

# AGREEMENT

## ENTER

### THE GOVERNMENT OF THE KINGDOM OF MOROCCO

### THE GOVERNMENT OF THE REPUBLIC OF MALI

## CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE KINGDOM OF MOROCCO,

THE GOVERNMENT OF THE REPUBLIC OF MALI, hereinafter referred to as the "Contracting Parties";

DESIRING to strengthen their economic co-operation by creating favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

CONSIDERING the beneficial influence which this Agreement may have on improving business contacts and confidence in the field of investment;

RECOGNIZING the need to encourage and protect foreign investment with a view to promoting the economic prosperity of both Contracting Parties;

HAVE AGREED AS FOLLOWS:

### Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means any asset and any direct or indirect contribution invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party; Including but not limited to:

A) Movable and immovable property and any other rights in rem, such as mortgages, pledges, security rights, usufruct and similar rights;

B) shares and all other forms of participation in companies;

C) monetary claims and rights to all services having economic value and linked to an investment;

(D) intellectual property rights, including copyrights, trademarks, patents, technical processes, trade names and any other industrial property rights, as well as goodwill, in accordance with the undertakings given by the contracting parties to The World Intellectual Property Organization (WIPO);

E) concessions under public law conferred by law or contract, including concessions for research, extraction or exploitation of natural resources.

No change in the legal form in which the assets and capital have been invested or reinvested affects their investment character "within the meaning of this Agreement.

Such investments shall be made in accordance with the laws and regulations in force of the Contracting Party in whose territory such investments are made.

2. "Investor" means any natural or legal person of a Contracting Party which invests in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party:

(A) the term "natural person" means any natural person having the nationality of that Contracting Party in accordance with its laws; and

(B) The term "legal person" shall mean any entity which is incorporated or constituted in the territory of one of the Contracting Parties in accordance with the laws and regulations in force in that Contracting Party and which has its head office, Or its principal place of business in the territory of that Contracting Party. However, any legal person shall have its head office in the territory of one of the Contracting Parties and its operations shall have a genuine and continuous connection with the economy of that Contracting Party.

3. The term "income" means the amounts yielded by an investment, including but not limited to profits, interest, dividends and royalties.

4. the term "territory" means:

(A) in respect of the Kingdom of Morocco: the territory of the Kingdom of Morocco including any maritime area beyond the territorial waters of the Kingdom of Morocco which has been or may hereafter be designated by the legislation of the Kingdom of Morocco in accordance with To international law, as an area within which the rights of the Kingdom of Morocco relating to the seabed and subsoil and to natural resources may be exercised.

(B) for the Republic of Mali: the territory of the Republic of Mali and all areas over which it exercises its sovereignty, sovereign rights or jurisdiction in accordance with international law.

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

1. Each Contracting Party shall encourage in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

The extension, modification or transformation of an investment made in accordance with the laws and regulations in force in the host country shall be considered as a new investment.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded by the latter Contracting Party fair and equitable treatment in accordance with international law and the provisions of this Agreement And, subject to measures strictly necessary for the maintenance of law and order, full protection and security.

3. Neither Contracting Party shall prevent unjustified, arbitrary, abusive or discriminatory measures in the management, maintenance, use, enjoyment or disposal in its territory of investments made by investors of the other Party Contracting Party.

4. The income from the investment, if reinvested in accordance with the laws and regulations of the Contracting Party in whose territory the investment is situated, shall enjoy the same protection as the initial investment.

5. Measures to be taken by one of the Contracting Parties on grounds of public security, public order or for the protection of public health or the environment shall not be considered as "less favorable treatment" Within the meaning of this Article.

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

1. Each Contracting Party shall accord to its investments in the other Contracting Party treatment no less favorable than that which it accords in similar circumstances to investments of its own investors or investments of the other Contracting Party. Most favored nation, with the most favorable treatment.

Each Contracting Party shall grant to investors of the other Contracting Party, in respect of activities connected with their investments, treatment no less favorable than that which it accords in similar circumstances to its own investors Or most-favored-nation investors, whichever is the more favorable.

2. The most-favored-nation treatment referred to in paragraph (1) above shall not apply to the privileges and advantages which a Contracting Party grants to investors of a third State by virtue of its Its association with a free trade area, an economic or customs union, a common market or any other form of regional economic organization or similar international

agreement or under a convention for the avoidance of double taxation Other tax treaty.

## **Article 4. Expropriation and Indemnification**

1. Measures of nationalization, expropriation or any other measure having the same effect (hereinafter referred to as "expropriation") as may be taken by the authorities of one Contracting Party against investments by investors Of the other Contracting Party shall be neither discriminatory nor motivated by reasons other than public utility. Expropriation measures must be carried out in accordance with the legal procedure and against prompt, adequate and effective compensation.

2. The Contracting Party which has taken such measures shall pay to the person entitled, without undue delay, an indemnity the amount of which shall be the fair market value of the investment expropriated on the day before the Expropriation shall be made or made public, whichever occurs first.

3. The provisions for the determination and payment of compensation shall be taken promptly and without undue delay. In the event of late payment, the indemnity shall bear interest at market conditions from the date of its payment in accordance with national law up to the date of payment. The allowance shall be effectively realizable and freely transferable.

## **Article 5. Compensation for Losses**

Investors of either Contracting Party whose investments suffer damage or loss due to war or to any other armed conflict, revolution, state of national emergency, revolt, insurrection or any other similar event in the territory of the other Contracting Party, Shall be accorded by the latter Contracting Party non-discriminatory treatment and at least equal to that accorded to its own investors or to investors of the most favored nation in respect of restitution, compensation, compensation or other compensation, With the most favorable treatment being retained.

## **Article 6. Transfers**

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to such investors, after payment of the tax obligations, the free transfer in convertible currency and without undue delay of Liquid assets relating to such investments and in particular;

A) initial capital or additional amounts to maintain or increase the investment;

(B) profits, dividends, interest, royalties and other current income;

(C) amounts required to repay borrowings relating to the investment;

D) the proceeds of a sale or the total or partial liquidation of the investment;

(E) compensation payable under Articles 4 and 5 of this Agreement;

(F) Wages and other remuneration of the personnel authorized by each Contracting Party to work in its territory in respect of an investment.

2. The transfers referred to in paragraph (1) above shall be made at the rate of exchange applicable on the date of the transfer and in accordance with the exchange regulations in force in the territory of the Contracting Party in which the investment was made.

3. The guarantees provided for in this Article shall be at least equal to those granted to investors of the most favored nation who are in similar situations.

4. Notwithstanding paragraphs 1 and 2 above, each Contracting Party may, on a non-discriminatory basis, adopt or maintain measures concerning foreign capital and the payment of transactions:

(A) in the event of serious difficulties in the balance of payments or in the external financial situation or a similar risk;

(B) where, in exceptional circumstances, capital movements cause or threaten to cause serious macroeconomic difficulties, particularly in terms of monetary or exchange rate policy;

C) to protect the rights of creditors.

5. The measures referred to in paragraph 4 above shall:

(A) To avoid unnecessary measures in the circumstances set out in paragraph 4 of this Article;

(B) be provisional and disposed of as soon as conditions permit; and

(C) Or be promptly notified to the other Contracting Party.

## **Article 7. Subrogation**

1. If, under a legal or contractual guarantee covering non-commercial investment risks, compensation is paid to an investor of one Contracting Party, the other Contracting Party shall recognize the subrogation of the insurer to the rights Of the indemnified investor.

2. In accordance with the guarantee given for the investment concerned, the insurer shall be entitled to assert all the rights which the investor could have exercised if the insurer had not been subrogated to it.

3. Any dispute between a Contracting Party and the investment insurer of the other Contracting Party shall be settled in accordance with the provisions of Article 9 of this Agreement.

## **Article 8. Applicable Rules**

Where a question relating to investments is governed both by this Agreement and by the national legislation of one of the Contracting Parties or by international conventions existing or subscribed by the Parties in the future, investors of the other Party Contracting Party may avail themselves of the provisions which are most favorable to them.

## **Article 9. Settlement of Disputes Relating to Investments**

1. Any dispute relating to investments between an investor of one Contracting Party and the other Contracting Party concerning an obligation of that Contracting Party under this Agreement shall, as far as possible, be settled amicably by consultation and negotiation between the parties to the dispute.

2. The parties to the dispute may, at the initiative of one of them and in the course of their consultations and negotiations, agree to apply other non-binding procedures, such as the mediation procedure.

3. In the absence of an amicable settlement by direct agreement between the parties to the dispute within a period of six months from the date of its written notification, the dispute shall be submitted, at the choice of the investor:

(A) to the competent court of the Contracting Party in whose territory the investment was made;

B) or to international arbitration, under the conditions described in paragraph (4) below.

4. In the event of recourse to international arbitration, the dispute may be referred to one of the following arbitration bodies, at the choice of the investor:

(A) the International Center for the Settlement of Investment Disputes (ICLRJD.L), established by the "Convention for the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature at Washington, March 18, 1965;

(B) an ad hoc arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (C.N.U.D.C.I).

To this end, each Contracting Party gives its irrevocable consent to the submission of any investment dispute to the tribunal referred to in paragraph 3 (a) above or to the arbitral proceedings referred to in subparagraphs (a) and (B) of that subsection.

If the investor chooses to submit the dispute to arbitration in accordance with subparagraphs (a) and (b) of this paragraph, the investor's choice is irrevocable.

5. Neither Contracting Party which is a party to a dispute may raise any objection at any stage of the arbitration procedure or the enforcement of an arbitral award to the fact that the investor, the adverse party to the dispute, Received an indemnity covering all or part of his losses under an insurance policy.

6. The Arbitral Tribunal shall decide on the basis of the national law of the Contracting Party, the party to the dispute, in whose territory the investment is situated, including the conflict of laws rules, the provisions of this Agreement and Principles of international law.

7. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce

these awards in accordance with its national law.

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

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, through the diplomatic channel.

If the dispute is not resolved through diplomatic channels within a period of six (6) months, the dispute shall be submitted to an ad hoc joint committee composed of the representatives of the Contracting Parties; The latter shall meet without delay at the request of the most diligent Contracting Party.

2. If the ad hoc Joint Committee can not settle the dispute within six (6) months from the beginning of the negotiations, it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. Such tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator, and the two arbitrators shall jointly designate a third arbitrator, who shall be a national of a third State, as President of the tribunal.

The arbitrators shall be appointed within three (3) months, the President within five (5) months from the date on which one of the Contracting Parties notified the other Contracting Party of his To submit the dispute to an arbitral tribunal.

4. If the time limits laid down in paragraph (3) above have not been complied with, either Contracting Party shall invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of one of the Contracting Parties, or if he is prevented from exercising this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President has the nationality of one of the Contracting Parties or if he is prevented from exercising his mandate, the most senior member of the International Court of Justice who is not a national of either Party Contracting Parties, shall be invited to make such

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and of the rules and principles of international law. The decision of the tribunal shall be adopted by a majority of votes. It shall be final and binding on the Contracting Parties. Each Contracting Party undertakes to implement these decisions in accordance with its laws and regulations.

6. The tribunal shall determine its own rules of procedure.

7. Each Contracting Party shall bear the expenses of its arbitrator and of its representation in the arbitration proceedings. The costs of the President and other costs shall be borne equally by the Contracting Parties.

## **Article 11. Application**

This Agreement shall apply to investments made before and after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter. However, this Agreement shall not apply to disputes which may arise prior to its entry into force.

## **Article 12. Entry Into Force Validity and Expiration**

1. This Agreement shall be subject to ratification and shall enter into force 30 days from the date of receipt of the last of the two notifications relating to the performance by both Contracting Parties of the constitutional procedures in their respective countries.

It shall remain in force for a period of ten (10) years. Unless one of the Contracting Parties denounces it for at least six (6) months before the expiry of its period of validity, it shall be automatically renewed for a further period of ten (10) years each Contracting Party shall, Reserving the right to denounce it by written notice at least six (06) months before the expiry date of the current validity period.

2. This Agreement may be amended as a result of the mutual consent of the two Contracting Parties. To that end, either Contracting Party may notify the other Contracting Party of its intention to amend the Agreement at any time but not within ten (10) years of its entry into force, by transmitting the notice by Through diplomatic channels, six (6) months in advance. The Agreement shall be amended after the consent of the two Contracting Parties. If one of the Contracting Parties does not give its consent, that Contracting Party shall have the right to denounce the Agreement. Such denunciation shall be made through diplomatic channels and shall be regarded as a notice of termination of the Agreement. The Agreement shall terminate six (6) months after the date of receipt of the above notice.

3. Investments made prior to the date of expiry of this

Agreement shall remain in force for a period of ten (10) years from the date of expiry.

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

Done at Bamako on 20 February 2014, in two originals, in the Arabic and French languages, both texts being equally authentic.

FOR

THE GOVERNMENT OF THE KINGDOM OF MOROCCO

Mohammed BOUSSAID Minister for Economy and Finance

FOR

THE GOVERNMENT OF THE REPUBLIC OF MALI

Mrs BOUARE Fily SISSOKO Minister for Economy and Finance