

# **AGREEMENT ON THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE ARAB REPUBLIC OF EGYPT AND THE REPUBLIC OF SENEGAL**

The Government of the Arab Republic Of Egypt and the Government of the Republic of Senegal, hereinafter referred to as the "Contracting Parties";

DESIRING to create favourable conditions for greater economic cooperation between the two countries in particular for investment of one Contracting Party in the territory of the other Contracting Party;

PERSUADED that the promotion and protection of such investments will be conducive to the stimulation of commercial initiatives and will increase prosperity in the territories of the Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of assets invested by natural or juridical persons, including the Government of one Contracting Party in the territory of the other Contracting Party.

It shall include, in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages usufructs, liens and similar rights;
- b) Shares, stocks and other forms of participation in companies;
- c) Claim to money and rights to performance having an economic value;
- d) Intellectual property rights, which include in particular copyrights, patents, industrial designs, trademarks, trade names, and goodwill;
- e) Economic concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources.

Any alteration of the form of investment of assets shall not affect their classification as investment.

2. The term "investor" means: natural or legal persons including the Government of the Contracting Party who invests in the territory of the other Contracting Party.

- a) The term "natural person" means a person having the nationality of either Contracting Party in accordance with its laws relating to nationality;
- b) The term "company" means, in relation to the other Contracting Party, any legal person constituted in the territory of one of the Contracting Parties, in accordance with the laws and regulations of the latter, such as: public institutions, corporations, foundations, private companies, projects, institutions and organizations, and having their headquarters in the territory of either of the Contracting Parties;

3. The term "returns" means the amounts yielded by an investment in accordance with the above definition, as profits, dividends, interests and other current income.

4. The term "territory" means the territory of each Contracting Party as well as the maritime areas adjacent to the outer limit of the territorial sea over which national, either Contracting Party may, exercise sovereign rights or jurisdiction in

accordance with international law.

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

1. Each Contracting Party undertakes to encourage investments in its territory by investors of the other Contracting Party and admits such investments in accordance with its laws and regulations.
2. Each Contracting Party undertakes to provide in its territory, fair and equitable treatment to investments of investors of the other Contracting Party, as well as their protection and security; Neither party shall take any measures of expropriation or discrimination against the investments of the other Contracting Party.
3. The Contracting Parties may, if necessary to exchange information on investment opportunities in their respective territories to help the actors to identify the most cost-effective for both Contracting Parties.

## **Article 3. Treatment of Investments**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as well as that profits generated, shall be accorded treatment which is fair and equitable and not less favourable than that accorded to nationals of the latter of investments or investors to party of any third State.
2. Each Contracting Party undertakes to provide, in its territory, fair and equitable treatment to investors of the other party in respect of the administration, use of their investments, which is no less favourable treatment than that accorded to its citizens or to investors of any third State.
3. Without prejudice to what is provided for in paragraph 2 of this Agreement, the most-favoured-nation treatment shall not include advantages, privileges or preferences accorded to investors of a third State by virtue of:
  - a) The existing or future participation of one Contracting Party in a free trade area, customs union or common market, a similar economic organization ;
  - b) An international agreement relating wholly or partly to double taxation;

## **Article 4. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to a war or any other armed conflict, a national state of emergency, revolt, insurrection or riot shall receive from this latter Contracting Party, treatment no less favourable than that accorded to its own investors to investors or of any third State. Any payments made under this article shall be prompt, fair, effective and freely transferable.

## **Article 5. Expropriation**

Neither Contracting Party shall take any measures of expropriation or nationalization or other measures having the same nature or effect against investments belonging to investors in the territory of the other Contracting Party except for public purposes reasons, on a non-discriminatory basis and in accordance with due process.

The measures shall be accompanied with provisions for a prompt, effective and adequate compensation. The amount of such compensation shall be paid in a freely convertible currency that will correspond to the real value of the affected investments immediately before the date when these measures were taken or publicly available.

## **Article 6. Transfers**

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party, shall authorize to those investors the free transfer of returns and other payments included, in particular:
  - a) Investment returns defined in article (1);
  - b) Compensation provided for in articles 4 and 5 above;
  - c) Proceeds of the sale of or the partial or total liquidation of the investment;
  - d) Earnings of nationals of one Contracting Party that were allowed to work in connection with an investment in the territory of the other Contracting Party.

## **Article 7. Subrogation**

(1) If one Contracting Party or any agency thereof makes payment to one of its investors under a guarantee or an insurance contract concluded in respect of such investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the first party or contracting agency thereof to any right or title held by the investor. The Contracting Party or any agency thereof is entitled to exercise the same rights that the investor would have been entitled to exercise.

## **Article 8. Settlement of Disputes between an Investor and the Contracting Party Host of the Investment**

(1) Any dispute concerning investment within the meaning of this Agreement between one of the Contracting Parties and an investor of the other contracting Party shall, as far as possible, be settled amicably between the two parties.

(2) If the dispute has not been settled within a period of six (6) months from the time when it was brought up by either of the concerned parties, it shall be submitted, at the request of the investor:

- a) Either to the national jurisdiction of the Contracting Party involved in the dispute;
- b) Or to international arbitration under the conditions set out in paragraph 3 below.

Once the investor has submitted the dispute to the courts of the concerned Contracting Party or to international arbitration, the choice of one of these procedures is final.

(3) In case of recourse to international arbitration, the dispute may be referred to one of the arbitration institutions hereinafter referred to, at the choice of the investor:

- a) The International Centre for the 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.
  - b) An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
- 4) The arbitral tribunal shall decide on the basis of the provisions of this Agreement, the Law of the Contracting Party to the dispute, including the rules relating to conflicts of law, of the terms of any specific agreement which may have been entered into regarding the investment as well as the Principles of International Law.

5) The awards shall be definitive and binding arbitrates in respect of the articles to the dispute. Each Contracting Party shall execute them in accordance with its legislation.

## **Article 9. Settlement of Disputes between the Contracting Parties**

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If the dispute cannot be settled within six (6) months after the beginning of negotiations, it shall be submitted to the arbitral tribunal in accordance with the provisions of this article.

(3) The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint an arbitrator within two months of the receipt of the request for arbitration, those two arbitrators shall select a third arbitrator who is a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The arbitrators shall be appointed within three (3) months and the Chairman within five (5) months, from the date of receipt of the request for arbitration.

(4) If within the periods specified in paragraph (3) of this article, the arbitrators have not been appointed, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or for any other reason, it cannot perform this function, the Vice-President shall be invited to make the appointments.

If the Vice-President is a national of either of the Contracting Parties or cannot discharge the function, the said member of the International Court of Justice next in seniority and which is not a citizen of either Contracting Party, shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall take its decisions on the basis of the provisions of the present Agreement and other agreements in force between the Contracting Parties in accordance with the principles of international law.

(6) The arbitral tribunal shall determine its procedures and shall reach its decisions by a majority of votes. Decisions are mandatory to both Contracting Parties. Each Contracting Party shall bear the costs of its own arbitrator and arbitrate its counsel in the procedure. the costs related to the Chair and any other charges shall be distributed equally between the two Contracting Parties.

## **Article 10. Entry Into Force**

This Agreement shall enter into force on the date of the exchange of instruments of ratification by both Contracting Parties.

## **Article 11. Duration and Denonciation**

This Agreement is concluded for a period of ten (10) years which may be renewed tacitly renewed unless one of the Parties denounces it in writing twelve (12) months before its expiration.

In the event of termination, the present Agreement shall continue to apply to investments made prior to the date when the notice of denunciation shall take effect, and Articles 1 to 10 shall remain in force for a period of ten (10) years.

Each Contracting Party may request in writing the amendment of all or part of this Agreement. the parties amended by mutual agreement shall enter into force upon notification of acceptance by both Contracting Parties.

Done at Dakar on 05 March 1998

In two originals in the Arabic and French languages, both texts being equally authentic.

For the Government of the Arab Republic Of Egypt

S.E.M. Amre MOUSSA

Minister of Foreign Affairs

For the Government of the Republic of Senegal

S.E.M. Moustapha NIASSE

Minister of State, Minister of Foreign Affairs and Senegalese Abroad