initial investor is entitled to receive, pursuant to this agreement, in relation to the investment in question.

3. Notwithstanding the provisions of paragraph 1 of this Article, the transfer shall take place only upon the approval of one of the Contracting Parties, only after approval by the contracting Party, if such approval is required.

4. Without prejudice to Article 8, any payment received in local currency by the indemnifying party pursuant to established rights and claims shall be freely available to the indemnifying party for the purpose of covering any expenses incurred within the territory of the host Contracting Party.

## **Article 11. Settlement of Disputes between Contracting Parties and the Investor**

1. Disputes between a Contracting Party and an investor of the other Contracting Party concerning an investment under this Convention shall, as far as possible, be settled amicably through negotiations between the parties concerned.

2. In cases where an investor and any entity of a Contracting Party, Or if such local authorities or designated agencies have concluded an investment agreement, the procedure set forth in that investment agreement shall apply.

3. With respect to paragraph 1 of this Article, if the dispute cannot be settled amicably within a period of 6 months, the parties to the dispute shall pursue one of the following procedures.

a) If the dispute cannot be settled within 6 months from the date the request for settlement was filed and must be adjudicated by the competent authority or through arbitration, it shall be submitted to the competent authority of the Contracting Party in whose territory the investment was made or to the International Centre for Settlement of Investment Disputes (the Centre)

b) At any time during the consideration period or court proceedings, the parties must withdraw the case if they reach an agreement on the amicable settlement of the dispute.

## **Article 12. Settlement of Disputes between Contracting Parties**

1. The Contracting Party shall, as far as possible, settle any disputes concerning the interpretation, application, or implementation of this Convention through consultations or other diplomatic channels.

2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by a Contracting Party, and unless the Contracting Parties have agreed otherwise in writing, the other Contracting Party may submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

3. The tribunal shall be constituted as follows: Each Contracting Party shall appoint one member, and the two members shall agree on a national of a third State with which both Contracting Parties maintain diplomatic relations to serve as the chairperson of the arbitral tribunal, who shall be appointed by both Contracting Parties. These members shall be appointed within two months and the chairperson within four months from the date on which one of the contracting parties has informed the other contracting party of its intention to submit the dispute to an arbitral tribunal.

4. If the time limits specified in paragraph 3 below have not been observed, each contracting party may, in the absence of any other arrangement, request the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of a Contracting Party or if he is unable to assume the office, the Vice-Presidents of the International Court of Justice shall be invited to assume the office and hear the case. If the Vice-President of the International Court of Justice is a national of one of the Contracting Parties, or if he too is unable to assume the office, the most senior members of the International Court of Justice who are not nationals of any of the Contracting Parties shall be invited to make the necessary appointments.

5. The arbitral tribunal shall render its decisions by a majority vote. Such a decision must be made in accordance with the provisions of this Convention and the applicable rules of international law and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the members of the arbitral tribunal appointed by that Contracting Party, as well as the costs of their representation in the arbitration proceedings. However, the arbitral tribunal may, at its discretion, order that a higher proportion of the total costs be paid by one of the contracting parties. In all other respects, the arbitral tribunal shall determine its own procedures.

### **Article 13. Entry and Stay of Personnel**

The Contracting Parties, in accordance with their respective national laws and regulations in force, shall give special consideration to applications for entry and residence submitted by nationals of both Contracting Parties in connection with an investment. The same provisions shall apply to employees of both Contracting Parties who, in connection with an investment, wish to enter the territory of the other Contracting Party and reside there to take up employment.

### **Article 14. Amendment**

The present agreement may be amended at any time following a request by a Contracting Party and the Contracting Party making the request must submit its request in writing, specifying the points on which the amendment is to be made.

### **Article 15. Consultation**

Each Party may request a consultation with the other Contracting Party regarding the aforementioned provisions concerning interpretation, application, or enforcement, or any other dispute, including such disputes regarding the investment of the other Party and answer promptly.

### **Article 16. Entry Into Force**

Each contracting party shall notify the other party that its constitutional requirements for the entry into force of this Agreement have been met, and this Agreement will entry into force the thirtieth day after the day of the reception of the beforementioned notification.

### **Article 17. Duration and Termination**

1. This Convention shall remain in force for a period of ten (10) years and shall continue to be in force thereafter for a period or similar periods, at least than one year prior to the expiration of the initial period or any subsequent period, a contracting party shall notify the other contracting party in writing of its intention to terminate this Convention.

2. With respect to investments made prior to the date on which the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to apply for a period of fifteen (15) years from the date of termination of this Agreement.

3. The provisions of this Agreement shall apply regardless of the existence of diplomatic or consular relations between the Contracting Parties.

In witness whereof, the undersigned, authorized by their respective Governments, sign this Agreement.

Done in duplicate at Abu Dhabi, United Arab Emirates, on August 13, 2011, corresponding to the French, Arabic, and English versions, all texts being equally authentic. In the event of any discrepancy in interpretation, the English text shall prevail.

On behalf of the Government of the United Arab Emirates

Obaid Humaid Al Tayer

Minister of State for Financial Affairs

For the Government of the Republic of Guinea

Doctor Edouard Niankoye Lama

Minister of Foreign Affairs