

# **AGREEMENT between the Government of the French Republic and the Government of the Republic of Ghana on the Encouragement and Reciprocal Protection of Investments**

The Government of the French Republic and the Government of the Republic of Ghana, hereinafter referred to as the "Contracting Parties",

Desiring to enhance economic cooperation between the two States and to create favourable conditions for investments in Ghana and investment Ghanaians in France;

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the interest of their economic development,

Have agreed as follows:

## **Article 1.**

For the implementation of this Agreement;

1. The term "investment" means that every asset investment goods, rights and interests of all kinds, and particularly but not limited to:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits, guarantees and any other similar rights;
- b) Shares, stocks and other forms of participation, even minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;
- c) The obligations, rights and legitimate claims to any performance having economic value;
- d) Copyrights and industrial property rights, such as patents, licences, trademarks, industrial designs and models), technical processes, trade names and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources including those of the maritime area situated in contracting parties.

It is understood that such assets by means of investments already made or to be after the entry into force of this Agreement in accordance with the legislation of the Contracting Party in the territory or maritime area in which the investment is made. any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the legislation of the Contracting Party in the territory or maritime area in which the investment is made.

2. The term "national" means natural persons having the nationality of one of the Contracting Parties.

3. The term "companies" juridical means any person in the territory of one of the Parties in accordance with the legislation of contractantes. ceile-ci and having its registered office or directly or indirectly controlled by nationals of either Contracting Party, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

4. The term "returns" means all amounts yielded returns by an investment interests, such as profits, royalties or during a period of time.

The investment returns and in case of reinvestment, returns from their reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply:

- As regards the French Republic, in the territory of the French Republic including its territorial waters as well as the maritime area of the French Republic, hereinafter referred to as defined as the economic zone and the continental shelf extending beyond the limits of the territorial waters and on which the French Republic has, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources;

- In respect of the Republic of Ghana, in the territory of the Republic of Ghana including its territorial waters as well as the maritime area of the Republic of Ghana ciaprès, defined as the economic zone and the continental shelf extending beyond the territorial sea over which the Republic of Ghana, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources.

## **Article 2.**

Each Contracting Party shall promote and admit, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other party in its territory and in the maritime area.

## **Article 3.**

Each Contracting Party undertakes to ensure, in its territory and maritime area, fair and equitable treatment, in accordance with the principles of international law, for investments by nationals and companies of the other Party and to ensure that the exercise of the right so recognised is not hindered in law or in fact.

## **Article 4.**

1. Each Contracting Party shall apply, in its territory and in its maritime zone, to the or companies of the other Party, with respect to their investments and related activities to such investments, treatment no less favourable than that accorded to its nationals, or companies, or the treatment accorded to nationals or companies of the most-favoured-nation, if this one is more advantageous. In this respect, nationals authorised to work in the territory and in the maritime area of one of the Contracting Parties must be able to benefit from appropriate physical facilities for the exercise of their professional activities.

2. Such treatment does not, however, extend to the privileges which a Contracting Party grants to nationals or companies of a third State, by virtue of its participation or association in a free trade area, a customs union, a common market or any other form regional economic organization.

3. The provisions of this Article shall not apply to fiscal matters.

## **Article 5.**

Nationals or companies of one of the Contracting Parties whose investments will have suffered casualties as a result of war or any other armed conflict, revolution, national emergency or revolt occurring in the territory or maritime zone of the other Contracting Party, will receive treatment from the latter no less favourable than that granted to the former to its own nationals or companies or to those of the most favoured nation.

## **Article 6.**

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime area of the other Contracting Party.

2. The Contracting Parties shall not take measures of expropriation or nationalisation or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them, in their territory, and in their maritime area, except in the public interest and on condition that such measures are not discriminatory.

Any dispossession measures that may be taken must give rise to the payment of a fair and adequate indemnity, the amount of which, calculated on the real value of the investments concerned, must be assessed in relation to a normal economic situation prior to any threat of dispossession.

Such compensation, its amount and the terms of payment shall be fixed no later than the date of dispossession. Such

compensation shall be effectively enforceable, paid without delay and freely transferable. Until the date of payment, it earns interest calculated at the rate of appropriate market.

## **Article 7.**

1. Each Contracting Party, in whose territory or maritime zone investments have been made by nationals or companies of the other Contracting Party, shall grant such nationals or companies free transfer :

- a) Interest, dividends, profits and other current income;
- b) Royalties derived from the intangible rights referred to in paragraph 1 (d) and (e) of this Article; and Article 1;
- c) Payments made for the repayment of loans duly contracted;
- d) Proceeds from the sale or liquidation of the investment, in whole or in part, including the proceeds from the sale or liquidation of the investment, including capital gains;
- e) Compensation for loss of possession or loss as provided for in Articles 5 and 6 above.

The transfers referred to in the preceding paragraphs shall be effected without delay at the rate of exchange normal officially applicable on the date of transfer.

2. Nationals of each of the Contracting Parties who have been authorised to work on the territory or in the maritime zone of the other Contracting Party, in respect of an investment approved, are also authorised to transfer to their country of origin an appropriate share of their remuneration.

## **Article 8.**

To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case examination, to investments made by nationals or companies of that Party in the territory or maritime area of the other Party.

Investments by nationals and companies of one of the Contracting Parties in the territory or maritime area of the other Party may not obtain the guarantee referred to in the above paragraph unless they have first obtained the approval of the latter Party.

## **Article 9.**

Any investment dispute between one of the Contracting Parties and a national of a Contracting Party shall be settled in accordance with the provisions of this Agreement. or a company of the other Contracting Party shall be settled amicably between the two Parties concerned.

If such a dispute has not been settled within six months from the time when it was raised by either of the parties to the dispute, it shall be submitted at the request of either party to the dispute of these parties to international arbitration. At the choice of the national or the company, this dispute is submitted:

- the International Centre for Settlement of Investment Disputes; or (ICSID), established by the Convention on the Settlement of Investment Disputes between States and nationals of other States, signed in Washington on 18 March 1965;
- or to an ad hoc arbitration tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law.

## **Article 10.**

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime area of the other Party, makes payments to one of its nationals or to one of its companies, it is thereby subrogated to the rights and shares of that national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to international arbitration in accordance with Article 9 or to pursue claims brought before it until the proceedings have been concluded.

## **Article 11.**

Investments for which one of the Parties has made a particular commitment nationals and companies of the other Contracting Party shall be governed, without prejudice to any other provision of this Agreement, by the terms of this undertaking to the extent that where the latter contains more favourable provisions than those laid down in this Agreement.

## **Article 12.**

1. Disputes between Contracting Parties concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.
2. If the dispute is not settled within six months from the date on which it was raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.
3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall designate one member, and the two members shall designate, by common agreement, a national of a third State who is appointed President of the Tribunal by both Contracting Parties.

All the members shall be appointed within two months from the date on which they are appointed. In which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party, or if for some other reason he is prevented from performing this function, the most senior Vice-President who is not a national of one of the Contracting Parties shall make the necessary appointments.

5. The Arbitral Tribunal shall take its decisions by majority vote. Such decisions shall be final and enforceable by operation of law for the Contracting Parties.

The Tribunal shall itself determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, having regard to special circumstances, the costs of the arbitral proceedings, including the fees of the arbitrators, shall be shared equally between the Contracting Parties.

## **Article 13.**

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years. It shall remain in force after the term unless one of the Parties denounces through diplomatic channels with one year notice.

At the end of the period of validity of this Agreement, investments made while it was in force shall continue to benefit from the protection of its provisions for a further period of ten years.

Done at Paris on 26 March 1999 in two originals, each in French and English languages, both texts being equally authentic.

For the Government of the French Republic:

Jacques Dondoux

Secretary of State for Foreign Trade

For the Government of the Republic of Ghana:

Johu Abu

Minister of Trade and Industry