

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

The Government of the Republic of Guinea and the Government of the Republic of Mali, hereinafter referred to as "the Contracting Parties".

Desiring to develop and strengthen their long-term economic and industrial cooperation and in particular to create favourable conditions for investors from one Contracting Party to invest in the territory of the other Contracting Party.

Recognising the need to protect investments made by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiatives, with a view to promoting the economic prosperity of both Contracting Parties.

Have agreed as follows:

Article 1. Definitions

Under the terms of this Agreement :

1. The term "investments" means all kinds of funds placed by the Investor of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the latter's legislation in force. It concerns in particular, but not exclusively :

(i) movable and immovable property, as well as any right of ownership in rem, including mortgages, pledges or guarantees ;

(ii) shares, bonds and other securities of value and all other forms of participation in a company ;

(iii) financial claims and liabilities and other claims arising from contracts having an economic value;

(iv) intellectual property rights, such as copyrights and other similar rights, industrial property rights such as patents, licences, plans or models, trademarks, intangible assets, technical processes and know-how;

(v) concessions granted in accordance with the legislation in force in the Contracting Party in whose territory the investments are made, including concessions for the exploration, extraction and exploitation of natural resources.

A change in the form of an investment shall not entail a change in its nature as an investment.

2. The term "income" refers to income resulting from investments. It covers, inter alia, profits, capital gains, dividends, interest, royalties, rights, patents and licences, and other similar charges.

3. The term "investor" means :

(i) any natural person of the nationality of one of the Contracting Parties investing in the territory of the other,

(ii) any established legal person, government agency, firm, or association of firms, incorporated or constituted under the laws in force in either Contracting Party and having their headquarters in the territory of the other Contracting Party.

4. The term "territory" means the area within the land frontiers, the area of the sea, the seabed and subsoil thereof outside the territorial waters subject to the sovereign right or jurisdiction of a Contracting Party in accordance with its national law or international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and create favourable conditions for investors of the other Contracting Party in its territory and shall authorize the investments in question in accordance with the legislation in force.

2. Investments thus made by investors of each Contracting Party shall enjoy, at all times, in the territory of the other Contracting Party, fair and equitable treatment, protection and full security.

Article 3. National Treatment

1. Each Contracting Party shall accord in its territory to investments of the other Party treatment no less favourable than that accorded to domestic investors or to investors of a third State, whichever is the more favourable.

2. Each Contracting Party shall ensure in its territory to investors of the other Party, in the management, maintenance, operation and enjoyment of their investments, treatment no less favourable than that accorded to domestic investors or that accorded to investors of a third State, whichever treatment is the more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed as an obligation on the part of either Contracting Party to grant to investors of the other a more favourable, preferential or privileged treatment which the first Contracting Party may grant.

(i) a customs union, free trade area, monetary union or other similar international agreement establishing such unions or other forms of regional co-operation to which either Contracting Party has acceded or may accede.

(ii) any international agreement or arrangement relating wholly or in part to taxation matters.

Article 4. Compensation for Losses

1. Investors of one of the Contracting Parties whose investments placed in the territory of the other Party have suffered losses as a result of armed conflict, a state of emergency, mutiny, uprising or disturbance in that territory shall be accorded, as regards compensation, indemnification, refund or another form of relief for losses, treatment no less favourable than that accorded to national investors or those of any third country. Payments under the above will be made within the agreed time frame and will be freely transferable.

2. Without prejudice to the provisions of paragraph 1, investors of one of the Contracting Parties who have suffered losses in the territory of the other Party in any of the above-mentioned situations as a result of :

(i) the seizure by the authorities of the other Contracting Party of property belonging to them,

(ii) the destruction of property belonging to them by the authorities of the other Contracting Party which was not caused by the fighting and was not imposed as a result of the situation shall be granted the possibility of transfer of funds or shall be entitled to corresponding compensation. Payments in respect of the foregoing shall be made within your agreed time limits and shall be freely transferable.

Article 5. Expropriation

1. Funds invested by investors of either Party shall not be nationalized, expropriated or subjected to any measure having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except in the public interest. The expropriation shall be carried out lawfully on a non-discriminatory basis in exchange for adequate compensation to be paid immediately. The amount of compensation shall correspond to the current price of the expropriated investments in force immediately before the expropriation or before the imminence of the expropriation becomes known, whichever occurs first. This amount shall bear interest calculated in accordance with LIBOR at six months for the period up to the day of settlement. Payment shall be made immediately and the amount shall be freely transferable.

2. An investor who has suffered loss shall be entitled, in accordance with the legislation of the Contracting Party applying expropriation, to have his claim immediately examined by the competent authorities of that Party and to have his investments evaluated in accordance with the principles of this paragraph.

Article 6. Transfers

1. Each Contracting Party shall guarantee to the investors of the other, after the fulfilment by the latter of their fiscal and other obligations, subject to the legislation in force in the former, the free transfer of payments made in respect of the investments in question and, in particular, but not exclusively :

a. capital and additional funds intended to maintain or increase the funds invested ;

- b. income from the activity;
- c. funds derived from the repayment of loans;
- d. income from the sale or liquidation of investments;
- e. amounts settled under Articles 4 and 5 of this Agreement.

2. The transfers referred to in paragraph 1 of this Article shall be made within the agreed time-limit, in convertible currency, at the rate of exchange valid on the day of transfer in the territory of the Party concerned.

Article 7. Subrogation

1. Where one of the Contracting Parties or its representative has made payments to its own investors by way of guarantee in respect of investments made in the territory of the other Contracting Party, the latter shall recognise :

- (i) the rights or claims of the investors of the first Contracting Party or of the institution designated by it, and the assignment to the first Contracting Party or its representative of all rights and interests of the investor so compensated;
- (ii) The first Contracting Party or the institution subrogated has it, as having the power to exercise the rights or claims due to the investors, and shall assume the obligations relating to the investments.

2. The rights or claims subrogated may not exceed those of the investor.

3. Subrogation of the rights and obligations of an indemnified investor shall also cover transfers of payments made in accordance with the provisions of Article 6 of this Agreement.

Article 8. Precautionary Measures

1. This Agreement shall not prevent the application by each Contracting Party of measures necessary for the maintenance of law and order and morals, the fulfilment of its obligations in connection with the maintenance or 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 set out below.

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

1. Solutions to disputes between one Contracting Party and investors of the other Party concerning the obligations of the latter Party under this Agreement with respect to investments made by investors of the former Party shall be sought, to the greatest extent possible, by negotiation.

2. Should the disputes referred to in paragraph 1 of this Article not be settled within six months of negotiations, either Party shall have the right to submit the case to the competent court of the Contracting Party which is at the same time a party to the dispute.

3. If the provisions of paragraph 2 of this article are not applied, either Party to the dispute shall have the right to submit the case to arbitration:

(i) an ad hoc Arbitral Tribunal, in accordance with the Arbitration Rules of the United Nations Commission on Commercial Law (UNCITRAL);

(ii) or the International Centre for Settlement of Investment Disputes (ICSID), if both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965.

4. The decision thus pronounced shall be final and binding on both parties to the dispute and shall be enforced in accordance with the legislation in force in the Contracting Party in whose territory the investments have taken place.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute arising out of the interpretation or application of this Agreement shall be settled to the greatest extent

possible by negotiation between the Parties.

2. If, after six months from the beginning of the negotiations, the negotiations have not been concluded, the matter shall, at the request of either Party, be submitted to arbitration.

3. The Arbitration Court referred to in paragraph 2 above shall be set up on an ad hoc basis, on a case-by-case basis, in accordance with the following procedure: within three months of receipt of the request for arbitration, each of the Contracting Parties shall appoint one member of the Arbitration Court. These two members shall, within two months, appoint a third member who shall be a national of a third country. With the agreement of the two Contracting Parties, the latter shall assume the chairmanship of the arbitration.

4. Should the Arbitration Court not be constituted within the time limits laid down in the preceding paragraph, either Contracting Party may, failing any other arrangement, have recourse to the International Court of Justice and request its President to make the necessary appointments. Should the President be a national of one of the Parties or be prevented from carrying out his functions, the Vice-President shall be requested to appoint the above-mentioned officials. Should the Vice-President again prove to be a national of one of the Contracting Parties or be prevented from carrying out the task entrusted to him, the request for appointment shall be addressed to the first in the order of precedence - members of the International Court of Justice who are not nationals of any of the Contracting Parties.

5. The Arbitration Court shall take its decisions on the basis of the provisions of this Agreement and in accordance with the generally recognized principles and rules of international law. The decisions of the arbitration shall be taken by a majority of votes. They shall be final and binding on both Contracting Parties. The Court is called upon to establish its own rules of procedure.

6. Each Contracting Party shall bear the costs of its representative and of the latter's participation in the work of the arbitration. The costs of the chairmanship and other costs inherent in the arbitration shall be borne equally by the two Parties.

Article 11. Application of other Provisions

Should the national laws of the Contracting Parties, or existing or future agreements between the Contracting Parties or international agreements signed by the Contracting Parties contain provisions reserving to investments made by investors of any of them, a more favourable treatment than that provided for in this Agreement, the laws and agreements referred to above shall - to the extent that they are more favourable - take precedence.

Article 12. Consultations

If necessary, the representatives of the Contracting Parties shall meet for consultations on matters concerning the application of this Agreement. Consultations shall take place on the proposal of one of the Parties, at a place and date to be agreed through diplomatic channels.

Article 13. Entry Into Force, Duration and Expiration of the Agreement

1. This Agreement, which is subject to ratification, shall enter into force on the day of the exchange of the instruments of ratification.

2. This Agreement shall be concluded for a period of ten years and shall be tacitly renewable for further successive periods of five years unless one of the Contracting Parties has informed another in writing at least twelve months before the expiry date that it wishes to terminate it.

3. For investments made before the date of expiry of this Agreement, the provisions laid down in Articles 1 to 12 shall continue to apply for a period of ten years after that date.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Brussels on 18.05.01 in two originals in the French language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA

Hadja Mariama Déo BALDE

Minister of Trade, Industry and SMEs.

FOR THE GOVERNMENT OF THE REPUBLIC OF MALI