AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALI AND THE GOVERNMENT OF THE FEDERAL ISLAMIC REPUBLIC OF THE COMOROS

The Government of the Republic of Mali and the Government of the Islamic Federal Republic of the Comoros, hereinafter referred to as the Contracting Parties,

Desiring to strengthen economic co-operation between the two States, particularly in the field of investment by one of the Contracting Parties in the territory of the other Contracting Party

Recognizing that the promotion and protection of such investments will stimulate the flow of capital and technology between the two countries in the interest of the economic development,

Agreeing that fair and equitable treatment of investments is desirable to maintain a stable framework for investment and effective use maximum economic resources,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement and unless otherwise specified, the following words and terms shall have the corresponding meanings :

The term "investors" means:

Natural persons, having the status of nationals of Contracting Parties in accordance with its applicable laws;

Government agencies, companies, firms or associations of companies, incorporated or constituted under the law in force of either Contracting Party and having their headquarters in the territory of the other Contracting Party.

The term "investment" means :

(a) any property considered as such by each of the Contracting Parties having regard to its laws and regulations, including but not limited to :

(i) stocks or any other form of participation in companies ;

(ii) reinvested earnings, rights to money or other rights of financial value relating to the investment;

(iii) Movable and immovable property and all other rights such as mortgages, pledges, bonds and all other similar rights as defined in accordance with the laws and regulations of the Party in whose territory the property is situated;

(iv) Industrial and intellectual property rights, licences, industrial designs, trademarks, goodwill, know-how and all other similar rights;

(v) Business concessions granted by law or by contract, including natural resource concessions.

(b) The term "investment" here refers to all investments made in accordance with the laws and regulations in the territory or in the maritime zone of the Contracting Party where the investments are made. The maritime zone means the territorial waters and the adjacent area extending beyond the territorial waters of both Parties and over which they have, in accordance with international law and jurisdiction for purposes of exploration, a right to exploit and preserve natural resources.

(c) The term "investment" covers investments made in the territory of that Party before and after the entry into force of this Agreement.

(d) The term "profit" means the sums generated by an investment and includes in particular, although not exclusively, profit, interest and dividends.

Reinvested profits shall enjoy the same protection as any investment.

Article 2. Investment Promotion and Protection

1. Each Contracting Party shall permit the other Contracting Party to invest in its territory and maritime area and to carry on related activities on a basis no less favourable than that accorded, in similar situations, to investments by its investors in areas which are not exclusive to them or to investors from the most favoured State, within the framework of its laws and regulations in force.

2. Each Contracting Party shall accord fair and equitable treatment in accordance with the principle of international law to investments made by investors of the other Contracting Party in its territory or maritime zone and shall ensure that the exercise of the right thus recognized shall not be hindered in any way.

3. The provisions of the preceding paragraphs shall have no effect on the privileges granted by each Contracting Party to investors of a third State Party by reason of its participation in one of the following agreements:

a. Agreements relating to any existing or future customs unions, free trade areas, regional economic organizations or similar international agreements ;

b. Agreements relating wholly or mainly to taxation.

Article 3. Expropriation and Compensation

1. Investments shall not be subject, directly or indirectly, to any act of expropriation or nationalization or other procedures having similar effect unless it is not in the public interest and without discrimination against adequate and immediate compensation paid in accordance with legal procedures and general principles of the type of treatment stipulated in paragraph (2) of this Article.

2. Such compensation shall be equivalent to the real economic value of the expropriated investment at the time of its expropriation or declaration and shall be estimated in accordance with the economic situation prevailing before any threat of expropriation. The compensation due shall be paid without delay and shall be freely transferable, and shall bear interest to be calculated in accordance with the interest rates prevailing in the inter-banking system of the London financial market.

3. In the event that investments of a Contracting Party suffer losses in the territory of the other Party or in its maritime zones as a result of war or other armed conflict or civil commotion or any other similar events, that Party shall offer investors of the other Party treatment not inferior to that offered to investors in areas not exclusive to them or investors of the most favoured State in accordance with the procedures which it adopts in relation to losses suffered by such investments.

Article 4. Repatriation and Transfer

Each Contracting Party shall authorise the other Contracting Party to make all transfers relating to its investments freely and without reasonable delay within and outside its territory. Such transfers shall include

a. Profits ;

b. Proceeds from the sale or liquidation of all or part of the investment;

c. Compensation in accordance with Article (3) of this Agreement;

d. Repayments and interest on loans related to investments;

e. Salaries, wages and other remuneration received by nationals of a Contracting Party for their services for an authorized investment in the territory of the other Party or its maritime zone.

f. Payments arising out of an investment dispute.

2. Transfers shall be made in the convertible currency in which the investment was made or in any other convertible

currency with the agreement of the investor and at the exchange rates prevailing on the date of transfer.

Article 5. Subrogation

1. If the investment of an investor of one Contracting Party is insured against non-commercial risks under a scheme, any subrogation of the insurer under the terms of the insurance agreement shall be recognized by the other Contracting Party.

2. The insurer shall not be entitled to exercise rights other than those which the investor would have been entitled to exercise.

Article 6. Derogation

This Agreement shall not derogate from :

a. the laws and regulations, administrative practices or procedures or award decisions of a Contracting Party ;

b. International legal obligations or ;

c. Obligations assumed by each Contracting Party, including those contained in an investment agreement or an investment authorization, irrespective of who is authorized to make investments or carry out activities associated with such investments or activities, which provide for more favourable treatment than that offered by this Agreement in like situations.

Article 7. Preventive Measure

This Agreement shall not prevent the application by each Contracting Party, of measures necessary for the maintenance of public order and morals, the satisfaction of its obligations in the context of peacekeeping, peacemaking and the national security or the protection of its own essential security interests.

This Agreement shall not preclude either Party from adopting special procedures relating to the establishment of investments, provided that such procedures do not violate any of the fundamental rights set out below.

Article 8. Taxation

In observing its tax laws, each Contracting Party should endeavour to accord fair and equitable tax treatment to investments by investors of the other Contracting Party.

Article 9. Settlement of Disputes between a Party and Investors of the other Party

1. Any legal dispute arising directly from investment between a Contracting Party and investors from the other Contracting Party shall be settled amicably between them.

2. If a solution is not reached after six months from the date on which the problem was raised by one of the Parties, it may be settled, following an application submitted by one of the Parties in dispute, in the competent court in whose territory or maritime area the investment is made.

3. If the legal dispute is based on the amount of compensation stipulated in paragraph (2) Article (3) below and has not been settled amicably after a period of six months from the date on which it was raised by one of the Parties in dispute, each Party shall have the right to submit the dispute to an Arbitral Tribunal to be formed for each specific case, consisting of three members designated as follows :

Two months after the date of filing of the request for arbitration, each Party shall designate one member to the Tribunal.

Within two months of their designation, the two Parties shall appoint a third member who shall act as President of the Tribunal, provided that the said President shall be a national of a country having diplomatic relations with both Parties. The provisions of this paragraph shall not apply in the event that the investor chooses to have recourse to the Competent Tribunal referred to in paragraph (2) of this Article.

If it has not been possible to make such a designation within the specific time limits in section (3) of this Article, each Party in conflict may invite the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) to make the necessary designations.

The Tribunal shall take its decisions by majority vote and its decisions shall be final and legally binding on the Contracting

Parties. Each Party shall bear the cost of its arbitrator to the Tribunal and the costs of his presentation in the arbitral proceedings. The two Parties in dispute shall share equitably the amounts to be paid to the President of the Tribunal and other expenses, unless the Tribunal decides otherwise. The Tribunal shall, in its proceedings, apply the principles of arbitration of UNCITRAL, the United Nations Commission on International Trade Law, and shall also apply, in relation to the issue in dispute, the laws of the Contracting Country in whose territory or maritime zone the investment was made. The place of arbitration shall be the seat of the Permanent Arbitral Tribunal at The Hague (Holland) in accordance with the rules of this Article if the same dispute has already been submitted to another Arbitral Tribunal under the rules of Article (9) below and is still being heard by that Tribunal. However, this shall not affect the commencement of direct and constructive negotiations between the Contracting Parties.

Article 10. Entry Into Force

1. The present Agreement shall enter into force on the date on which the instruments of ratification have been exchanged through diplomatic channels. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph (2) of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired later.

2. Each Contracting Party may, by giving the other Contracting Party written notification one year before terminating this Agreement at the end of the initial ten-year period or at any time thereafter.

3. This Agreement may be amended by written agreement between the two Parties. Any amendment shall enter into force when each Party has notified the other that it has fulfilled all the conditions for the entry into force of that amendment.

4. Upon termination of this Agreement, investments made prior to the date of such termination and governed by the rules of this Agreement shall benefit from the protection established under those rules for a period of ten years from the date of termination.

Done this day, 18 May 2001, in duplicate in French, both texts being equally authentic.

For the Government of the Republic of Mali

The Minister of the Economy and Finance

Bacari KONE

For the Government of the Islamic Federal Republic of the Comoros

The Private Counsellor of the Head of State

Sultan CHOUZOUR