

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

The Government of the Republic of Cameroon and the Government of the Republic of Guinea hereinafter referred to as "the Contracting Parties";

Desiring to create favorable conditions for investments by investors of one of the Contracting Parties in the territory of the other Contracting Party

Recognizing that the reciprocal economic encouragement, promotion and protection of such investments may promote business contacts of investors and contribute to the prosperity of both States;

Desiring to intensify economic cooperation between the two States on the basis of equality and mutual benefit;

Have agreed as follows:

Article 1. Definitions

1. Investment" means assets of any kind invested by the investor of one of the Contracting Parties, in accordance with the legislation of each of the Contracting Parties, in the territory or maritime zones of the latter, and more particularly, but not exclusively

- (a) movable and immovable property as well as all other real rights such as mortgages, pledges, usufructs and similar rights
- b) shares, securities and other forms of direct or indirect participation, even minority ones, in companies incorporated in the territory of one of the parties
- c) intellectual property rights such as copyrights, patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source, technical processes, know-how and goodwill;
- d) Monetary claims and rights to any other benefits of economic value;
- e) concessions granted in accordance with the law, in particular concessions for the cultivation, exploration, extraction or exploitation of natural resources.

No change in the legal form in which the assets and capital have been invested or reinvested shall affect their character as investments within the meaning of this Agreement.

2. The term "income" means amounts net of taxes derived from investments such as profits, interest, capital gains, dividends, royalties or other legal income.

Income from the investment and any reinvestment shall enjoy the same protection as the investment.

3. The term "Investor" means :

- (a) Individuals possessing the nationality of either Contracting Party;
- (b) Legal entities, including companies, registered or unregistered corporations, and other organizations, which are constituted in accordance with the laws of that Contracting Party.

4. The term "territory" means.

(i) with respect to the Republic of Cameroon, the territory of the State of Cameroon and its maritime and submarine areas over which it exercises sovereignty, sovereign rights or jurisdiction in accordance with international law;

(ii) with respect to the Republic of Guinea :

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 Guinea in accordance with its national legislation or under international law.

Article 2. Scope of Application

This Agreement shall also cover, upon its entry into force, investments made before its entry into force by investors of one of the Contracting Parties in the territory of the other Contracting Party, in accordance with its laws and regulations, but it shall not cover disputes which may arise before its entry into force.

Article 3. Investment Promotion

1. Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by investors of the other Party in its territory.

2. Each Contracting Party shall endeavour to issue, in accordance with its laws and regulations, the necessary authorizations in connection with such investments, including for the purpose of executing licensing, technical, commercial or administrative assistance contracts, as well as authorizations required for the activities of consultants and experts.

Article 4. Treatment and Protection of Investments

1. Each Contracting Party undertakes to accord in its territory to investments of investors of the other Party fair and equitable treatment no less favorable than that accorded to investments of its own investors in accordance with its laws and regulations or to investments of investors of the most favored nation, whichever is more favorable.

2. Most-favored-nation treatment does not, however, extend to privileges which a Contracting Party accords to investors of a State by virtue of its participation in or association with a free trade area, customs union, common market or other form of regional economic organization, or a similar international agreement or a convention for the avoidance of double taxation in respect of taxes or any other convention relating to taxes.

3. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall enjoy the full protection and security of the latter. Each Contracting Party undertakes, without prejudice to its laws and regulations, to ensure that the management, maintenance, use, enjoyment or transfer in its territory of the investments of the other Contracting Party are not hindered by unjustified or discriminatory measures.

4. The extension, modification or transformation of an investment carried out in accordance with the laws and regulations in force in the host country shall be considered an investment.

Article 5. Compensation for Losses

1. Investors of a Contracting Party whose investments in the territory of the other Contracting Party have suffered losses due to war or any other armed conflict, revolution, national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, compensation, indemnification or any other settlement, treatment no less favourable than that accorded to its own investors or to investors of any third State. Payments resulting therefrom shall be freely transferable at the rate of exchange applicable on the date of transfer in accordance with applicable exchange rules.

2. Without prejudice to paragraph (1) of this Article, investors of a Contracting Party who, in one of the situations referred to in that paragraph, have suffered losses in the territory of the other Contracting Party as a result of

(a) the requisition of their assets by its forces or authorities, or

(b) the destruction of their assets by its forces or authorities, which was not the result of fighting or was not required by the situation, shall be granted restitution or adequate compensation. The resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer in accordance with the applicable exchange rules.

Article 6. Expropriation and Compensation

1. Investments of investors of a Contracting Party shall not be nationalized, expropriated or subjected to measures having

equivalent effect to nationalization or expropriation in the territory of the other Contracting Party, except for reasons of public interest and provided that such measures comply with legal requirements, are not discriminatory and result in the prompt payment of effective and adequate compensation. The compensation shall correspond to the market value of the investment concerned on the day before the measures are taken or made public, whichever comes first. It shall further include, if applicable, interest calculated at normal commercial rates until the date of payment, shall be fully realizable and freely transferable on the basis of the exchange rate applicable on the date of transfer in accordance with applicable exchange rules.

2. The investor concerned by the expropriation shall have the right to have a prompt review, within six months from the date of publication of the value of the compensation, in accordance with the law of the expropriating Contracting Party, by a judicial or other independent authority accepted by both parties, of his case and of the valuation of his investment in accordance with the principles set forth in this Article.

3. If a Contracting Party expropriates the assets of a company registered or incorporated under the laws in force in its territory and in which investors of the other Contracting Party hold shares, it shall ensure, in accordance with its laws, that such investors are compensated in accordance with paragraph (1) of this article.

Article 7. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee the free transfer in convertible currency of the net liquid assets relating to such investments and in particular :

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

(b) sums required for the repayment of loans relating to the investment

(c) proceeds from the sale or liquidation of the investment in whole or in part, including capital gains on the investment

(d) the indemnities due pursuant to Article 5 and 6;

(e) salaries and other remuneration accruing to citizens of a Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an investment.

2. The transfers referred to in paragraph 1 shall be made at the rate of exchange on the date of transfer in accordance with the regulations in force in the Contracting Parties.

Article 8. Subrogation

1. If under a legal or contractual guarantee covering non-commercial risks of investments, indemnities are paid to an investor of one of the Contracting Parties, the other Contracting Party recognizes the subrogation of the insurer in 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 rights which the investor could have exercised if the insurer had not been subrogated.

3. The transfer of the sums resulting from the above subrogation shall be governed by the provisions of Article 7.

4. Any dispute between a contracting party and the insurer of an investment of the other contracting party shall be governed by the provisions of Article 10 of this Agreement.

Article 9. 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 by diplomatic channels between the two Contracting Parties.

2. If the dispute cannot be settled through diplomatic channels within six months of the commencement of negotiations, it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. The said tribunal shall be constituted in the following manner: Each Contracting Party shall appoint an arbitrator, and the two arbitrators shall together appoint a third arbitrator who shall be a national of a third State having diplomatic relations with both Contracting Parties, as the Chairman of the tribunal. The arbitrators shall be appointed within three months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal. Arbitrators shall have two months to appoint the Chairman.

4. If the time limits laid down in paragraph (3) above have not been observed, 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 possesses 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 is a national 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 any of the Contracting Parties shall be invited to make the said appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and 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 shall bear the cost of the arbitrator it has appointed and of its representation in the arbitration proceedings and half the costs of the Chairman of the arbitral tribunal and other expenses.

6. Apart from the above the Tribunal shall establish its own rules of procedure.

Article 10. Settlement of Investment Disputes

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party, as far as possible be settled amicably through consultations and negotiations between the parties to the dispute.

2. In the absence of an amicable settlement through direct arrangement between the parties to the dispute within six months from the date of the written notification, the dispute shall be submitted at the choice of the investor:

a) either to the competent court of the Contracting Party in whose territory the investment has been made;

b) or for arbitration to the International Centre for Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature in Washington, D.C. on March 18, 1965.

c) or to an ad hoc arbitral tribunal which, unless otherwise arrangement between the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL)

3. No Contracting Party to a dispute may object, at any stage of the arbitration proceedings or of the execution of an arbitral award, to the fact that the investor, as an adverse party to the dispute, has received compensation for all or part of its losses under an insurance policy.

4. The arbitral tribunal shall decide the dispute on the basis of the national law of the Contracting Party to the dispute in whose territory the investment is located, as well as on the basis of the rules of conflict of laws, the provisions of this Agreement, the terms of any special agreements concluded with respect to the investment and the principles of international law.

5. The arbitral award shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the award according to its national law.

6. Each Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the Chairman of the tribunal for its function as well as the other costs of the arbitral tribunal shall be borne equally by each of the Parties.

Article 11. Miscellaneous and Final Provisions

1. Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or under existing international conventions or undertaken by both parties in the future, investors of the other Contracting Party may avail itself of the provisions that are most favourable.

2. This Agreement shall enter into force thirty days after the date of receipt of the latter of the two notifications to the fulfilment by the two Contracting Parties legislative procedures required in their respective countries.

This Agreement shall remain in force for a period of ten years and may be tacitly renewed for a further period of ten years.

3. This Agreement may be amended by agreement parties through an exchange of letters under the same conditions and deadlines as provided for in paragraph 2 above.

4. Each Contracting Party reserving the right to terminate this Agreement by written notification at least six months before the date of expiry of the current period of validity.

5. Upon the expiration of the validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of five years.

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

Done at.... on..... in two originals in the English and French languages, both texts being equally authentic. in case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF CAMEROON

Isabelle BASSUNG

Ambassador

FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA

(signature)