

# **Agreement on the Encouragement and Reciprocal Protection of Investments between the Government of the State of Qatar and the Government of the Republic of Senegal**

The Government of the State of Qatar and the Government of the Republic of Senegal (hereinafter referred to as the "Contracting Parties");

DESIRING to further promote economic cooperation between the two States, especially in the area of investments made by investors of one of the Parties in the territory of the other Contracting Party;

RECOGNIZING that the promotion and protection of investments will stimulate the flow of capital and the transfer of technology between both countries in the interest of economic development,

ADMITTING that defining a fair and equitable regime of investments is desirable with the view of maintaining a stable framework of investment and of using economic resources in an optimal manner,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Convention, and unless is decided otherwise, the following expressions have the meanings hereby assigned to them, as follows:

1. The term "Investor" means:

- a) The natural persons citizens of either Contracting Party according to the law in force in that country.
- b) The governments, public bodies, commercial companies, corporations, enterprises or professional associations incorporated or created to the applicable law in force in either Contracting Party and headquartered in the territory of that Contracting Party.

2. The term "investment" means:

- a) All types of assets, and in particular, but without limitation, the following:
  - i) shares or any other form of participation in companies;
  - ii) reinvested revenues, monetary claims or other rights having financial value relating to an investment;
  - iii) Movable and immovable property and other rights, such as mortgages, liens, pledges and any other similar rights as defined in the laws and regulations of the Contracting Party on whose territory the property is located.
  - iv) industrial and intellectual property rights, patents, industrial designs, trademarks, goodwill and expertise and any other similar rights.
  - v) commercial franchises granted by law or contract, including special privileges in natural resources.
- b) These terms concern any investment made in accordance with the laws and regulations in force in the territory and maritime area of the Contracting Party hosting the investment. Maritime area means the territorial waters of both Parties and over which, in accordance with jurisdiction and international law, they are responsible for the exploration, exploitation and preservation of natural resources. The term "investments" covers investments made in the territory of that Party before and after the entry into force of this Agreement.

3. The term "revenues" means the amounts yielded by an investment, in particular, but not exclusively, the profits, the interests and the dividends. The reinvested revenues enjoy of the same protection that the original investment.

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

1. Each Contracting Party shall allow to the other Contracting Party to invest in its territory and in the maritime zone and to exercise related activities, on a basis not less favourable than that granted, in similar situations, to investments and investors in areas not exclusively reserved for them or for investors from the most favoured nation within the framework of its laws and regulations in force.
2. Each Contracting Party shall grant, according to the principles of international law, a fair and equitable treatment to investments made by investors of the other Contracting Party in its territory or maritime zone and shall ensure that there shall be no impediment to the exercise of the right so recognized.
3. Subject to the laws and regulations of the parties regarding to the entry, stay and employment of foreigners:
  - a) The citizens of any of the Contracting Parties are authorized to enter and reside in the territory of the other Contracting Party and its maritime zone, for the purpose of advising, establishing, developing and managing investment operations in which these nationals have contributed capital or other resources.
  - b) The companies legally incorporated in accordance with the laws and regulations of one of the Contracting Parties, which constitute investments made by investors of the other Contracting Party shall be authorised to employ technical management staff of their own choice irrespective of nationality
4. The provisions in the previous paragraphs are not applicable with respect to the privileges granted by either Contracting Party to a third country under its involvement in any of the following agreements below:
  - a) Agreements relating to existing or future customs unions, or free trade areas, regional economic organizations, or any similar international agreements.
  - b) Agreements partially or wholly relating to tax matters.

## **Article 3. Expropriation and Compensation**

1. The investment are nor subject, either directly or indirectly, to expropriation or nationalization or any action of similar effect, unless it is an act of public interest in a non-discriminatory manner, and under the condition that prompt and adequate compensation is paid in accordance with legal procedures and general principles set forth in paragraph (2) of this Article.
2. The above-mentioned compensation shall be equivalent to the real economic value of the investment expropriated at the moment of its expropriation or at the time of its declaration; it is assessed in relation to the normal economic situation that prevailed before the threat of expropriation. The compensation due will be paid immediately without transfer costs and the interest earned will be calculated in accordance with the London Interbank Offered Rate (LIBOR).
3. Where investments of either Contracting Party suffer losses in the territory of the other Party or in its maritime zone as a result of war, any other armed conflict, riots or other such events, that Party shall accord to investors of the other Party treatment at least equal to that enjoyed by its investors in areas not exclusively reserved for such investors or to investors of the most favoured nation in accordance with procedures which it adopts with respect to losses suffered by such investments.

## **Article 4. Remittance and Transfer**

1. Each Contracting Party shall allow to investors of the other Contracting Party to freely carry out all private transfers of their investments without undue delay, in and out of its territory. These transfers include:
  - a) revenues;
  - b) income from the total or partial sale or liquidation of the investment;
  - c) compensation stipulated in Article (3) of this Agreement;
  - d) repayment of loans and general interests generated by those loans, related to the investments;
  - e) the salaries, wages and other remunerations received by citizens of one od the Contracting Parties for services rendered in the implementation of an authorized investment in the territory of the other Contracting Party or its maritime zone;

f) payments made as a result from the settlement of investment disputes.

2. The transfers are made in the convertible currency used at the time of investment, or any other convertible currency agreed with the investor, at the exchange rate in effect on the date of transfer.

## **Article 5. Subrogation**

1. If the investment made by an investor of one of the Contracting Parties is insured against non-commercial risks under a special system, 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 of the investor.

## **Article 6. Derogation**

The present Agreement does not prevent the observance of:

a) Laws, regulations, administrative practices or procedures, or administrative or judicial decisions of either Contracting Party;

b) international legal obligations;

c) obligations undertaken by either Contracting Party, in particular those contained in an investment agreement or an investment authorization, irrespective of the person whose investments or activities they authorize are related to treatment more favourable than that offered by this Agreement in like situations.

## **Article 7. Exclusion**

1. The present Agreement does not exclude the application by either Contracting Party, of measures necessary to preserve public morals and order, or to comply with its commitments in order to maintain or restore international peace and security, or the protection its fundamental interests in security matters.

2. The present Agreement does not preclude either Contracting Party to adopt special procedures regarding the establishment of investments, provided that they do not violate the substance of any of the rights set forth in this Agreement.

## **Article 8. Taxes**

With respect to its tax legislation, either Contracting Party shall seek to be fair and equitable on the tax treatment of investments of investors of the other Contracting Party.

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

1. Any legal dispute arising directly from an investment between any of the Contracting Parties and a the investors of the other Contracting Party, shall be settled amicably between the concerned parties.

2. If a settlement is not reached within a period of six months from the date on which the question was raised by one of the parties, a solution may be found, following a request submitted by one of the disputing parties to the competent jurisdiction in whose territory or maritime area the investment is made.

3. If the legal dispute concerns the amount of the compensation provided for in Paragraph 2 of Article (3) of this Agreement, has not been settled amicably a period of six months from the date on which the question was raised by one of the disputing parties, any of the parties to the dispute, it shall be entitled to submit that dispute to an arbitral tribunal, which must be established for each specific case, of three members appointed as follows:

Within two months from the request for arbitration, each party shall appoint a member of the tribunal;

Within two months from their appointment, the two parties shall agree on a third member who serves as President of the tribunal, under the condition that such President is a citizen of a country having diplomatic relations with both Contracting Parties. The provisions of this paragraph do not apply in the case the investor has chosen to recourse to the competent court set forth in paragraph (2) of this Article.

If the said appointment is not made within the time limits specified in paragraph (3) of this Article, one of the Parties to the conflict may invite the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) to make the necessary appointments.

The Tribunal shall take its decisions by majority vote and its decision shall be final and binding on the Contracting Parties. Each party shall bear the fees of its arbitrator to the Tribunal and the cost of his representation in the arbitration proceedings. The fees of the President of the Tribunal and the remainder shall be shared equally by the two Parties to the dispute, unless the Tribunal decides otherwise. The Tribunal shall, with respect to its proceedings, apply the UNCITRAL principles of arbitration and shall apply, with respect to the substance of the 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 Court of Arbitration in The Hague, the Netherlands.

## **Article 10. Settlement of Disputes between the Parties**

1. The two Contracting Parties shall endeavour, in good faith and in a spirit of cooperation to achieve prompt and fair settlement of any dispute between them regarding the interpretation, application or termination of this Agreement. In this regard, the Contracting Parties agree to enter in direct and meaningful negotiations to arrive to a settlement. If the parties did not reach an agreement within a period of six months from the date on which the question was raised by one of the Contracting Parties, it may be submitted at the request of either Party, to an arbitral tribunal composed of three members.

2. Within a period of two months from the date of receipt of the said request, each Contracting Party shall in turn designate a third-country national as President of the Court. If one of the Contracting Parties has not designated its arbitrator within the period indicated, the other Contracting Party may request the President of the International Court of Justice to designate an arbitrator.

If the two arbitrators fail to agree on the choice of the President within two months of their appointment, the President shall be designated, upon request of either Contracting Party, by the President of the International Court of Justice (ICJ).

3. If, moreover, the President of the International Court of Justice (CIJ) is unable to exercise his functions in accordance with the preceding paragraphs 2 and 3 of this article, or if the President of the International Court of Justice is a national of one of the Contracting Parties, the Vice-President of the International Court of Justice will take the decision to proceed with the appointment. However, if the Vice-President cannot exercise this function or if he is a national of one of the Contracting Parties, then the senior member after the Vice-President will take the decision to appoint, provided that he does not is not a national of a country of one of the Contracting Parties.

4. The arbitral tribunal shall take its decisions by majority vote, and those decisions are final and enforceable by the Contracting Parties.

5. Regarding its procedures, the tribunal apply the principles of UNCITRAL, and regarding the substance of the dispute, apply the rules of this Agreement, the applicable provisions of international law. The place of arbitration will be The Hague (Netherlands), or Stockholm (Sweden).

6. All complaints must be submitted and all debates closed within eight months of the date of appointment of the third member unless otherwise stipulated. The court submits its decision within two months from the date of filing of the final claims or the date of the end of ordinary sessions regardless of the order of succession.

7. The two Parties contribute equally to the expenses of the President, the two arbitrators and to the costs of the other proceedings. However, the court may decide to charge the Parties a higher sum.

8. It is not permitted to submit a dispute to arbitration by the court in accordance with the provisions of this article, if this dispute has already been submitted to arbitration by another court in accordance with the provisions of article 9 and if he is still under investigation at the level of this court. However, this situation does not prevent the two Parties from consulting each other for direct and constructive negotiations.

## **Article 11. Entry Into Force**

1. This Agreement will entry into force from the date of exchange of instruments of ratification through diplomatic means. It shall remain in force for a period of ten years and continue to be renewed for similar periods unless it is terminated according to Paragraph 2 of this Article. It also covers the existing investment at the time of entry into force and those made later.

2. Either Contracting Party may terminate this Agreement at the end of the ten-year period or at any time thereafter by

written notification to the other Contracting Party.

3. Both Contracting Parties may agree to amend this Agreement by a written agreement. Any amendment will entry into force from the date that both Contracting Parties have notified of the completion of all special requirements to enter the amendment into effect.

4. When the Agreement is terminated, the investments made before that date will continue to be subject to the rules of this Agreement, and enjoy the protection prescribed under these provisions for an additional period of ten years from the date of its termination date.

Done in Dakar the 10 June 1998, in two original copies in French and Arabic language, both being equally authentic.

For the Government of the State of Qatar

For the Government of the Republic of Senegal