

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALI AND THE GOVERNMENT OF THE STATE OF QATAR CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Mali and the Government of the State of Qatar, hereinafter referred to as the "Contracting Parties", Desirous of strengthening economic cooperation between the two countries

States, particularly in the field of investment of one Party in the territory of the other Party,

Recognizing that the promotion and protection of such investments will stimulate the flow of capital and technology between the two countries in the interest of economic development,

Agreeing that fair and equitable treatment of investments is desirable to maintain a stable framework for investment and the maximum effective use of economic resources,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement and unless otherwise indicated, the following words and terms shall have corresponding meanings:

1. The term "investors" means :

- a. Natural persons, having the status of nationals of one of the Contracting Parties in accordance with its applicable laws;
- b. Governments, governmental agencies, corporations, firms, or associations, constituted or created in accordance with the law in force of either Contracting Party and having their headquarters in the territory of that Contracting Party.

2. (a) The term "investments" means all kinds of assets and, in particular, not limited to the following:

- I. Shares or any other form of participation in companies ;
- II. Reinvested profits, rights to money or other rights of financial value relating to the investment ;
- III. Movable and immovable property as well as any other rights such as mortgages, pledges and any other similar rights as defined in accordance with the laws and regulations of the Party in whose territory the property is situated;
- IV. Industrial and intellectual property rights, licences, industrial designs, trademarks, good faith, know-how and any other similar rights;
- V. Business concessions granted by law or under contract, including concessions relating to natural resources.

(b) The said terms refer to all investments made in accordance with the laws and regulations in the territory or maritime zone of the Contracting Party in which the investments are made. The maritime zone means the territorial waters and the adjacent area extending beyond the territorial waters of both Parties for the purposes of prospecting, exploitation and preservation of natural resources. The term "investment" covers investments made in the territory of that Party before and after the entry into force of this Agreement.

3. The term "profit" means the sums generated by an investment and includes in particular, but not exclusively, profit, interest and dividends. Reinvested profits shall enjoy the same protection as any investment.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall authorize the other to invest in its territory, in its maritime zone and to carry on, within the framework of its laws and regulations in force, activities relating thereto on a basis no less favourable than that accorded, in

similar situations, to investments of its investors in zones which are not exclusive to them or to investors of the most favoured State, within the framework of its laws and regulations in force.

2. Each Contracting Party shall accord fair and equitable treatment in accordance with the principle of international law to investments made by investors of the other Contracting Party in its territory or maritime zone and shall ensure that the exercise of the right thus recognized shall not be hindered in any way.

3. Subject to the laws and regulations of the Parties relating to the entry, residence and employment of aliens :

a. Nationals of each Contracting Party shall be authorized to enter and remain in the territory of the other Contracting Party and its maritime area for the purpose of establishing, developing, managing or advising on investment operations in which such nationals or investments have contributed with their capital or other resources ;

b. Companies lawfully established in accordance with the laws and regulations in force in one of the Contracting Parties and 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 of the preceding paragraphs shall have no effect on the privileges granted by each Contracting Party to investors of a third Contracting Party on account of its participation in one of the following Agreements:

a. Agreements relating to all existing or future customs unions, free trade areas, regional economic organizations or similar international agreements ;

b. Agreements relating wholly or mainly to taxation.

Article 3. Expropriation and Compensation

1. Investments shall not be subject, directly or indirectly, to any act of expropriation or nationalization or other procedures having similar effect unless it is in the public interest and without discrimination against adequate and immediate compensation paid in accordance with legal procedures and general principles of the type of treatment stipulated in paragraph 2 of this Article.

2. Such compensation shall be equivalent to the real economic value of the expropriated investment at the time of its expropriation or declaration and shall be estimated in accordance with the economic situation prevailing before any threat of expropriation. The compensation due shall be paid without delay and shall be freely transferable and bear interest until the date of payment, calculated in accordance with the interest rates prevailing in the London Interbank Offered Rate (LIBOR).

In the event that investments of a Contracting Party suffer losses in the territory of the other Party or in its maritime zones as a result of war or other armed conflicts, civil riots or any other similar event, that Party shall offer investors of the other Party treatment not inferior to that offered to investors from areas not exclusive to them or investors from the most favoured State in accordance with the procedures which it adopts in relation to losses suffered by such investments.

Article 4. Repatriation and Transfer

1. Each Contracting Party shall authorize the other Contracting Party to make all transfers relating to its investments freely and without unreasonable delay within and outside its territory. Such transfers shall include

a. Profits ;

b. Proceeds from the sale or liquidation of all or part of the investment;

c. Compensation in accordance with Article 3 of this Agreement;

d. Repayments of principal and interest on loans related to investments;

e. Salaries, wages and other remuneration received by nationals of a Contracting Party for their services in respect of an authorized investment in the territory of the other Party or its maritime zone.

f. Payments arising out of an investment dispute.

2. Transfers shall be made in the convertible currency in which the investment was made or in any other convertible currency with the agreement of the investor and at the exchange rates prevailing on the date of transfer.

Article 5. Subrogation

1. If the investment of an investor of one Contracting Party 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 which the investor would have been entitled to exercise.

Article 6. Waiver

This Agreement shall not derogate from :

- a. The laws and regulations, practices or procedures or administrative acts or legal decisions of a Contracting Party;
- b. International legal obligations, or
- c. Obligations assumed by each Contracting Party, including those contained in an investment agreement or investment authorisation, irrespective of who is authorised to make investments or carry out activities associated with a more favourable treatment than that offered by that Agreement in similar situations.

Article 7. Preventive Measures

1. This Agreement shall not prevent each Contracting Party from applying the measures necessary for the maintenance of law and order and morals, the fulfilment of its obligations in connection with the restoration of peace and national security or the protection of its own essential security interests.
2. This Agreement shall not prevent any Party from adopting special procedures relating to the establishment of investments, provided that such procedures do not violate any of the fundamental rights stipulated in this Agreement.

Article 8. Taxation

In observing its tax legalisation, each Contracting Party should endeavour to grant fair and equitable tax treatment to investments by investors from the other Contracting Party.

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

1. Any dispute arising directly from an investment between a Contracting Party and investors from the other Contracting Party shall be settled amicably.
2. If a solution is not reached after six months from the date on which the problem was raised by one of the Parties, it may be settled, following a request submitted by one of the Parties in dispute, in the competent court in whose territory or maritime area the investment is made.
3. If the dispute is based on the amount of compensation stipulated in paragraph 2 Article 3 above and has not been settled amicably after a period of six months from the date on which it was raised by one of the Parties in dispute, each Party shall have the right to submit the said dispute to an arbitral tribunal which shall be composed for each specific case of three members designated as follows:

Within two months from the date of filing of the request for arbitration, each Party shall appoint one member to the tribunal.

Within two months of their designation, the two Parties shall appoint a third member who shall act as President of the tribunal, provided that the said President shall be a national of a third country having diplomatic relations with both Parties. The provisions of this paragraph shall not apply in the event that the investor elects to have recourse to the competent tribunal referred to in paragraph 2 of this Article.

If it has not been possible to make such a designation within the specific periods of the above-mentioned section, each Party in dispute may invite the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) to make the necessary designations.

The Tribunal shall take its decisions by majority vote and its decisions shall be final and legally binding on the Contracting

Parties. Each Party shall bear the cost of its arbitrator to the Tribunal and the costs of his representation in the arbitral proceedings. The two Parties in dispute shall share equitably the amounts to be paid to the President of the Tribunal and other expenses unless the Tribunal decides otherwise. The Tribunal in its proceedings shall apply the principles of arbitration of "UNCITRAL" and shall also apply, with respect to the issue in 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 mutual cooperation, to reach a rapid and fair settlement of any dispute arising between them over the interpretation, execution or termination of this Agreement. To this end, the two Parties hereby agree to reach such settlement through direct objective negotiations. If the dispute has not been settled after six months from the date on which the problem was raised by one of the Contracting Parties, it may be submitted, at the request of either Contracting Party, to a three-member arbitral tribunal.

2. Within a period of two months following the date of receipt of the said request, each Contracting Party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third, who must be a national of a third country, to be the President of the tribunal. If one of the Contracting Parties is unable to appoint its arbitrator at the end of a specific period, the other Contracting Party may request the President of the International Court of Justice to appoint an arbitrator.

3. If the two arbitrators are unable to agree on the choice of the President within two months of their appointment, the President shall be appointed at the request of either Contracting Party by the President of the International Court of Justice.

4. If the President of the International Court of Justice is prevented from carrying out his functions as stipulated in the two 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 decision of appointment shall be taken by the Vice-President of the International Court of Justice. If, however, the Vice-President is prevented from carrying out the said function or if he is a national of one of the Contracting Parties, then the decision of appointment shall be taken by a member immediately following the Vice-President in order of precedence, provided that he is not a national of one of the Contracting Parties.

5. The Tribunal shall take its decisions by a majority of votes. Its decisions shall be final and binding on the Contracting Parties.

The Tribunal, in its proceedings, shall apply the principles of UNCITRAL and, in relation to the merits of the dispute, it shall apply the rules of this Agreement and the rules of International Law whenever necessary. The place of arbitration shall be The Hague (Netherlands) or Stockholm (Sweden).

6. All claims to be submitted and all hearing sessions shall be completed within eight months from the date of appointment of the third arbitrator unless otherwise decided. The Tribunal shall publish its decision in two months from the date of the submission of the last claims or from the date of closure of the general sessions.

7. Both Parties shall share equitably all costs of the chairman, the two arbitrators and the costs of the other proceedings. However, the Tribunal may decide to have the Parties pay a higher percentage of the costs.

8. It shall not be permitted to submit a dispute to an arbitral tribunal in accordance with the rules of this Article if the same dispute has already been submitted to another arbitral tribunal under the rules of Article 9 above and is still being heard by that tribunal. However, this shall not affect the commencement of direct and constructive negotiations between the Contracting Parties.

Article 11. Entry Into Force

1. The present Agreement shall enter into force on the date on which the instruments of ratification have been exchanged through diplomatic channels. It shall remain in force for a period of ten years and shall continue to be valid unless it is terminated in accordance with paragraph 2 of this article. It shall apply to investments existing at the time of entry into force and to investments made or acquired thereafter.

2. Either Contracting Party may, by giving one year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.

3. This Agreement may be amended by written agreement between the two Parties. Any amendment shall enter into force when each Party has notified the other that it has fulfilled all the conditions for the entry into force of that amendment.

4. Upon termination of this Agreement, any investment made prior to the date of such termination shall be governed by the rules of this Agreement and shall enjoy the protection established under those rules for a period of ten years from the date of termination.

Fait à Bamako le 18 mai 2002 en deux exemplaires originaux en français et en arabe, tous les deux textes faisant également foi.

Done at Bamako on 18 May 2002 in two originals in French and Arabic, both texts being equally authentic.

For the GOVERNMENT OF THE REPUBLIC OF MALI

For the GOVERNMENT OF THE STATE OF QATAR