

# **AGREEMENT BETWEEN THE GOVERNMENT OF BURKINA FASO AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF MAURITANIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of Burkina Faso, on the one hand,

And

The Government of the Islamic Republic of Mauritania, on the other hand, hereinafter referred to as the "Contracting Parties"

DESIRING to intensify economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party;

CONSIDERING the beneficial influence that may exercise such an agreement with a view to improving the business contacts and to enhance confidence in the field of investment;

RECOGNIZING the need to promote and protect foreign investment in order to stimulate entrepreneurship; and promote economic prosperity of both contracting parties;

HAVE AGREED AS FOLLOWS

## **Article 1. Definitions**

For the purposes of this Agreement

1. The term investment means every asset any and all direct or indirect, in cash or in kind, invested or reinvested services in any sector of the economy.

The following shall be considered in particular, though not exclusively, as investments within the meaning of this Agreement:

- a) Movable and immovable property as well as any other rights in rem mortgages, such as security rights in rem, usufruits and similar rights;
- b) The actions, shares and any other forms of participation in companies;
- c) The rights of claim and all other rights relating to performance having an economic value;
- d) Intellectual property rights, such as copyrights, patents, industrial designs, trademarks, trade names, know-how, goodwill and other similar rights recognized by the national laws of each Contracting Party;
- e) The concessions under public law, including concessions to search for, extract or exploit natural resources, as well as any right conferred by law, by contract or by decision of the competent authorities in accordance with the law.

Any alteration of the form in which legal capital assets and other assets are invested or reinvested shall not affect their character as "investment" within the meaning of this Agreement.

Such investments shall be carried out in accordance with the laws and regulations in force in the host country.

If the investment is made by an investor through a body referred to in subparagraph (c) of paragraph 2 of article 1, in which it holds a participation in the capital, the investor shall cease to enjoy the benefits of this Agreement to the extent of such indirect participation provided, however, that these benefits are not if it has invoked the dispute settlement mechanism

provided for by another foreign investment protection agreement concluded by the Contracting Party in whose territory the investment is made.

2. The term "investor" means any natural or legal persons who invest in the territory of the State of the other Contracting Party in accordance with this Agreement:

a) Natural persons who, according to the law of both contracting parties (2), are considered to be its citizens

b) Legal entities, including companies, corporations and other organizations, business associations which are constituted or otherwise organised under the law of the two contracting parties and which has its head office and their effective economic activities in the territory of the State of the same Contracting Party;

c) Legal entities established in accordance with the law of any country which are directly or indirectly controlled by nationals of a Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party.

3. The term "returns" means the net income tax reported by an investment and in particular, though not exclusively profits, dividends, interests and licence fees.

4. The term "territory" means:

a) In respect of Burkina Faso; the territory under its sovereignty, including the territorial sea and underwater areas and other maritime and air space over which the mainland exercises in accordance with international law. the sovereign rights or jurisdiction.

b) With respect to the Islamic Republic of Mauritania, the territory of the Islamic Republic of Mauritania, including the territorial sea and the airspace above the territorial sea and territory over which the Islamic Republic of Mauritania has sovereignty and the contrigüe area, the continental shelf and the exclusive economic zone over which the Islamic Republic of Mauritania exercises sovereign rights or jurisdiction in accordance with its national law and international law

5. The term "companies" means:

Juridical persons referred to in subparagraph (b) of article 1, paragraph 2.

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

1. Each Contracting Party shall, as far as possible, promote investments in the territory of its State by investors of the other Contracting Party and admit such investments in accordance with its national laws and regulations. It will treat the investments in each case in a fair and equitable manner.

2. When a Contracting Party has admitted an investment made in the territory of its State by investors of the other Contracting Party, it shall grant, in accordance with its national laws and regulations, the necessary authorizations relating to this investment. For this reason, neither Contracting Party shall, subject to the measures strictly necessary for the maintenance of public order, hinder, by arbitrary or discriminatory measures, the administration, use, use or enjoyment of the investments of the Contracting Parties. nationals or companies of the other Contracting Party on its territory.

3. Returns from investments and in the event of their reinvestment in accordance with the legislation of one Contracting Party, shall enjoy the same protection as the original investment.

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

1. Each Contracting Party shall protect in the territory of its State investments made by investors of the other Contracting Party in accordance with its national laws and regulations, and shall not impede, by unjustified or discriminatory measures, the management, control, maintenance, use, enjoyment, growth, sale or liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment in the territory of its State for investments made by investors of the other Contracting Party. This treatment shall not be less favorable than that accorded by each Contracting Party to investments made in the territory of its State by its own investors or by investors of any third State, if the latter treatment is more favorable.

3. The treatment shall not extend to privileges granted by either contracting party to nationals or companies of any third country, either because of its membership in a customs union, economic or a common market or a free exchange zone or its association with either of them.

4. The treatment granted under the present article shall not apply to advantages accorded by a contracting party to nationals or companies of any third State by virtue of a double taxation agreement or any other arrangement relating to taxation.

## **Article 4. Freedom of Transfer**

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to investors, after the fulfilment of tax obligations, the free transfer in convertible currency of the liquid assets relating to these investments and in particular:

- a) Capital and additional funds necessary for the maintenance or extension of the investment;
- b) Income in accordance with article 1, paragraph (3) of this Agreement;
- c) Payments arising from borrowing or other contractual obligations assumed for purposes of an investment;
- d) The total or partial proceeds of sale, alienation or liquidation of an investment;
- e) Any compensation owed to an investor in accordance with article 5 of the Agreement.

The transfer shall be effected without delay into in force.

5. If it has not otherwise agreed with the investor transfers shall be made in accordance with the national laws and regulations in force of the Contracting Party in the territory of the State of which the investment has been made at the rate of exchange prevailing on the date of transfer.

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

1. Neither Contracting Party shall take, either directly or indirectly, measures of expropriation, nationalization or other measures of this nature or the same effect against investments of investors of the other contracting party unless the measures are taken for reasons of public interest, duly established by law, without discrimination and in accordance with due process.

2. The Contracting Party which would be required to take such action shall contribute to the claimant, without undue delay, fair and equitable compensation in the amount will correspond to the market value of the investment concerned on the day before the date on which the measures taken or are publicly available.

3. The provisions for the purpose of fixing and the payment of compensation shall be made in a prompt no later than at the moment of the expropriation. In the event of late payment, the compensation shall include interest at market conditions from the date of its receipt. The compensation shall be paid to investors in convertible currency and freely transferable.

4. Investors of one Contracting Party whose investments suffer damage or loss due to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection, or any similar event in the territory of the other contracting party benefit, on the part of this latter in a non-discriminatory manner and not less than that accorded to its own investors as regards restitution, indemnification, compensation or other remedies.

## **Article 6. Implementation**

This Agreement shall also cover, as regards the implementation of future investments made prior to its entry into force by investors of one Contracting Party in the territory of the other contracting party, in accordance with its laws and regulations. However, this Agreement shall not apply to disputes that may arise before its entry into force.

## **Article 7. Additional Obligations**

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 the parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its State territory by investors of the other contracting party.

## **Article 8. Subrogation**

1. If one contracting party or its designated agency makes payment to its own security under a financial investors against non-commercial risks in connection with an investment in the territory of the State of the other contracting party, the latter shall recognize, by virtue of the principle of the subrogation, assignment of any right or title to the former investor of that Contracting Party or its designated agency by it. The other Contracting Party shall be justified to deduct taxes and other obligations of public due and payable by the investor.
2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.
3. Any dispute between one Contracting Party and the insurer to an investment of the other Contracting Party shall be settled in accordance with the provisions of article 9 of this Agreement.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled amicably, as far as possible through consultations and negotiations between the parties to the dispute.
2. In the absence of an amicable settlement by 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) To arbitration or the International Centre for the 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 at Washington, on 18 March 1965.
  - c) An ad hoc 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).

To this end, each Contracting Party gives its consent irrevocable that any investment dispute may be submitted to the arbitration procedure.

3. Neither of the Contracting Parties, which are Party to the dispute, can raise as an objection, at any stage of the arbitration proceedings or of the execution of an arbitral award, on account of the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy.
4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party, Party to the dispute, in the territory of which the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreements to be concluded in connection with investment as well as the Principles of International Law.
5. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the award according to 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, between the two Contracting Parties through diplomatic channels.
2. If the dispute is submitted to a Joint Commission composed of the representatives of the Parties; it shall meet without delay and at the request of either party.
3. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations, it shall be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.
4. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute to an arbitration tribunal.
5. If the periods specified in paragraph (4) above have not been made, either Contracting Party may invite the President of

the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is unable to perform 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 either Contracting Party 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 Contracting Party shall be invited to make the necessary appointments.

6. 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.

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

8. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

## **Article 11. Entry Into Force, Validity and Expiration**

1. This Agreement shall be subject to ratification and 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 constitutional procedures in their respective countries.

It shall remain in force for a period of ten years. It may be revised in writing at the request of either contracting party (12) twelve months after notification to the other contracting party. Unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years each contracting party reserving the right to denounce it by written notification at least six months before the date of expiry of the current validation period.

2. The investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from the date of expiry referred to above.

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

Done at Brussels, on 18 May 2001, in duplicate copies in the English language, both texts being equally authentic.

In two originals each in French and Arabic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF BURKINA FASO

MINISTER OF TRADE, PROMOTION OF ENTERPRISE AND CRAFT.

Bedouma Alain YODA

Officer of the National Order

FOR THE GOVERNMENT OF REPUBLIC THE ISLAMIC OF MAURITANIA

THE MINISTER OF ECONOMIC AFFAIRS AND DEVELOPMENT

Mohamed Ould Nanv