

# **AGREEMENT BETWEEN THE REPUBLIC OF GUINEA AND THE REPUBLIC OF CHAD ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Guinea and the Government of the Republic of Chad hereinafter referred to as the Contracting Parties;

Desiring to develop and strengthen economic and industrial cooperation between them and in particular to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

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 economic prosperity of both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

In the present Agreement:

1. The term "investment" means any direct or indirect invested capital and reinvested any asset or by an investor of one Contracting Party in the territory of the other contracting party, in accordance with the legislation in force. It, including but not limited to:

(i) Movable and immovable property and any property right of ownership, mortgages, liens or guarantees;

(ii) Stocks, shares, debentures and other securities and any other form of participation in a company;

(iii) Claims and other financial commitments under contracts to economic value;

(iv) Intellectual property rights, such as copyrights and other similar rights, industrial property rights, such as patents, licences, plans or models, trademarks, intangible assets, processes and technical know-how;

(v) The concessions granted in accordance with the legislation in force of the Contracting Party in whose territory the investments were made, including concessions to prospecting, extraction and exploitation of natural resources.

A change in the form of investment does not change in its character as an investment.

2. The term investor means:

(i) Any natural person who is a national of one of the Contracting Parties investment in the territory of the other party,

(ii) Any legal person established, government agencies, companies or firms, business associations corporations incorporated or constituted under the law in force of either of the Contracting Parties and having their headquarters in the territory of the other Contracting Party.

3. The term "income" means any sum produced by an investment, such as capital gains, profits, dividends, interests, royalties, fees and licences, fees and other similar products.

4. The term "territory" means the extent of the land border within the scope of the sea, its seabed and subsoil beyond the territorial waters falling within the sovereignty or jurisdiction of the Contracting Party in accordance with its national law and international law.

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

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party in its territory and allow the investments in accordance with its legislation in force.
2. The Contracting Parties shall exchange the necessary information about the opportunities for investments in their respective territories to each of the Contracting Parties.
3. Investments made by investors of each Contracting Party shall at all times, in the territory of the other Contracting Party fair and equitable treatment and protection of the full security.

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

1. Each of the Contracting Parties shall ensure in its territory non-discriminatory treatment for investments of the other Contracting Party which is no less favourable than that accorded to national investors or to those of a third State, whichever treatment is more favourable.
2. Each Contracting Party shall guarantee within its territory to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment of their investments, treatment no less favourable than that accorded to nationals or that accorded to investors of a third State, the most favourable treatment shall prevail.
3. The provisions of paragraphs 1 and 2 of this Article shall not be interpreted as an obligation of one of the Contracting Parties to accord to investors of the other Contracting Party to more favourable treatment, preferential or privileged that Contracting Party may grant the first, in the framework of:
  - (i) A customs union, a free trade area or a monetary union or other similar international agreement establishing such unions or other forms of regional cooperation to which either Contracting Party is or may become a party;
  - (ii) Any international agreement or arrangement relating wholly or partly on matters of taxation.

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

1. Investors of one Contracting Party whose investments in the territory of the other party have suffered losses due to armed conflict, a national state of emergency, revolt, insurrection or disturbances in that territory, are awarded in respect of compensation, indemnification, compensation or other forms of compensation for losses, treatment no less favourable than that accorded to domestic investors or those of any third country. Payments under the above will be carried out within the agreed time frame, and shall be freely transferable.
2. Without prejudice to the provisions of paragraph 1 of this Article, investors of one Contracting Party who has suffered, in any of the situations referred to above, losses in the territory of the other Party resulting from:
  - (i) Seizure, by the authorities of the other Contracting Party, of their property,
  - (ii) The destruction of their property by the authorities of the other Contracting Party,which were not caused by the fighting and were not imposed by the situation, shall be entitled to corresponding compensation. Payments under the foregoing shall be made within the agreed time limits and shall be freely transferable.

### **Article 5. Expropriation and Compensation**

1. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures with equivalent effect having the same nature, in respect of investments made in its territory by investors of the other Contracting Party, except in the public interest. However, these measures shall be the subject of legal proceedings, be taken on a discriminatory basis and be accompanied by provisions for the payment of adequate and effective compensation.
2. The abovementioned compensation shall be paid without delay and without undue delay in a freely convertible currency and will correspond to the real value of the investment concerned on the day before the date on which the measures are taken or are publicly available.

In case of delay, the amount of compensation shall include interest at a normal commercial rate for the period until the date the regulation will be carried out. The payment will be made within the agreed time and be freely transferable.
3. The investor has incurred loss shall have a right under the law of the Contracting Party applying the expropriation, for the consideration of his case and of the valuation of its investment by the competent authorities of that Party in accordance with the principles set out in this Article.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after the fulfilment by them, their tax obligations, in accordance with the legislation in force in the first, the free transfer of payments in connection with investments in question. These include in particular, though not exclusively:

- a. Capital and additional funds to maintain or increase the investment;
- b. Income derived from the activity;
- c. Funds from the repayment of loans;
- d. The proceeds from the sale or liquidation of investments;
- e. The amounts paid 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 time agreed in convertible currency at the rate of exchange applicable on the date of transfer in the territory of the Contracting Party in which the investment is made.

## **Article 7. Subrogation**

1. If a Contracting Party or its representative will be conducted under security relating to investments in the territory of the other Contracting Party, of payments for the benefit of its own investors, the latter shall recognize:

(i) Any rights or claims from investors to the former Contracting Party or its designated agency by it and the first assignment to the Contracting Party or its representative of all rights and interests of the investor and compensation;

(ii) The first Contracting Party or institution to discharge it, as having the power to exercise the rights and assert the claims arising from investors and shall assume the obligations related to the investment.

2. Where the rights or claims shall not exceed those of the investor.

3. Subrogation of the rights and obligations of the investor indemnified shall also cover the 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 negotiations between the parties.

2. Where, after six months after the beginning of negotiations, they have not resulted, the matter shall be submitted, at the request of either of the Parties to the arbitration.

3. The Arbitral Tribunal referred to in paragraph 2 above shall be imposed on an ad hoc basis, on a case-by-case basis, in the following manner: within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the arbitration court. These two Members shall designate, within two months, a third member who shall be a national of a third country. With the agreement of both Contracting Parties, the latter shall assume the chair of the arbitration.

4. In the event that the court of arbitration is not constituted within the time limits provided for in the preceding paragraph, either Contracting Party may, in the absence of any other arrangement, have recourse to the International Court of Justice and request its president to make the necessary appointments. In the event that the President is a national of one of the Parties or is prevented from performing his duties, the Vice-President shall be invited to make the above-mentioned appointments. In the event that the vice-president is also a national of one of the contracting parties or is prevented from performing his duties, the request for appointment shall be addressed to the first in the hierarchy of members of the International Court of Justice who are not nationals of any of the Contracting Parties.

5. The arbitral tribunal shall take its decisions in accordance with the provisions of this Agreement and in conformity with the principles and rules of international law as accepted. Decisions of the arbitration shall be taken by a majority of votes. They shall be final and duty to both Contracting Parties. the court is required to establish its own rules of procedure.

6. Each Contracting Party shall bear the costs of its own member and of its participation in the work of the arbitration. The cost of the Chairman and the remaining costs of the arbitration shall be borne in equal parts by the two parties.

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

1. Solutions to disputes between investors of one Contracting Party to the other Contracting Party with respect to the obligations of the latter under this Agreement in respect of investments made by investors of the first, will be sought, to the fullest extent possible, through diplomatic channels.
2. If the dispute referred to in paragraph 1 of this Article cannot be settled within six months, the investor shall be entitled to submit the case to the competent court of the Contracting Party that is at the same time a Party to the dispute.
3. A failure to implement the provisions of paragraph 2 of this article, either party to the dispute may submit the claim to arbitration:
  - (i) An ad hoc court of arbitration laid down under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
  - (ii) the Common Court of Justice and Arbitration (CCJA) of OHADA; or
  - (iii) The International Centre for Settlement of Investment Disputes (ICSID), if both parties are Contracting Parties to the Convention on the settlement of disputes between States, investment, to nationals of other States, opened for signature at Washington on 18 March 1965 (ICSID Convention).
4. The choice and may be made and the award shall be final and binding upon both parties to the dispute, and implemented in accordance with the legislation in force of the Contracting Party in whose territory the investments were made.

## **Article 10. Application of other Provisions**

In the event that the national laws of the Contracting Parties; or any existing or future agreements between the Contracting Parties or international agreements signed by the Contracting Parties include provisions applying to investments made by investors of any other more favourable treatment than that provided for in this Agreement, these laws and agreements have the preponderance - to the extent that they are more favourable.

## **Article 11. Consultations**

Where necessary, the representatives of the Contracting Parties shall consult on matters relating to the implementation and follow-up of this Agreement. the consultations shall be held on the proposal of one of the Parties, place and date to be agreed upon through diplomatic channels and each Contracting Party may request in writing the amendment of this Agreement. In this context, the agreement shall be subject to the provisions of Article 13 of the present Agreement.

## **Article 12. Implementation of the Agreement**

The provisions of this Agreement relating to investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to as well as after the entry into force of this Agreement, but shall be applied as from the date of its entry into force.

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

1. This agreement is subject to ratification and shall enter into force thirty (30) days after the exchange of instruments of ratification between the two Contracting Parties.
2. This agreement is concluded for a period of ten (10) years which may be renewed tacitly renewed unless either Contracting Party notifies in writing the other Contracting Party, twelve (12) months at least before the expiration of the Agreement, of its intention to terminate it.
3. In respect of investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 12 shall continue to be valid for a period of ten (10) years from that date.

In WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have affixed their

signatures to this Agreement.

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

For the Government of the Republic of Guinea

For the Government of the Republic of Chad