

# **AGREEMENT BETWEEN THE REPUBLIC OF THE GAMBIA AND THE UNITED ARAB EMIRATES ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

Desiring to intensify the economic cooperation to the mutual benefit of both Contracting Parties;

Recognising the right of each Contracting Party to regulate the investments made in its territory in order to protect legitimate public welfare objectives in the field of health, public order and environment;

Recognising the need to promote and protect foreign investments with the aim to foster the economic prosperity and economic development of both Contracting Parties;

Have agreed as follows::

## **Article 1. Definitions**

For the purposes of this Agreement:

The term "investor" means in respect of either Contracting Party:

- a. a natural person, who is a national of a Contracting Party in accordance with its laws and regulations and who makes an investment in the territory of the other Contracting Party;
- b. a legal entity which is incorporated under the laws and regulations of that Contracting Party and is the owner, possessor or shareholder of an investment in the territory of the other Contracting Party;
- c. Government of Contracting Party.

2. The term "investment" means every kind of asset which is owned directly or indirectly and invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular:

- a. movable and immovable property as well as any other rights, such as mortgages, pledges, usufructs and similar rights;
- b. stocks, shares and other forms of participation in companies;
- c. returns reinvested, debentures, claims to money or any other rights to legitimate performance having financial value related to an investment;
- d. intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, including copyrights and related rights, industrial property rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;
- e. rights to engage in economic and commercial activities conferred by law, by administrative act or by virtue of a contract. In the Case of the United Arab Emirates Natural, resources shall not be covered by this Agreement.

3. investments does not include claims to money arising solely from:

- (i) commercial contracts for the sale of goods and services by a national or legal entity in the territory of a Contracting Party to a national or a legal entity in the territory of the other Contracting Party; or

(ii) credits granted in relation with a commercial transaction.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such change is not contrary to the approvals granted, if any, to the assets originally invested.

4. The term "returns" means income deriving from an investment and includes, in particular, but not exclusively profits, dividends, capital gains, interests, royalties and any other fees.

5. The term "freely convertible currency" shall mean any currency that is any widely used in international transactions and is traded in principal exchange markets.

6. The term "territory" means in respect to:

a. The "Gambia" when used in a geographical sense means the land territory of the Gambia, its territorial waters, the airspace above it and other maritime zones including the exclusive economic zone and continental shelf over which the Gambia has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws, the United Nations Convention on the law of the Sea and International law

The United Arab Emirates: the territory of the United Arab Emirates, its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in accordance with international law and the law of United Arab Emirates sovereign rights; including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in its water, seabed and subsoil in connection with the exploration for or the exploitation of the natural resources by virtue of its law and international law.

## **Article 2. Promotion and Encouragement 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, promote economic cooperation through the protection in its territory of such investments and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour as far as possible to inform the other Contracting Party, at the request of either Contracting Party of the investment opportunities in its territory.

3. Each Contracting Party shall observe any obligations and commitments to the investor with respect to his/her investment in its territory.

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

1. Investments and returns of investors of either Contracting party made in accordance with its laws and regulations shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party, for more certainty protection and security shall not be beyond the security and protection that the State provide for its nationals, residents and other aliens and the measures that the Contracting Party undertakes to protect its security and public order.

2. For greater certainty The concept of "fair and equitable treatment" means protection against measures or series of measures that constitute:

a) denial of justice in criminal, civil or administrative proceedings;

b) fundamental breach of due process, in judicial and administrative proceedings; or

c) manifest arbitrariness.

3. Neither Contracting party shall hamper, by arbitrary or discriminatory measures, the development, management, use, expansion of the investments.

4. In accordance with its laws and regulations, each Contracting Party shall as far as possible make publicly available, its laws, regulations that pertain to investments.

5. Each Contracting Party shall in accordance with its laws and regulations ensure to investors of the other Contracting Party the right of access to its courts of justice, administrative tribunals and agencies and all other judicial authorities.

6. In case of liquidation of an investment, the proceeds from liquidation shall be accorded the same protection and treatment.

## **Article 4. National Treatment**

1. Subject to its laws and regulations each Contracting Party shall accord to investors of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the expansion, management, conduct, operation and sale or other disposal of investments in its territory.
2. Each Contracting Party shall accord to the investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the expansion, management, conduct, operation and sale or other disposal of investments in its territory.
3. For greater certainty, national treatment at the sub-national level shall not apply to sectors or services that are reserved exclusively to nationals.

## **Article 5. Most-Favoured-Nation Treatment**

1. Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the expansion, management, conduct, operation including export and import and sale or other disposition of investments in its territory.
2. Each Contracting Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the expansion, management, conduct, operation and sale or other disposition of investments in its territory.
3. For greater clarity, to limit the scope of Most-Favoured-Nation Treatment in respect of treatment referred to in paragraphs 1 and 2 of this Article, it does not encompass definitions, nor dispute resolution mechanisms.
4. For greater certainty, the treatment accorded by a Contracting Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

## **Article 6. Compensation for Damage or Loss**

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Contracting Party they shall be accorded by the latter Contracting Party treatment, as regards restitution, compensation or other settlement, not less favourable than the treatment that the latter Contracting 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 one 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 resulting from:

- a. requisitioning of their property or part thereof by its forces or authorities;
- b. destruction of their property or part thereof by its forces or authorities which was not caused in combat or was not required by the necessity of the situation,

shall be accorded, adequate and effective compensation or restitution for the damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without delay.

## **Article 7. Prohibition of Performance Requirements**

A Party may not impose or enforce the following requirements, or enforce a commitment or undertaking, in connection with the establishment, expansion, management, conduct or operation of an investment or any other investment in its territory:

- (a) to export a given level or percentage of a good or service;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from a person in its territory;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;

(e) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory.

## **Article 8. Expropriation**

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

- a. for a purpose which is in the public interest,
- b. on a non-discriminatory basis,
- c. in accordance with due process of law, and
- d. accompanied by payment of adequate and effective compensation.

2. Compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known, whichever is the earlier.

3. Where the fair market value cannot be ascertained, the compensation shall be determined in equitable manner taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement, book value and goodwill.

4. Compensation shall be paid without delay, be effectively realizable and freely transferable.

5. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority: or another competent and independent authority of the latter Contracting Party.

6. Where a Contracting Party expropriates the assets of a legal entity that is constituted in its territory according to 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 way that it guarantees such investors adequate and effective compensation.

## **Article 9. Immunity of the Government Movable and Immovable Assets**

1. The movable and immovable assets of either Contracting Party, or local governments or local authorities shall not be subjected to nationalization, expropriation, or sequestration directly or indirectly and should be immune from the jurisdiction of the local courts in either of contracting Parties.

2. Government assets shall not be subject to any of the above mentioned measures by any third party and shall be immune from the jurisdiction of the local courts.

## **Article 10. Transfers**

1. In accordance with its laws and regulation in force in the territory of the Contracting Party, each Contracting Party shall 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. returns;
- c. payments made under a contract, including repayments pursuant to a loan agreement;
- d. proceeds from the sale or liquidation of all or any part of an investment;
- e. payments of compensation under Article 6 of this Agreement;

- f. payments under Article 8 of this Agreement;
- g. payments arising out of the settlement of an investment dispute;
- h. camings and other remuneration of personnel engaged from abroad in connection with an investment;
- i. profits and returns of national airlines.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article are made without unreasonable delay and in a freely convertible currency, at the market rate of exchange prevailing on the date of transfer and under the laws and regulations in force in the territory of the Contracting Party where investments have been made. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

3. Notwithstanding paragraph 1 and 2 of this Article, a Contracting Party may in accordance with its laws and regulations, in good faith and in equitable and non-discriminatory manner temporarily prevent the transfers to apply its laws and regulations relating to:

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

## **Article 11. Subrogation**

1. If one Contracting Party or its designated agency (for the purpose of this Article: the "guarantor") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise:

- a. the assignment to the guarantor by law or by legal transaction of all the rights and claims of the party indemnified; and
- b. that the guarantor is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The guarantor shall be entitled in all circumstances to:

- a. the same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and
- b. any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive it by virtue of this Agreement, in respect of the investment concerned and its related returns.

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 take place in the Contracting Party only after the approval of the competent authority of that Contracting Party.

## **Article 12. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. An investor that has a dispute with a Contracting Party should initially attempt to settle it through negotiations.

2. To start negotiations, the investor shall deliver to the Contracting Party a 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 breached;
- c. the factual and legal basis for the claim; and
- d. the remedy sought and the amount of damages claimed.

3. When required by the Contracting Party, If the dispute cannot be settled amicably within six months from the moment of receipt of the written notice, it shall be submitted to the competent authorities of that Contracting party or arbitration centres thereof, for conciliation.

4. If the dispute cannot be settled amicably within six months from the moment of receipt of the written notice, or from the

start of the conciliation referred to in paragraph 3 of this Article, the dispute shall upon the request of the investor be settled as follows:

- a. by a competent court of the Contracting Party in whose territory the investment is made; or
  - b. 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 in Washington on 18 March 1965 provided both Contracting Parties are parties to the said Convention; or
  - c. by the Additional Facility of ICSID, if only one of the Contracting Parties is a signatory to the Washington Convention; or
  - d. by arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Contracting Parties. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned.
5. The award shall be final and binding. 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 shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of an insurance in respect of all or a part of its losses.
7. When the investor and any designated entity of a Contracting Party or its local government have concluded an agreement concerning the investments of the investor, the dispute settlement procedure stipulated therein shall apply.
8. An Investor may not file a complaint if more than three (3) years have elapsed since the date the Investor had knowledge or should have had knowledge of the alleged violation to this Agreement, as well as of the alleged losses and damages.

## **Article 13. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.
2. If a dispute under paragraph 1 of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.
3. Such arbitral tribunal shall be constituted ad hoc. Each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one 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 two further months.
4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, 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 either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-president or in case of his inability the member of the International Court of Justice next in seniority according to the Rules of the Court should be invited under the same conditions to make the necessary appointments. The appointed judge should be a national of a State that has diplomatic relations with the Contracting parties.
5. The arbitral tribunal shall establish its own rules of procedure unless the Contracting Parties decide otherwise.
6. The arbitral tribunal shall reach its decision in virtue of this Agreement and pursuant to the rules of international law. It shall reach 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 in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

## **Article 14. Application of other Rules**

Without prejudice to Article 4, if the legislation of either Contracting Party or obligations between the Contracting Parties under international law existing at present or established hereafter between the Contracting Parties, in addition to this

Agreement, contain rules whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable to the investor, prevail over this Agreement.

## **Article 15. Application of the Agreement**

This Agreement shall apply to investments made before or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen nor any claim that was settled before its entry into force.

## **Article 16. Consultations**

The Contracting Parties shall, on the request of either, hold consultations on any matter relating to the implementation or application of this Agreement including settlement of investment disputes. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time to be agreed upon through diplomatic channels.

## **Article 17. Entry and Sojourn**

Subject to its laws and regulations regarding the entry and sojourn of foreigners, a Contracting Party may give sympathy regarding the entry of natural persons who are investors of the other Contracting Party and personnel employed by companies of that other Contracting Party to enter and temporally remain in its territory for the purpose of engaging in activities connected with investments.

## **Article 18. Senior Management and Boards of Directors**

In accordance with its domestic law and regulation, a Contracting Party may allow enterprises to appoint senior management positions to natural persons of any particular nationality, provided that they are nationals of a State that has diplomatic relations with both Contracting Parties

## **Article 19. Limitation of Benefits**

1. Benefits of this Agreement shall not be available to an Investor of a Contracting Party, if the main purpose behind the acquisition of the nationality of that Contracting Party was to obtain benefits under this Agreement that would not otherwise be available to such Investor.

2. A Contracting Party may deny the benefits of this Agreement to:

(a) an Investor of the other Contracting Party that is a juridical person of such Contracting Party and to an investment of such investor if the juridical person is owned or controlled by investors of a third party and the Denying Contracting Party does not maintain diplomatic relations with the third party;

(b) an Investor of the other Contracting Party that is a juridical person of such other Contracting Party and to investments of that investor, if an investor of a non-Contracting Party owns or controls the juridical person or the juridical person has no substantial business activities in the territory of the other Contracting Party.

## **Article 20. Entry Into Force, Amendments, Duration and Termination**

1. This Agreement shall enter into force on the date of receipt of the latter notification through diplomatic channels by which either Contracting Party notifies the other Contracting Party 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 the mutual consent of the Contracting Parties. Such amendments shall enter into force according to 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 following ten years periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to terminate the Agreement. In that case, the termination shall become effective by the expiration of current period of ten years.

4. In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date the termination of this

Agreement became effective.

5. This Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

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

Done at Abu Dhabi on 16/07/2019 in duplicate, in the Arabic and English languages, all texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF THE GAMBIA

FOR THE UNITED ARAB EMIRATES