

AGREEMENT BETWEEN THE GOVERNMENT OF BURKINA FASO AND THE GOVERNMENT OF THE REPUBLIC OF GUINEA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Burkina Faso on the one hand,

And the Government of the Republic of Guinea on the other hand,

Hereinafter referred to as the "Contracting Parties,"

Desiring to intensify economic cooperation through the creation of favourable conditions for investment by investors of one of the Contracting Parties on the realization of investments by investors of either Contracting Party in the territory of the other Contracting Party;

Recognizing the positive impact that may exercise such an agreement with a view to improving the business contracts and to enhance confidence in the field of investment;

Recognizing the need to protect investments by investors of the two contracting parties and to stimulate the flow of capital and individual initiatives in respect of matters with a view to promoting the economic prosperity of both contracting parties.

Have agreed as follows:

Article 1. Definitions

1. The term "investment" means any asset of any kind and any direct or indirect contribution in cash, in kind or in services, invested or reinvested in any sector of economic activity whatsoever by investors of one of the Contracting Parties in the territory of the other Contracting Party.

Such investments shall be made in accordance with the laws and regulations in force in the host in force in the host country.

In particular, but not exclusively, the following shall be considered investments

(i) movable and immovable property, as well as all other real rights such as mortgages, pledges, securities, usufructs and similar rights

(ii) shares, bonds and all other forms of participation in companies;

(ii) rights of claim and all other rights concerning benefits having economic value;

(iv) intellectual property rights, such as copyright and other similar rights, industrial property rights such as patents, licenses, designs, trademarks, technical processes, know-how and all other similar rights recognized by the national laws of each Contracting Party

(v) concessions granted in accordance with the legislation in force of the Contracting Party in whose territory the investments are made, including concessions for the exploration, extraction and exploitation of natural resources, as well as any other rights granted by law.

No change in the legal form of the investment shall affect its character as an "investment character of an "investment" within the meaning of this Agreement.

2. The term "income" refers to the amounts derived from investments; it includes profits, capital gains, dividends, interest, royalties, and other similar proceeds.

3. The term "Investor" means:

(i) any individual having the nationality of one of the Contracting Parties and investing in the territory of the other Contracting Party

(ii) any legal entity established in the territory of the other Contracting Party, including governmental agencies, companies, corporations, associations of companies, and other organizations established in accordance with the laws of the Contracting Parties and having their registered office and effective business activities in the territory of the other Contracting Party.

4. The term "territory" means the area within the land borders, the territorial sea, the seabed, the maritime areas including the subsoil under the territorial waters and the airspace, which are under the sovereign right and jurisdiction of the Contracting Party according to its national legislation and international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and create favorable conditions for investors of the other Contracting Party in its territory and shall authorize such investments in accordance with its legislation.

2. Investments thus made by investors of each Contracting Party shall at all times enjoy in the territory of the other Contracting Party fair and equitable treatment, protection and full security,

3. Where a Contracting Party has admitted an investment made in its territory by investors of the other Contracting Party, it shall grant, in accordance with its laws and regulations, the necessary authorizations relating to such investment, including those relating to senior personnel.

Article 3. Treatment of Investments

1. Each of the Contracting Parties shall ensure in its territory to the investments of the other Party treatment no less favourable than that accorded to national investors or to those of a third State, the most favourable treatment to prevail.

2. Each of the Contracting Parties shall guarantee, in its territory, to the investors of the other Contracting Party, with respect to the management, maintenance, operation, enjoyment, increase, sale or liquidation of their investments, treatment no less favorable than that accorded to national investors or that accorded to those of a third State, whichever is more favorable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed as an obligation of either Contracting Party to grant to investors of the other Contracting Party more favorable, preferential or privileged treatment than the first Contracting Party may grant in the context of

(i) a customs union, free trade area, monetary union or other similar international agreement establishing such unions or other forms of regional cooperation to which either Contracting Party has acceded or may accede

(ii) any present or future international agreement or arrangement relating in whole or in part to taxation matters.

Article 4. Compensation for Losses

1. Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party suffer damage or loss due to armed conflict, state of emergency, mutiny, uprising, disturbances or any other similar event in that territory shall be granted non-discriminatory and no less favourable treatment in respect of compensation, indemnification, reimbursement or any other form of compensation for losses than that agreed upon in the Agreement, shall be accorded non-discriminatory treatment no less favorable than that accorded to domestic investors or those of any third country, whichever is more favorable, with respect to compensation, restitution, reimbursement, or any other form of compensation for damages. Payments under the foregoing shall be made within the agreed time period and shall be freely transferable,

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of one of the Contracting Parties who have suffered, in any of the above-mentioned situations, losses in the territory of the other Party as a result of the destruction of property belonging to them by the authorities of the other Contracting Party, which was not caused by the fighting and was not imposed by the situation, shall be entitled to a corresponding compensation. Payments in this respect shall be made in the agreed time and shall be freely transferable.

Article 5. Expropriation and Compensation

1. No Contracting Party shall take either directly or indirectly measures of expropriation, nationalization or other such

measures to the same effect against investments of investors of the other Contracting Party unless the measures are taken for reasons of public utility duly established by law, without being discriminatory and in accordance with the legal procedure.

2. The Contracting Party which is obliged to take such measures shall pay to the rightful owner, without undue delay, fair and equitable compensation in an amount corresponding to the market value of the investment concerned on the day before the measures are taken and made public.

3. The arrangements for the determination and payment of the compensation shall be made promptly at the latest at the time of expropriation. In the event of delay in payment, the compensation shall bear interest under the terms of the contract from the date of its due date. The compensation shall be paid to the investors in convertible and freely transferable currency.

4. The investor who has suffered the loss shall be entitled, in accordance with the legislation of the Contracting Party applying expropriation, to the examination of his claim and to the revaluation of his investments by the competent authorities of the said Contracting Party, in accordance with the principles set forth in this Article.

Article 6. Transfers

1. Each of the Contracting Parties guarantees to the investors of the other Contracting Party, after the fulfilment by the latter of tax and other obligations, in accordance with the legislation in force of the former, the free transfer in convertible currency of the payments made in respect of the investments in question. This includes, but is not limited to;

- a. the capital and additional funds required for the maintenance and expansion of the investment ;
- b. income from the activity;
- c. sums derived from loans taken out or other contractual obligations
- c. amounts from loans or other contractual obligations for the purpose of an investment
- d. sums arising from the total or partial sale, alienation or liquidation of an Investment;
- e. any compensation or indemnity due to an investor pursuant to Articles 4 and 5 of this Agreement.

2. The transfers referred to in paragraph 1 of this Article shall be made within the agreed time period, in accordance with the national laws and regulations in force in the Contracting Party in whose territory the investment was made, at the exchange rate officially applicable on the date of the transfer.

3. The guarantees provided for in this Article shall be at least equal to those accorded to investors of the most favored nation who are in similar situations.

Article 7. Subrogation

1. In the event that one of the Contracting Parties or its representative has made payments to its own investors as a guarantee for investments made in the territory of the other Contracting Party, the latter shall recognize :

(i) the rights or claims of the investors of the first Contracting Party to the institution designated by it, as well as the assignment to the first Contracting Party or its representative of all rights and interests of the investor so indemnified

(ii) the first Contracting Party or the institution subrogated to it shall have the power to exercise the rights or to claim the claims due to the investors and shall assume the obligations relating to the investments.

2. The rights or claims subrogated shall not be superior to those of the investor.

3. The subrogation of a Contracting Party or of the institution designated by it in the rights and obligations of an indemnified investor shall also cover transfers made in accordance with the provisions of Article 6 of this Agreement.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. If the dispute cannot be settled within six months after the beginning of negotiations, it shall be submitted to an arbitral

tribunal at the request of one of the Contracting Parties.

3. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.

4. If the periods specified in paragraph (3) above have not been made, either Contracting Party may 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 Contracting Party or if he is unable to perform this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is prevented from exercising his mandate, the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and principles of international law. The decision of the Tribunal shall be adopted by a majority of votes. It shall be final and binding on the Contracting Parties. The tribunal shall determine its own rules of procedure.

6. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

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

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled as amicably as possible by consultations and negotiations between the parties to the dispute.

2. If the dispute is not settled amicably by direct agreement between the parties to the dispute within six months from the date of written notification, the dispute shall be submitted, at the option of the investor,

a. either to the competent court of the Contracting Party in whose territory the investment was made ;

b. or for arbitration by the Common Court of Justice and Arbitration (CCJA) of OHADA

c. or for arbitration at 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.

d. or to an ad-hoc tribunal which, failing any other arrangement between the parties to the dispute, shall be constituted in accordance with the arbitration rules of the United Nations Commission on Trade Law (UNCITRAL).

To this end, each of the Contracting Parties irrevocably agrees that any investment dispute shall be submitted to such arbitration procedure.

3. No Contracting Party to a dispute may object at any stage of the arbitration proceedings or of the execution of an arbitral award to the fact that the investor, as an adverse party to the dispute, has received compensation for all or part of its losses under an insurance policy.

4. The arbitral tribunal shall decide the dispute on the basis of the national law of the Contracting Party to the dispute in whose territory the investment is located, including the rules on conflict of laws, as well as on the basis of the provisions of this Agreement, the terms of any special agreements concluded in connection with the investment and the principles of international law.

5. arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce such awards in accordance with its domestic law.

Article 10. Application of other Provisions

In case the national laws of the Contracting Parties, or the present or future agreements between the Contracting Parties, or the international agreements signed by the Contracting Parties, contain provisions which provide for a more favorable treatment of the investments made by the investors of one of them than the one provided for in the present Agreement, the aforementioned laws and agreements shall prevail, insofar as they prove to be more favorable

Article 11. Consultations

When necessary, the representatives of the Contracting Parties shall meet for consultations on matters concerning the application and content of this Agreement. The consultations shall take place at the proposal of one of the Parties, at a place and time to be agreed upon through diplomatic channels.

Article 12. Implementation of the Agreement

The provisions of this Agreement shall apply to investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party before and after the entry into force of this Agreement. However, this Agreement shall not apply to disputes arising before its entry into force.

Article 13. Entry Into Force , Duration and Termination of the Agreement

1. This Agreement shall be subject to ratification and shall enter into force 30 days from the date of receipt of the last of the two notifications concerning the completion by the two Contracting Parties of the constitutional procedures in their respective countries.
2. This Agreement shall remain in force for a period of ten years. It may be revised in writing at the request of either Contracting Party twelve (12) months after notification to the other Contracting Party. Unless one of the Contracting Parties denounces it at least twelve (12) months before the expiration of its period of validity, it shall be tacitly renewed each time for a further period of ten years, each Contracting Party reserving the right to denounce it by written notification at least twelve (12) months before the date of expiration of the current period of validity.
3. Investments made prior to the date of expiration of this Agreement shall remain subject to it for a Agreement shall remain subject to this Agreement for a period of ten years from the date of date of such expiration.

In WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have affixed their signatures to this Agreement.

Done at Dakar, on 25.03.2003, in two originals in the English language, both texts being equally authentic.

For the Government of Burkina Faso,

Secretary General of the Ministry of Commerce, Enterprise Promotion and Handicrafts

Marie Blanche BADO

For the Government of the Republic of Guinea

Minister of Commerce, Industry and SMEs

Hadja Mariama Déo BALDE