

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALI AND THE GOVERNMENT OF THE GABONESE
REPUBLIC ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

PREAMBLE

The Government of Mali, and

The Government of the Gabonese Republic,

(hereinafter referred to as the "Contracting Parties") ;

Desiring to create favourable conditions for increased investment and to intensify economic cooperation between the two States on the basis of equality of treatment and mutual benefit;

With the intention of creating and maintaining favourable conditions for investments by investors of one of the Contracting Parties in the territory of the other Contracting Party;

Recognizing that an Agreement on the reciprocal promotion and protection of investments is likely to stimulate private initiative and contribute to the prosperity of both Parties;

Have agreed as follows:

Article 1. Definitions

(1) For the purposes of this Agreement :

(A) The term "investment" means any asset and in particular, but not exclusively:

i) movable and immovable property, even if placed at the disposal of a lessor, as well as all other real rights, such as mortgages, liens, securities, charges on land, movable and immovable pledges, usufruct and analogous rights;

(ii) shares and other forms of participation in companies incorporated in the territory of one of the Contracting Parties;

(iii) Monetary claims and rights to any other benefits under a contract of economic value;

(iv) industrial and intellectual property rights, such as copyrights, patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source, technical processes, know-how and clientele;

(v) Concessions granted by law or by contract, in particular, concessions for the prospection, cultivation, extraction or exploitation of natural resources, as well as any other right conferred by law, by contract or by a decision of the authority pursuant to the law;

No change in the form in which the assets have been invested or reinvested shall affect their investment status within the meaning of this Agreement.

(B) The term "income" means amounts net of tax, derived from an investment and includes, but is not limited to, profits, interest, capital gains, dividends, royalties and other earnings.

C) The term "investors" means, with respect to each Contracting Party :

(i) natural persons who, in accordance with the legislation of that Contracting Party, are regarded as its nationals and who have made investments in the territory of the other Contracting Party within the meaning of Article 1, A;

(ii) legal persons having their seat in the territory of one of the Contracting Parties, which are constituted and operate in accordance with the legislation of that Contracting Party and which have made investments within the meaning of Article 1(A);

D) The term "territory" means :

The national territory of each Contracting Party, the maritime area of each Contracting Party including the economic zone and the continental shelf extending beyond the limits of the territorial waters and over which each Contracting Party exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

Article 2. Scope of Application

This Agreement shall apply to investments made before and after its entry into force by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with its laws and regulations.

However, this Agreement shall not apply to disputes arising before its entry into force.

Article 3. Encouragement and Admission

(1) Each Contracting Party shall encourage and facilitate investments by investors of the other Contracting Party in its territory and shall admit or approve such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall endeavour to issue, in accordance with its laws and regulations, the necessary authorisations in connection with such investments, including for the purpose of executing licensing, technical, commercial or administrative assistance contracts, as well as authorisations required for the activities of consultants and experts.

(3) Each Contracting Party shall, in accordance with its laws and regulations, deal with matters relating to the entry and residence of investors of the other Contracting Party making or operating in its territory investments covered by this Agreement.

Article 4. Treatment and Protection of Investments

(1) Investments and income of investors of each Contracting Party shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting Party. No Contracting Party shall hinder in any way, by discriminatory or arbitrary measures, the management, maintenance, use, enjoyment, expansion or disposal of such investments.

Income from investment and possible reinvestment shall enjoy the same protection as the investment.

(2) Each Contracting Party shall accord to investments made in its territory, and to the income of investors of the other Contracting Party, treatment that is no less favourable than that which it accords to investments and income of its own investors or to investments and income of investors of any third State, whichever is more favourable.

(3) Each Contracting Party shall accord to investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment or disposal of investments made in its territory, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

4. If a Contracting Party grants special advantages to investors of any third State under an Agreement establishing a free trade area, customs union or common market or any other form of regional economic organization or similar international agreement to which it is or will become a party, or under an Agreement for the avoidance of double taxation, it shall not be required to grant such advantages to investors of the other Contracting Party.

(5) The provisions referred to in paragraphs (2) and (3) of this Article shall not apply with respect to special advantages granted to development finance institutions.

Article 5. Compensation for Losses

Investors of a Contracting Party whose investments made in the territory of the other Contracting Party have suffered losses as a result of war or any other armed conflict, revolution, national emergency, revolt, insurrection or riot occurring in the territory of the latter Contracting Party shall enjoy, on the part of the latter Contracting Party, as regards restitution, compensation, indemnification or any other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third State. Payments resulting therefrom shall be freely transferable at the rate of exchange applicable on the date of transfer in accordance with the applicable rules of exchange.

Article 6. Expropriation and Compensation

(1) The Contracting Parties shall not take expropriation or nationalisation measures or any other measures the effect of which is to dispossess, directly or indirectly, investors of the other Contracting Party of investments made in their territory.

(2) If public interest, security or national interest considerations justify a derogation from paragraph 1, the following conditions shall be met:

(a) The measures shall be taken in accordance with a legal procedure and shall be neither discriminatory nor arbitrary. They shall give rise to the prompt payment of effective and adequate compensation.

(b) Such compensation shall correspond to the value of the investment, determined on the day before the measures are taken or made public, whichever is the earlier. The indemnity shall include interest, if any, calculated at a normal commercial rate, up to the date of payment. The compensation shall be fully realisable and freely transferable on the basis of the exchange rate applicable on the date of transfer, in accordance with the exchange rules in force.

(3) The compensation for expropriation referred to above may be subject to review at the request of the investor concerned by a judicial or other independent authority of the expropriating Contracting Party for the purpose of assessing its investment in accordance with the principles set out in this Article.

(4) Investments of a company formed in accordance with the legislation in force in the territory of the expropriating Contracting Party and in which investors of the other Contracting Party hold shares shall be compensated in accordance with paragraph (2) of this Article.

Article 7. Transfers

1) Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer in a convertible currency, and without delay, of amounts relating to investments made in its territory, in particular :

(a) capital and additional amounts necessary for the maintenance or development of investments ;

(b) net income as defined in Article 1, B of this Agreement;

(c) amounts necessary for servicing, repayment and amortisation of loans recognised by both Contracting Parties as investments;

(d) the proceeds resulting from the alienation or liquidation of all or part of the investments;

(e) compensation due under Articles 5 and 6;

(f) the wages of foreign workers authorised to work in connection with the investment in the territory of the other Contracting Party.

Transfers shall be effected at the rate of exchange prevailing on the market on the date of transfer, in accordance with the regulations in force in the Contracting Parties. In the absence of an exchange market, the rate to be used shall be the most recent rate applied to domestic investments or the most recent rate for the conversion of the currency concerned into Special Drawing Rights, whichever is more favourable to the investor.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

(1) Any investment dispute between one of the Contracting Parties and an investor of the other Contracting Party shall be settled amicably between the two Parties concerned and, where appropriate, through diplomatic channels.

(2) If the dispute has not been settled within six months from the time it has been notified in writing by either Party to the dispute, it shall be subject to the choice of the investor who is a party to the dispute:

(a) to the competent national court of the Contracting Party in whose territory the investment, which is the subject of the dispute, was made; or

b) Arbitration by the Common Court of Justice and Arbitration created by the Treaty of the Organization for the Harmonization of Business Law in Africa (OHADA Treaty);

(c) arbitration by 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, signed at Washington on 18 March 1965;

(d) arbitration by an ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Recourse to one of the above-mentioned forms of arbitration shall be exclusive of any parallel or subsequent referral to any other of these bodies under the provisions of this article, without prejudice to the parties to the dispute pursuing amicable negotiations until an arbitral award has the force of *res judicata*.

(3) The tribunal shall decide on the basis of the domestic law of the Contracting Party, that is a party to the dispute, in whose territory the investment is situated, including the rules relating to conflict of laws, as well as on the basis of the provisions of this Agreement, the terms of any Special Agreement on Investment and the principles of international law.

(4) Arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards, without delay, in accordance with its national legislation.

(5) The provisions of this Article shall not affect the right of the Contracting Parties to have recourse to the procedures provided for in Article 9 if the dispute concerns the interpretation or implementation of this Agreement.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

(2) If, within six (6) months from the beginning of negotiations, the dispute is not settled, it shall, at the request of either Contracting Party, be submitted to an Arbitration Tribunal.

(3) The said tribunal shall be constituted ad hoc. Each Contracting Party shall appoint an arbitrator within three (3) months from the date on which one of the Contracting Parties has notified the other of its intention to submit the dispute to arbitration. Within two (2) months of their appointment, the two arbitrators shall designate by common agreement a national of a third State to act as chairman of the arbitral tribunal.

(4) If the time-limits laid down in paragraph (3) above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary designations. If the President of the International Court of Justice is a national of one or other Contracting Party, or if he is prevented for any other reason from exercising that office, the Vice-President of the International Court of Justice shall make the necessary appointments. If the Vice-President of the International Court of Justice is a national of one or other Contracting Party, or if for some other reason he is prevented from holding office, the most senior judge of the International Court of Justice who is not a national of one of the Contracting Parties shall make the necessary appointments.

(5) The Tribunal shall take its decision by a majority vote and shall itself determine its own rules.

(6) The Tribunal shall decide on the basis of respect for the principles of international law, the provisions of this Agreement, and national legislation.

(7) The decisions of the Tribunal shall be final and enforceable by operation of law for the Contracting Parties. It shall interpret the award at the request of either Contracting Party.

(8) Each Contracting Party shall bear the expenses of its arbitrator and advisers in the arbitral proceedings, as well as half of the expenses of the President of the Tribunal and of the other expenses. The Tribunal may, however, decide in its award that a greater proportion of the costs shall be borne by either party, and the award shall be binding on both parties.

(9) Except as provided above, the Tribunal shall establish its own rules of procedure.

Article 10. Subrogation

(1) If one of the Contracting Parties, a dismembering Contracting Party, or a legal or contractual guarantee body covering non-commercial risks of investments, pays compensation to an investor under a guarantee given for an investment, the other Contracting Party shall recognise that all the rights of that investor in relation to the guaranteed investment are transferred to the Contracting Party or body concerned.

(2) With regard to the rights transferred, the other Contracting Party may enforce against the body which is subrogated to the rights of the indemnified investor the obligations which the latter has by law or contract.

(3) The transfer of sums resulting from the above subrogation shall be governed by the provisions of Article 7.

(4) Any dispute between a Contracting Party and the organization subrogated to another Contracting Party shall be settled in accordance with the provisions of Article 8 of this Agreement.

Article 11. Special Provisions

(1) If provisions of the legislation of a Contracting Party or of a Convention or a Special Agreement grant to investments of investors of the other Contracting Party more favourable treatment than that provided for in this Agreement, such provisions shall prevail over this Agreement to the extent that they are more favourable.

(2) Each Contracting Party undertakes to ensure at all times that the obligations it has entered into in respect of investments made in its territory by investors of the other Contracting Party are complied with.

(3) Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any measures necessary to protect its essential interests in the fields of safety, the environment, public health or the prevention of animal and plant diseases.

Article 12. Final Provisions

1) This Agreement is concluded for an initial term of ten (10) years. Unless one of the Contracting Parties denounces it at least twelve (12) months before the expiry of its period of validity, it shall be tacitly renewed for a period of ten (10) years, each Contracting Party reserving the right to denounce it by means of a notification submitted at least twelve (12) months before the date of expiry of the current period of validity.

(2) This Agreement shall enter into force thirty (30) days from the date of receipt of the last of the two notifications relating to the completion by the two Contracting Parties of the legal procedures required in their respective countries.

(3) This Agreement may be amended by mutual agreement between the Parties by exchange of letters under the same conditions and within the same time limits as provided for in paragraph (1) above.

(4) With respect to investments made prior to the date of expiry of this Agreement, the provisions of Articles 1 to 11 shall remain applicable to them for a period of ten years from the date of expiry.

In witness whereof the undersigned representatives, being duly authorized by their respective Governments, have signed this Agreement.

Done at Bamako, on 25 March 2005, in two originals in the French language, both texts being equally authentic.

For the Government of the Republic of Mali

Moctar OUANE

For the Government of the Gabonese Republic

Minister of Foreign Affairs and International Cooperation

Jean-Francois NDONGOU

Minister Delegate to the Minister of State, Minister of Foreign Affairs, Cooperation and Francophonie