

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GUINEA AND THE GOVERNMENT OF THE REPUBLIC OF THE GAMBIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Guinea and the Government of the Republic of The Gambia (hereinafter referred to as the "Contracting Parties").

Desiring to intensify economic co-operation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments of investors of one States in the territory of the other State, and Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

- a) Movable and immovable property as well as any other property rights such as mortgages, liens, pledges, and similar rights;
- b) Shares, stocks and debentures of companies or any other form of participation in a company
- c) Claims to money or to any performance having an economic value associated with an investment;
- d) Intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;
- e) Any right conferred by law or under contract and any licenses and permits pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources.

Any alternation of the form in which assets are invested shall not affect their character as an investment. On this note, therefore extension, modification or transformation of an investment made in accordance with the laws and regulations in force in the host country are considered as new investments.

2. The term "investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

a) The term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws:

b) The term "legal person" shall mean any organisation incorporated or constituted or, otherwise, duly organised under the laws of that Contracting Party, including companies, associations, partnerships, corporations, branches etc.

3. The term "return" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties or fees.

4. The term "territory" means:

a) with respect to The Republic of Guinea: the territory of The Republic of Guinea including any maritime area situated beyond the territorial waters of The Republic of Guinea which have been or might be afterwards designed by the law of The Republic of Guinea, according to international law, being an area into which the rights of The Republic of Guinea relative to sea bed and maritime subsoil as well as to natural resources can be exercised;

b) with respect to The Republic of The Gambia: the territory of The Gambia, including the territorial sea and any maritime area situated beyond the territorial sea, over which the Republic of The Gambia may exercise sovereign rights or jurisdiction in accordance with relevant international and domestic laws.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party in accordance with laws and regulation.

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

4. Investment returns, and in case of their reinvestment in accordance with the laws of the Contracting Party in the territory of which the investment is made, enjoy the same protection.

Article 3. Most-favoured-nation Treatment

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment that is fair and equitable and not less favourable than that which it accords to investments and returns of investors of any third State.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment that is fair and equitable and not less favourable than which it accords to investors of any third State.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a) Any customs union or free trade area or a monetary union or similar international agreement leading to such unions or institution or other forms or regional co-operation to which either of the Contracting Party is or may become a Party;

b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Compensation for Losses

1. When investments by investors of either Contracting Party suffer losses on their investments owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in V the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to Investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the event referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a) requisitioning of their property by its forces or authorities,

b) destruction of their property by its forces or authorities, which was nn not caused in combat action or was not required by the necessity of the the situation, shall be accorded just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property.

All resulting payments pertaining to the above shall be freely transferable in freely convertible currency without delay in accordance with the laws of the country.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provision for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest (LIBOR) from the date of expropriation, shall be made without delay, be effectively realisable and be freely transferable in freely convertible currency.

2. The affected investor of a Contracting Party shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own majority shares.

Article 6. Transfers

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns subject to the laws and regulations in force in their territories. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular, though not exclusively:

- a) capital and additional amounts to maintain or increase the investment;
- b) profits, interest, dividends and other current income;
- c) funds in repayment of loans;
- d) royalties or fees;
- e) proceeds of sale or liquidation of the investment;
- f) the earning of national persons subject to the laws and regulations of the Contracting Party, in whose territory investments have been made;
- g) compensation under Article 4, 5 and 7 of this Agreement.

2. For the purpose of this Agreement, exchange rates shall be the official rates effective for current transactions at the date of transfer, unless otherwise agreed.

Article 7. Subrogation

If a Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment in the territory of the other Party, the latter Party shall recognize the assignment, whether by law or by legal transaction, to the former Party of all the rights and claims of the indemnified investor, and shall recognize that the former Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2. If the dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of last appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may make a request to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 9. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months, the investor shall be entitled to submit the case either to:

- a) The competent court of the Contracting Party in the territory of which the investment has been made;
- b) The International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, in the event both Contracting Parties shall have become a party to this Convention; or
- c) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission of International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both Parties to the dispute.

Article 10. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors or investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

Article 11. Other Obligations

1. Investors of one Contracting Party may conclude with the other Contracting Party particular agreements, provisions of which shall not be contrary to this Agreement. Investments made under such commitment are also ruled by this Agreement.

2. Each Contracting Party shall observe any obligations it may have entered into with regard to investments of investors of the other Contracting Party.

Article 12. Application of this Agreement

1. The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party prior as well as after the entry into force of this Agreement. However, this Agreement shall not apply to the disputes, which would arise before its entry into force.

2. A Consultative Technical Committee comprising of officers of the Departments of State for Trade, Industry & Employment of The Gambia and Ministry of Commerce, Industry and Small & Medium Enterprises of the Republic of Guinea who will meet once every year to monitor implementation of this Agreement.

Article 13. Entry Into Force, Duration and Termination

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.
2. This Agreement shall remain in force for a period of five years and shall continue in force for five year periods thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.
3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of five years from the date of termination.

IN WITNESS WHEREOF, the undersigned duly authorised have signed this Agreement.

DONE in duplicate at, this day of 2002, in French and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Hon. Haja Mariama Déo Baldé

For The Government of The The Republic of Guinea

Hon. Musa H. Sillah For

The Government of Republic of The Gambia