

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALI AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

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

Desiring to create favourable conditions for investment in both States and to intensify cooperation between the private enterprises of the two States with a view to stimulating the productive use of resources;

Recognizing the growing importance of the progressive liberalization of investment to stimulate the initiative of investors to promote prosperity in both Contracting Parties;

Considering that fair and equitable treatment of investments on a reciprocal basis will serve this purpose;

Convinced that this Agreement will contribute to the strengthening of bilateral relations between the countries of the two Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement :

1. The term "investment" means any type of asset and includes in particular, but not exclusively :

- a. Tangible and intangible, movable and immovable property as well as all other rights, such as leases, mortgages, liens, pledges, privileges, security interests;
- b. A business or commercial undertaking, or shares, stocks or other forms of participation in a business or commercial undertaking;
- c. Reinvested returns, money claims and performance claims under contracts having economic value;
- d. Industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, know-how and all other similar rights;

2. This Agreement does not cover concessions or other rights conferred by law or under a contract relating to natural resources;

3. Money claims relating to the types of interests referred to in (a) to (d) above, but no money claims arising solely from :

- (i) commercial contracts for the sale of goods or services by a national or an enterprise in the territory of one Contracting Party to an enterprise in the territory of the other Contracting Party, or
- (ii) the granting of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d) above.

2. Any change in the form in which the assets are invested does not affect their investment character.

3. The term "returns" refers to the amounts generated by an investment and includes, but is not limited to, profits, interest, capital gains, dividends. and royalties.

4. Returns, and in the case of reinvestment of amounts generated by reinvestment, shall enjoy the same protection as the investment in accordance with the provisions of this Agreement.

5. The term "investor" means, for each Contracting Party :

(a) Natural persons having the citizenship or nationality of each Contracting Party in accordance with its laws.

(b) An entity established in accordance with the laws of that Contracting Party and recognized as a legal person therein, such as corporations, enterprises and development finance institutions.

(c) The government of a Contracting Party and its financial institutions.

6. The term "territory" shall mean in respect of :

a. Mali: the land territory, internal waters, airspace and all areas over which Mali, under international law, exercises sovereignty and authority.

b. The United Arab Emirates: the territory of the United Arab Emirates, its territorial sea, its airspace and the submarine areas over which the United Arab Emirates carries out its activities in accordance with international law and the law on the sovereign rights of the United Arab Emirates; including the exclusive economic zone and the mainland and islands under its jurisdiction for any activity carried out in its waters, seabed and subsoil in connection with the exploration or exploitation of natural resources in accordance with its legislation and international law.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall admit investments from investors of the other Contracting Party in accordance with its laws and regulations.

2. Investments by investors of one Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. For greater certainty, protection and security shall not go beyond the treatment which the Contracting Party accords to its own residents and to other foreigners in accordance with the laws and regulations of the Contracting Parties to protect its own security and public order.

3. Neither Contracting Party may, by unreasonable or discriminatory measures, in any way impair the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

4. Each Contracting Party shall comply with any obligation it may have entered into in respect of investments of investors of the other Contracting Party.

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

1. Investments and returns of investors of one of the Contracting Parties made in accordance with its laws and regulations shall at all times be accorded fair and equitable treatment.

2. No Contracting Party shall hinder, by arbitrary or discriminatory measures, the development, management, use and expansion of the sale and, where appropriate, liquidation of such investments.

3. For greater certainty, fair and equitable treatment means that each Contracting Party shall, as far as possible, make its laws and regulations relating to investments available to the public and shall provide the investor with the right of access to its courts, administrative tribunals and agencies and all other judicial authorities.

4. Each Contracting Party shall, in accordance with its laws and regulations, assure investors of the other Contracting Party that, in the event of liquidation of an investment, the proceeds of liquidation shall enjoy the same protection and treatment.

## **Article 4. Most-favoured Nation Treatment**

1. In accordance with its laws and regulations, each Contracting Party shall accord to investments and income of investors of the other Contracting Party in its territory treatment no less favourable than that which it accords to investments and income of investors of a third State, whichever is more favourable to the investors concerned, in respect of the development, management, maintenance, use, expansion, sale or other disposition of their investment.

2. With regard to most-favoured-nation treatment, each Contracting Party shall grant investors of the other Contracting Party, in its territory, the development, management, maintenance, use, expansion, sale or other disposition of their

investment, not less favourable than that which it grants to investors of any third State, whichever is more favourable to the investors concerned.

3. Paragraphs 1 and 2 of this Article shall not apply to public contracts at all levels, grants, subsidies or loans granted to SMEs.

4. Notwithstanding any other bilateral investment agreement which the Contracting Parties have concluded with other States before or after the entry into force of this Agreement, most-favoured-nation treatment shall not apply to procedural or judicial matters.

5. The provisions of paragraphs 1 and 2 of this Article shall not be interpreted as obliging a Contracting Party to grant investors of the other Contracting Party the benefit of the treatment, preference or privilege which the first Contracting Party may grant under:

a. any existing or future customs union, economic or monetary union, free trade area or similar international agreements to which one of the Contracting Parties is or may become a party in the future;

b. any international agreement or arrangement, wholly or partly related to taxation.

## **Article 5. Compensation for Damages or Losses**

1. Where investments made by investors of one of the Contracting Parties suffer loss or damage as a result of war or other armed conflict, civil disturbance, state of emergency, revolution, riot or other similar events in the territory of the other Contracting Party, they shall be granted by treatment of the latter Contracting Party, as regards restitution, compensation or any other settlement, no less favourable than the treatment which the latter Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

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

(a) the requisition of their property or part thereof by their forces or authorities ;

(b) the destruction of their property or part thereof by their forces or authorities which was not caused by combat or was not required by the necessity of the situation,

Prompt, adequate and effective reparation or restitution will be made for damage or loss suffered during the period of requisition or as a result of the destruction of their property. The resulting payments shall be made in freely convertible and freely transferable currency without delay.

## **Article 6. Prohibition of Performance Requirements**

1. Neither Contracting Party shall impose in its territory compulsory measures concerning investments by investors of the other Contracting Party in respect of the purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects. This paragraph shall not apply to measures taken in accordance with the laws and regulations governing the procurement of goods and services at all levels of government of the Contracting Party.

2. Neither Contracting Party shall :

a. Restrict the export of goods and services and ;

b. Impose conditions to achieve a given level or percentage of national content.

## **Article 7. Expropriation**

1. A Contracting Party may not expropriate or nationalize directly or indirectly in its territory an investment of an investor of the other Contracting Party or take measures having equivalent effect (hereinafter referred to as "expropriation") unless the following conditions occur simultaneously :

a. in the public interest,

b. on a non-discriminatory basis,

c. in accordance with due process, and

- d. accompanied by the payment of prompt, adequate and effective compensation.
2. The compensation shall be equal to the fair market value of the expropriated investment immediately before the expropriation or imminent expropriation is known, whichever occurs first.
3. Where the fair market value cannot be established, compensation must be determined in an equitable manner taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement and book value.
4. Compensation must be paid without delay, be effectively realisable and freely transferable.
5. An investor of a Contracting Party affected by expropriation by the other Contracting Party shall have the right to have its case promptly examined, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial or other competent authority independent of the latter.
6. Where a Contracting Party expropriates the property of a legal person which is incorporated in its territory in accordance with its laws and regulations and in which investors of the other Contracting Party participate, it shall ensure that the provisions of this Article are applied in a manner which guarantees adequate and effective compensation to such investors.

## **Article 8. Immunity of Government Movable and Immovable Assets**

1. The movable and immovable property of each of the Contracting Parties, or of local communities or local authorities, shall not be subject to nationalisation, expropriation, or sequestration directly or indirectly and shall enjoy immunity from the jurisdiction of the local courts.
2. Government assets shall not be subject to any of the above measures by a third party and shall enjoy immunity from the jurisdiction of local courts.

## **Article 9. Transfers**

1. Each Contracting Party shall, in accordance with its laws and regulations in force in the territory of the Contracting Party, ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include in particular :

- (a) initial capital and additional amounts to maintain or increase an investment;
- (b) results ;
- (c) proceeds from the sale or liquidation of all or part of an investment ;
- (d) compensation payments under Articles 5 and 7 of this Agreement ;
- (e) payments under Article 10 of this Agreement ;
- (f) payments resulting from the settlement of an investment dispute.

2. Each Contracting Party shall ensure that the transfers referred to in paragraph 1 of this Article shall be made without delay and in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may, in accordance with its laws and regulations, in good faith and in an equitable and non-discriminatory manner, temporarily prevent transfers from applying its laws and regulations concerning:

- (a) the protection of creditors in bankruptcy proceedings; and
- (b) criminal offences.

## **Article 10. Subrogation**

1. If a Contracting Party or its designated body (for the purposes of this Article: the "guarantor") makes a payment in respect of compensation granted in respect of an investment in the territory of the other Contracting Party, the latter shall recognize ;

- a. the assignment to the guarantor by law or by a legal transaction of all the rights and claims of the indemnified party; and
- b. that the guarantor has the right to exercise these rights and to enforce these rights by subrogation to the same extent as the indemnified party and assumes the obligations related to the investment.

2. The guarantor has the right, in all circumstances, to :

- a. the same treatment with respect to the rights, claims and obligations acquired by it under the assignment; and
- b. any payment received pursuant to such rights and claims, as the Indemnified Party was entitled to receive under this Agreement, in respect of the investment concerned and its related revenues.

3. The subrogated rights or claims shall not exceed the original rights or claims of the investor,

4. Notwithstanding paragraph 1 of this Article, subrogation shall only take place in the Contracting Party after approval by the competent authority of that Contracting Party.

## **Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. An investor who has a dispute with a contracting party should first attempt to resolve it through negotiations.

2. In order to commence negotiations, the investor must provide the Contracting Party with written notice. The notice shall specify :

- a. the name and address of the disputing investor;
- b. the provisions of this Agreement alleged to have been violated;
- c. the factual and legal basis for the claim; and
- d. the relief sought and the amount of damages claimed.

3. Where the Contracting Party so requests, if the dispute cannot be settled amicably within three months of receipt of the written notice, the dispute shall be submitted to the competent court of the Contracting Party in whose territory the investment is made.

4. If the dispute cannot be settled amicably within six months of receipt of the written notification or of the commencement of the conciliation procedure referred to in paragraph 3 of this Article, the dispute shall be settled as follows at the request of the investor:

- a. a. By 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, opened for signature at Washington on 18 March 1965. In the event of arbitration, each Contracting Party hereto irrevocably consents in advance, even in the absence of an individual arbitration agreement between the Contracting Party and the investor, to submit such a dispute to the Centre; or
- b. by the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), accepted by both Contracting Parties. In the event of arbitration, each Contracting Party hereby irrevocably consents in advance, even in the absence of an individual arbitration agreement between the Contracting Party and the investor, to submit such a dispute to the said tribunal.

5. The award shall be final and binding, provided that the provisions of Articles 42 to 54 of the Convention and of the ICSID Rules have been complied with. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its laws and regulations.

6. A Contracting Party which is a party to a dispute may not, at any stage of the conciliation or arbitration proceedings or of the enforcement of an award, object that the investor which is the other party to the dispute has received compensation under the Convention for all or part of its losses.

7. Where the investor and any designated entity of a Contracting Party or its local government have concluded an agreement relating to the investments of the investor, the dispute settlement procedure set out therein shall apply.

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

1. Disputes between Contracting Parties concerning the interpretation or application of this Agreement shall be settled to the extent possible by diplomatic negotiations.
2. If a dispute under paragraph 1 of this article cannot be settled within six months, it shall be submitted, at the request of one of the Contracting Parties, to an arbitral tribunal of three members.
3. This arbitral tribunal shall be constituted ad hoc. Each Contracting Party shall appoint one member and these two members shall agree on the name of a national of a third State. These members shall be appointed within two months from the date on which a Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within a further two-month period.
4. If the time-limits provided for in paragraph 3 of this Article are not complied with, either Contracting Party may, in the absence of any other relevant arrangements, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise prevented from exercising the said office, the Vice-President or, if he is prevented from so doing, the Member of the International Court of Justice should be invited under the same conditions to make the necessary appointments. The judge appointed should be a national of a State which maintains diplomatic relations with the Contracting Parties.
5. The Arbitral Tribunal shall draw up its own rules of procedure unless the Contracting Parties decide otherwise.
6. The arbitral tribunal shall take its decision under this Agreement and in accordance with the rules of international law. It shall take its decision by a majority of votes; the decision shall be final and binding.
7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne equally by the two Contracting Parties. However, the Tribunal may, in its award, determine a different apportionment of costs.

### **Article 13. Application of other Rules**

Without prejudice to Article 4, if the legislation of one of the Contracting Parties or the obligations existing between the Contracting Parties under international law now existing or hereafter established between the Contracting Parties contain, in addition to this Agreement, general or specific rules permitting investors of the other Contracting Party to be treated more favourably than is provided for in this Agreement, such rules shall be applied to the extent that they are more favourable to the investor.

### **Article 14. Application of the Agreement**

This Agreement shall apply to investment in progress and to investment made after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen or to any claim settled before its entry into force.

### **Article 15. Consultations**

The Contracting Parties shall, at the request of either of them, hold consultations on any question relating to the implementation or application of this Agreement, including the dispute relating to investment with a view to a settlement. Such consultations shall take place at the proposal of either Contracting Party at a place and time to be agreed through diplomatic channels.

### **Article 16. Denial of Benefits**

1. An investor of a Contracting Party shall not enjoy the benefits of this Agreement if the principal purpose of acquiring the nationality of that Contracting Party is to obtain benefits under this Agreement which would not otherwise be available to the investor.
2. The benefit of this Agreement shall not be accorded to an investor which restructures its investment through intermediary countries which do not have diplomatic relations with the host State and which have no substantial business activities in that State.
3. For greater certainty, the benefit of this agreement will not be available to the third party.
4. Before refusing the benefits of this agreement, the Contracting Party refusing the agreement shall inform the other Contracting Party.

## **Article 17. Preventive and Safeguard Measures**

1. Notwithstanding any other provision of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services for prudential reasons.
2. Measures applied in accordance with paragraph 1 of this Article shall not be used to avoid specifically or solely their commitments or obligations under this Agreement.
3. The measures referred to in paragraph 1 of this Article shall not violate the IMF Agreement on the Free Movement of Capital.

## **Article 18. Health, Safety, Environment and National Labour Measures**

1. No Contracting Party may repeal or derogate from its health, safety, environmental, commercial or industrial labour standards or legislation as a means of encouraging investment by investors of the Contracting Party or of any non-Contracting Party.
2. The investment shall be directed towards environmental protection and sustainable development and shall encourage the use of environmentally sound technologies in accordance with the national policies of the Parties.

## **Article 19. Entry Into Force, Amendments, Duration and Termination**

1. This Agreement shall enter into force on the date of receipt of the last notification through diplomatic channels by which one of the Contracting Parties notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement may be amended in writing by common agreement of the Contracting Parties. Such amendments shall enter into force in accordance with the same procedure as the Agreement.
3. This Agreement shall remain in force for a period of ten years and shall be extended thereafter for a period of ten years unless one year before the expiry of the initial or subsequent period one of the Contracting Parties notifies the other of its intention to do so. In this case, the denunciation shall take effect at the end of the current ten-year period.
4. With respect to investments made before the date on which the termination of this Agreement takes effect, the provisions of this Agreement shall remain in force for a period of ten years from the date of entry into force of the termination of this Agreement.
5. This Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Bamako on 6 March 2018 in duplicate, in the Arabic, English, French and Spanish languages, each text being equally authentic.

In the event of any discrepancy in interpretation, the English text shall be authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF MALI

Tiéman Hubert COULIBALY, Minister for Foreign Affairs and International Cooperation

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

Sheikh Abdullah Bin Zayed Al NAHYAN, Minister for Foreign Affairs and International Cooperation