

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

The Government of the Republic of Mauritius and the Government of the Republic of Guinea, hereinafter referred to as the contracting parties.

Desiring to develop and strengthen their economic and industrial cooperation in the long term 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**

The terms of this Agreement:

1. The term "investment" means any and all forms of investments by an investor of one Contracting Party in the territory of the other contracting party, in accordance with the legislation in force. It includes, but is not limited to:

- (i) Movable and immovable property and any property rights in rem, such as mortgages, liens or land; guarantee charges
- (ii) Shares, stocks and other securities and any other forms of participation in a company;
- (iii) Financial assets and liabilities and claims under other contracts of economic value;
- (iv) Intellectual property rights, such as copyrights and other similar rights of proprietary rights, such as patents, licences, industrial designs or models, trade marks, intangible assets, processes and technical know-how;
- (v) 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 "returns" means the returns derived from the investment amounts. It covers, inter alia, capital gains, interests, profits, dividends, royalties, fees, patents and licences and other similar fees.

3. The term "investor" means:

- (i) Any natural person who is a national of one of the Contracting Parties investing in the territory of the other party;
- (ii) Legal entities, including companies, registered partnerships, corporations or other organizations, which are constituted in accordance with the law of that Contracting Party;

4. The term "territory" means,

- (i) In respect of the Republic of Mauritius: all the territories and islands in accordance with the laws of Mauritius constitute the State of Mauritius; the territorial waters of Mauritius; and any area beyond the territorial waters of Mauritius, in accordance with international law, is or will be determined by the law of Mauritius as a zone and continental shelf included, which may be exercised the rights of Mauritius as regards the sea, its subsoil and seabed, as well as their territories and resources naturelles. all the islands in accordance with the laws of Mauritius constitute the State of Mauritius; the territorial waters of Mauritius; and any area beyond the territorial waters of Mauritius, in accordance with international law, is or will be determined by the law of Mauritius as a zone and continental shelf included, which may be exercised the rights of

Mauritius as regards the sea and seabed, subsoil and their natural resources.

(ii) With respect to the Republic of Guinea: scope 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 Republic of Guinea in accordance with its national law and international law;

## **Article 2. Scope**

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party, before or after its entry into force.

## **Article 3. Investment Promotion**

(1) Each Contracting Party shall promote and create favourable conditions for investors of the other contracting party in its territory and promoting investment in question in accordance with the legislation in force.

(2) Each Contracting Party shall endeavour to grant, in accordance with its laws and regulations the necessary permits in connection with such investments and with the carrying out of licensing agreements, commercial, administrative or technical assistance, as well as the required authorisations for the activities of consultants and experts.

(3) Having received an investment authorization in accordance with article 2 cidevant will be subject to a fair and equitable treatment and protection in accordance with the provisions of this Agreement.

## **Article 4. The Treatment and Protection of Investments**

(1) Returns of investments and investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other contracting party. no Contracting Party shall in any way hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increased or disposal of such investments.

(2) Each Contracting Party shall accord in its territory to returns of investments and investors of the other contracting party treatment no less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State, more favourable treatment to the investor concerned is crucial.

(3) Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that it accords to its own investors to investors or of any third State, more favourable treatment to the investor concerned is crucial.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a Free Trade Area (libreéchange, customs union or common market agreements to which it is already a party or becomes, or by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other contracting party.

(5) To prevent any ambiguity, it is confirmed that the principles referred to in paragraphs (2) and (3) of this article shall not apply with respect to the special advantages to development finance institutions, such as tax matters.

## **Article 5. 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 form 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), 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 was not caused by the fighting and was not required by the necessity of the situation would be given the opportunity to transfer of funds or will be entitled

to compensation. payments under the above shall be carried out within the agreed time and shall be freely transferable.

## **Article 6. Expropriation**

(1) Investments of investors of one Contracting Party shall not be expropriated or nationalized, subjected to measures having effects equivalent to expropriation nationalisation or in the territory of the other contracting party except for reasons of public interest and provided that such measures are consistent with the legal requirements, they are non-discriminatory and provide for prompt payment of adequate and effective compensation. the compensation shall amount to the actual value of the expropriated investment immediately before the expropriation is taken or they are known to the public, the first of those facts are crucial. it shall include interest at a normal commercial rate until the date of payment, shall be paid without delay and shall be fully realizable freely transferable and at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(2) The Investor affected by the expropriation shall have a right to a prompt review, according to the Law of the expropriating Contracting Party, by a judicial or other independent authority of that party of its case and of the valuation of its investment in accordance with the principles set out in this article.

(3) If a Contracting Party expropriating the assets of a company which is incorporated or constituted under the law in force in its territory and in which investors of the other contracting party own shares, it shall ensure, to the extent necessary and in accordance with its legislation, by such investors shall be compensated in accordance with subparagraph (1) of this article.

## **Article 7. Free Transfer**

1. Each Contracting Party shall guarantee to investors of the other, after the fulfilment of their tax obligations and other, subject to the laws in force in the first, the free transfer of payments in connection with investments in question and, in particular, though not exclusively:

- (a) Capital and additional funds to maintain or increase the investment;
- (b) Income;
- (c) Funds from the repayment of loans;
- (d) The proceeds from the sale or liquidation of the investment, including possible gains;
- (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 carried out within the time period agreed upon 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 8. Principle of Subrogation**

If a Contracting Party or its designated agency makes a payment in respect of an investment in the territory of the other contracting party, the latter Contracting Party shall recognize the first assignment to the contracting party or its designated agency by law or pursuant to a contract of all rights and claims of indemnified the investor and the right of the former Contracting Party or its designated agency to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the investor.

## **Article 9. 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 consultations and negotiations between the contracting parties.

(2) If the dispute cannot be settled in this way within six months, it shall be submitted to arbitration at the request of either of the Contracting Parties.

(3) The Arbitral Tribunal (hereinafter referred to as the Tribunal "" ) shall be composed of three arbitrators, each party shall appoint one arbitrator and the third, who shall be the Chairman of the Tribunal and national of a third State, shall be appointed by mutual agreement between the contracting parties. such an arbitral tribunal shall be constituted for each individual case. within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator within two months from the date of appointment of the two arbitrators, the Contracting Parties shall appoint the

third arbitrator.

(4) In the event that the Tribunal has not been constituted within four months from the date of receipt of the request for arbitration, each Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) / not yet appointed (s). If the President is a national of either Contracting Party or if he is unable to make the appointment, the vice-president may be required to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the member of the International Court, just after and who is not a national of the Contracting Parties, may be requested to make the necessary appointments, and so on.

(5) The tribunal shall take its decision by a majority of votes. The decision of the arbitral tribunal shall be final and require the parties undertake to comply with the award. Each Contracting Party shall bear the cost of its own arbitrator and its counsel in the arbitration proceedings and half the costs of the Chairman of the arbitral tribunal and other expenses. The Tribunal in its award may however decide that a higher proportion of costs shall be borne by one of the two parties, and this award require both parties.

(6) The above except for the Tribunal shall establish its own rules of procedure.

## **Article 9. Settlement of Investment Disputes**

(1) Solutions to disputes between investors of one Contracting Party to the other party in the area of 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, by negotiation.

(2) If the dispute referred to in paragraph 1 of this article cannot be settled within six months of negotiations, either party shall be entitled to submit the case to the competent court of the Contracting Party which is a party to the dispute at the same time.

(3) A failure to implement the provisions of paragraph 2 of this article, either party to the dispute may choose to submit the claim to arbitration:

(i) An ad hoc court of arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(ii) The International Centre for Settlement of Investment Disputes, in case both contracting parties are 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 decision and imposed 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.

(5) Each Party shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings. The cost of the President of the Court for its function as well as the other costs of the arbitral tribunal shall be borne equally by each of the Parties. The Tribunal in its award may however decide that a higher proportion of costs shall be borne by one of the two parties, and this award require both parties.

## **Article 10. Other Special Rules and Commitments**

(1) 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 - insofar as they would be more favourable.

(2) Each Contracting Party shall carry out any particular obligation entered into in respect of an investment in its territory by investors of the other contracting party.

## **Article 11. Consultations**

Where necessary, the representatives of the Contracting Parties shall meet in consultations on issues relating to the implementation 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.

## **Article 12. Prohibitions and Restrictions**

Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any measure necessary for the protection of its essential security interests or for reasons of public health and prevention of diseases animal and plant diseases.

### **Article 13. Entry Into Force**

(1) This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party, before or after its entry into force. for the avoidance of doubt, it is agreed that any investment, subject to the provisions of this Agreement shall be subject to the laws in force in the territory of the Contracting Party in which the investment has been made.

(2) Each Contracting Party shall notify the other contracting party of the completion of the procedures required by its Law for the entry into force of this Agreement. this Agreement shall enter into force on the day following the date of receipt of the later of these notifications.

(3) This Agreement shall remain valid for a period of ten years. after the term, it shall remain in force until the expiration of twelve months from the date on which either Contracting Party has denounced in writing to the other.

(4) In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to apply for a further period of ten years from the expiry or for such longer period as may be agreed between the investor and the Contracting Party in whose territory the investment has been made.

In WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at.... on....., in duplicate, both texts being equally authentic.