

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

The Government of the Republic of Guinea and the Government of the Republic of Benin, 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 favorable conditions for the realization of investments by investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing the need to protect investments made by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiatives in order to promote the economic prosperity of both Contracting Parties.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" means all kinds of funds placed by the Investor of one of the Contracting Parties in the territory of the other Contracting Party, in accordance with the legislation in force in the latter. It includes, but is not limited to:

(i) movable and immovable property, as well as any right of ownership in rem, including mortgage, pledge or guarantee;

(ii) shares, bonds and other securities and all other forms of participation in a company

(iii) financial claims and liabilities and other claims under contracts of economic value

(iv) intellectual property rights, such as copyrights and other similar rights, industrial property rights such as patents, licenses, designs, trademarks, intangible assets, technical processes and know-how

(v) concessions granted in accordance with the legislation in force in the Contracting Party in whose territory the investment is made, including concessions for the exploration, extraction and exploitation of natural resources

(vi) If the investment is made by an investor through an entity referred to in subparagraph (iii) of paragraph 3 below, in which it has an equity interest, such investor shall enjoy the benefits of this Agreement to the extent of such indirect interest provided, however, that such benefits shall not accrue if it invokes the dispute settlement mechanism provided for in another foreign investment protection agreement concluded by a Contracting Party in whose territory the investment is made.

The change in the form of investment does not entail a change in its nature as an investment.

2. The term "income" refers to the income resulting from investments. It includes, but is not limited to, profits, capital gains, dividends, interest, royalties, fees, patents and licenses, and other similar expenses.

3. The term "investor" means:

(i) any natural person of the nationality of one of the Contracting Parties investing in the territory of the other,

(ii) any legal entity established, founded or otherwise duly organized in accordance with the legislation in force of one of the Contracting Parties with its seat in its territory, investing in the territory of the other.

(iii) Legal entities established in accordance with the legislation of any country which are controlled, directly or indirectly, by nationals of a Contracting Party or by legal entities having their seat, together with actual economic activities, in the territory

of that Contracting Party; it is understood that control requires a significant share of ownership.

4. The term "territory" means the area within the land borders, the area of the sea, the seabed and its subsoil outside the territorial waters under the sovereign right or jurisdiction of the Contracting Party in accordance with its national legislation or 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 the legislation in force.

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

3. The income from the investment and, in the event of its reinvestment in accordance with the legislation of a Contracting Party, shall enjoy the same protection as the initial investment.

Article 3. Treatment of Investments

1. Each of the Contracting Parties shall ensure that investments of the other Party are treated in its territory in a manner no less favourable than that accorded to national investors or to investors of any third State, whichever is the more favourable.

2. Each of the Contracting Parties shall guarantee, in its territory, to the investors of the other Party, as regards the management, maintenance, operation and enjoyment of their investments, treatment no less favourable than that accorded to national investors or that accorded to those of a third State, whichever is more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed to require either Contracting Party to grant to investors of the other any 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 international agreement or arrangement dealing wholly or in part with taxation matters.

Article 4. Compensation for Losses

1. Investors of one of the Contracting Parties whose investments in the territory of the other have suffered losses as a result of armed conflict, state of emergency, mutiny, uprising or disturbance in that territory shall be accorded treatment no less favorable than that accorded to domestic investors or investors of any third country with respect to compensation, restitution, reimbursement or other form of loss relief. 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, investors of one of the contracting parties who, in any of the above-mentioned situations, have suffered losses in the territory of the other party, resulting from

(i) the seizure, by the authorities of the other Contracting Party, of property belonging to them,

(ii) 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 granted the possibility of transferring the funds or 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

1. Measures of nationalization, expropriation or any other form having the same effect or character (hereinafter referred to as expropriation), which may be taken by the authorities of one of the Contracting Parties against investments made by investors of the other Contracting Party, shall meet the following conditions :

(a) they shall be taken in the public interest;

(b) they shall be subject to a legal procedure

(c) they shall not be discriminatory;

(d) they shall give rise to the payment of compensation.

2. The compensation referred to in paragraph 1 (d) of this Article shall be the market value of the investment concerned on the day before the measures are taken or made public.

Such compensation shall be paid without undue delay and shall be effectively realizable and freely transferable.

3. Investors of a Contracting Party who have suffered losses in connection with their investments in the territory of the other Contracting Party as a result of war, a state of national emergency, insurrection, riot or other similar disturbances, shall be accorded by the latter Party treatment no less favourable than that accorded to investors of the most favoured nation with regard to restitution, compensation, indemnification or other relief.

Article 6. Transfers

1. Each of the Contracting Parties shall guarantee to the investors of the other, after the latter have fulfilled their fiscal and other obligations, subject to the legislation in force in the former, the free transfer of payments made in respect of the investments in question and, in particular, but not exclusively:

a. capital and additional funds for maintenance or increase of the invested funds ;

b. income ;

c. funds derived from the repayment of loans;

d. proceeds from the sale or liquidation of investments;

e. Amounts paid under Articles 4 and 5 of this Agreement.

2. The transfers referred to in paragraph 1 of this Article shall be made on the date of transfer, in convertible currency, at the rate of exchange valid on the day of transfer in the territory of the Contracting Party in which the investment is made.

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

(ii) The first Contracting Party or the institution subrogated to it, as having 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 subrogated rights or claims shall not be greater than those of the investor.

3. The subrogation of the rights and obligations of an indemnified investor shall also cover the transfer of payments made in accordance with the provisions of Article 6 of this Agreement.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute arising out of the interpretation or application of this Agreement shall be settled as far as possible by negotiation between the Parties.

2. If, after six months from the beginning of the negotiations, the negotiations have not been successful, the matter shall, at the request of either Party, be submitted to arbitration.

3. The Court of Arbitration referred to in paragraph 2 above shall be established on an ad hoc basis, on a case-by-case basis, in accordance with the following procedure: within three months of receipt of the request for arbitration, each of the Contracting Parties shall appoint one member of the Court of Arbitration. These two members shall appoint, within two months, a third member who shall be a national of a third country. With the agreement of both Contracting Parties, this third member shall assume the chairmanship of the arbitration.

4. In the event that the arbitration court 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 requested to make the above-mentioned appointments. In the event that the President is 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 member of the International Court of Justice who is not a national of one of the Contracting Parties.

5. The arbitration court shall make its decisions on the basis of the provisions of this Agreement and in accordance with the commonly recognized principles and rules of international law. The decisions of the arbitration shall be taken by a majority vote. They shall be final and binding on both Contracting Parties. The Court shall establish its own rules of procedure.

6. Each of the Contracting Parties shall bear the costs of its representative and of the latter's participation in the arbitration proceedings. The costs of the presiding officer and other costs inherent in the arbitration shall be borne equally by the two parties.

Article 9. Settlement of Investment Disputes

1. Disputes between one of the Contracting Parties and investors of the other Party concerning the obligations of the latter under this Agreement in respect of investments made by investors of the former shall be settled, to the greatest extent possible, by negotiation.

2. In the event that the disputes referred to in paragraph 1 of this Article are not settled within six months of negotiations, either Party shall have the right to submit the matter to the competent court of the Contracting Party which is at the same time a party to the dispute.

3. If the provisions of paragraph 2 of this Article are not applied, either party to the dispute shall have the right to submit the case to arbitration:

(i) an ad hoc Court of Arbitration, in accordance with the arbitration rules of the United Nations Commission on Trade Law (UNCITRAL);

(ii) the Common Court of Justice and Arbitration (CCJA) of AOAD; or

(iii) the International Centre for Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature on March 18, 1965 in Washington (ICSID Convention).

4. The arbitral tribunal shall decide the dispute on the basis of the national law of the Contracting Party, party to the dispute, in whose territory the investment is located, including the rules relating to conflict of laws, the provisions of this Agreement, the terms of any special agreement entered into with respect to the investment and the principles of international law.

5. The decision so rendered shall be final and binding on both parties to the dispute and shall be enforced in accordance with the law in force in the Contracting Party in whose territory the investment was made.

Article 10. Application of other Provisions

In the event that 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 reserving for investments made by investors of one of them a more favorable treatment than that provided for in this Agreement, the aforementioned laws and agreements shall prevail - insofar as they prove to be more favorable.

Article 11. Consultations

When necessary, representatives of the Contracting Parties shall meet for consultations on matters concerning the application 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. Application 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 before and after the entry into force of this Agreement, but shall be applied as from its entry into force.

Article 13. Entry Into Force, Validity and Expiration

1. This Agreement, subject to ratification, shall enter into force 30 days from the date of receipt of the last of the two notifications relating to the completion by the two Contracting Parties of constitutional procedures in their respective countries.
2. This Agreement shall be concluded for a period of ten years, renewable by tacit agreement for further successive periods of five years, unless either Contracting Party notifies the other in writing at least twelve months before the expiry date that it wishes to terminate the Agreement.
3. For investments made prior to the date of expiration of this Agreement, the provisions of Articles 1 through 12 shall continue to apply for a period of 10 years following such date.

In witness whereof the undersigned, duly authorized by their respective Governments, have hereunto set their hands.

Done at Brussels on 18.05.01 in two original copies in the French language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA

Hadja Mariama Déo BALDE

Minister of Commerce, Industry and SMEs.

FOR THE GOVERNMENT OF THE REPUBLIC OF BENIN

Mr. Joseph ADLIN

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