

Agreement on the encouragement and protection of investments between the Kingdom of the Netherlands and the Republic of Senegal

The Government of the Kingdom of the Netherlands

And

The Government of the Republic of Senegal

Desiring to strengthen economic cooperation between the two countries;

Having regard to the Agreement on economic and technical cooperation between the Kingdom of the Netherlands and the Government of the Republic of Senegal, signed at Dakar on 12 June 1965;

In order to create favourable conditions for investment capital by nationals and companies of one of the two States in the territory of the other State and recognising that the encouragement of such investment is likely to stimulate business initiative and will increase prosperity of both nations,

Have agreed as follows:

Article 1.

- 1) The term "investment" includes all categories of goods, including all categories of rights and interests
- 2) The term "proceeds" means the amounts made by way of profit or interest on capital investment.
- 3) The term shall comprise nationals with regard to either contracting party to natural persons having the nationality of that Contracting Party in accordance with its law.
- 4) The term "" refers companies with regard to either Contracting Party:
 - a. Without prejudice to the provisions of subparagraph (b) below, legal persons constituted in accordance with the law of that Contracting Party;
 - b. Legal persons directly or indirectly controlled by nationals of that Contracting Party but constituted in accordance with the law of the other contracting party.

Article 2.

Each Contracting Party shall, in accordance with its laws and admit, promote investments in its territory of nationals and companies of the other contracting party.

Article 3.

Neither Contracting Party shall subject nationals and companies of the other contracting party as regards their investments in the territory of the Party, employment and economic performed in connection with such investments, management and administration, maintenance, use and the use of such investments, under conditions no less favourable than those of its own nationals or companies or those of third States.

Article 4.

- 1) The investments made by companies and nationals of one Contracting Party shall enjoy, in the territory of the other

contracting party, of a full protection and security.

2) Nationals and companies of one Contracting Party shall not be expropriated, directly or indirectly, of their investments in the territory of the other contracting party except for public purposes, under due process, non-discriminatory and fair compensation.

Compensation shall correspond to the real value of the investment in question, be scheduled and paid without undue delay; it shall be freely transferable realisable effectively and in the currency of the country of the national or company or affected in any other convertible currency. the legality of the measures referred to above and the amount of compensation shall be audited by an ordinary judicial procedure without prejudice to the provisions of articles 10 and 11 of this Agreement.

3) If nationals and companies of one contracting party, due to suffer under a war or any other armed conflict, revolution or riot in the territory of the other Contracting Party, loss of investment capital is located, they shall receive from this latter Contracting Party, as regards compensation, restitution, compensation or other treatment indemnities, which shall not be less favourable than that accorded to nationals and companies of that Party. with regard to the transfer of such payments, the Contracting Parties shall provide each other to grant rights of nationals and companies of the other contracting party a treatment which shall not be less favourable than that accorded to similar rights of nationals and companies of any third State.

Article 5.

The provisions of articles 3 and 4 of this Agreement shall also apply to products of investment capital.

Article 6.

In accordance with the principle of freedom of transfer and in accordance with its laws, each Contracting Party shall permit nationals and companies of the other Contracting Party to transfer without any restriction or undue delay, to the country of the other contracting party of the capital invested, dividends and products of every kind of assets invested, as well as the proceeds from the liquidation or the attainment of their assets. the transfer shall be effected in the currency which was made at the time of creation of investment; if the investment has been made in kind, the transfer shall be effected in a freely convertible currency determined by agreement between the parties.

Article 7.

The Contracting Party in whose territory an investment is approved by the investment has been made, for which a financial guarantee against non-commercial risks has been granted by the other Contracting Party or by one of its nationals, shall recognize the subrogation of the guarantor in the rights of the investor who is transferred under the guarantor's obligation to make a contribution to the investor for the damages.

Article 8.

If the legislation of either Contracting Party or international obligations existing at present or future basis between the Contracting Parties in addition to the present Agreement, a regulation that it is granted to investments made by nationals or companies of the other contracting party to more favourable treatment than that provided for under this Agreement, it shall not affect the rules in question. each Contracting Party shall observe any other obligations relating to investments made in its territory by nationals or companies of the other Contracting Party, which it has undertaken.

Article 9.

Without prejudice to any special tax advantages accorded by either contracting party by virtue of any international agreement for the avoidance of double taxation, by virtue of its participation in a union-douanière, an economic union or similar institutions, or on the basis of reciprocity, the Contracting Parties shall, as regards taxes, duties and taxes as well as the granting of exemptions and tax deductions, to nationals of the other contracting party engaged in economic activities in its territory which treatment shall not be less favourable than that accorded to its own nationals or to nationals of other States, if the latter is more favourable treatment to the taxable.

Article 10.

The Contracting Party in whose territory a national of the other contracting party performs or intends to make an

investment shall grant to any request from the national to submit to arbitration or conciliation, any dispute which may arise in connection with that investment at the centre established under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

Article 11.

- 1) Disputes concerning the interpretation or application of this agreement should, if possible, be settled by the Governments of the two contracting parties.
- 2) If a dispute cannot be settled in this way, it will be submitted to an arbitral tribunal at the request of one of the two contracting parties.
- 3) The arbitral tribunal shall be constituted ad hoc; each Contracting Party shall appoint one member and these two members as Chairperson shall agree to select a national of a third State to be appointed by the Governments of the two contracting parties. the members shall be appointed within two months and the Chairman within three months after one of the Contracting Parties has notified the other that it intends to submit the dispute to an arbitration tribunal.
- 4) If the periods specified in paragraph 3 of this article are not observed and in the absence of any other agreement, each Contracting Party may request 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 he is otherwise prevented, the Vice-President should make the necessary appointments. if the Vice-President is also a national of either Contracting Party or if he is also prevented, the member of the Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.
- 5) The arbitral tribunal shall reach its decisions by a majority of votes. these decisions shall be binding. each Contracting Party shall bear the costs of its own arbitrator and its representation in the proceedings before the arbitral tribunal; the cost of the Chairman and the remaining costs shall be borne in equal parts by both contracting parties. the arbitral tribunal may fix a different regulation concerning costs. the arbitral tribunal shall address its own procedure.
- 6) The Tribunal shall decide on the basis of respect for the law.
- 7) If the parties agree, the Tribunal shall decide ex aequo et bono.

Article 12.

- 1) Each of the Contracting Parties shall notify each other of the completion of the constitutional procedures required for the entry into force of this Agreement shall enter into force on the date of the last notification.

This Agreement shall remain in force for a period of ten years and shall be extended indefinitely unless denounced in writing by either contracting party one year before its expiration. at the end of the period of ten years, this Agreement may be denounced at any time, but it shall remain in force for a period of one year from the date of its termination.

- 2) In respect of the Kingdom of the Netherlands, this Agreement shall apply to the territory of the Kingdom in Europe and the Netherlands Antilles.
- 3) Taking into account the periods referred to in paragraph 1 of this article, the Government of the Kingdom of the Netherlands may terminate separately for the implementation of this Agreement in respect of the Netherlands Antilles.
- 4) In respect of investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 11 shall continue to apply for a further period of ten years from the date of termination of this Agreement.

Article 13.

On the date of entry into force of this Agreement, the provisions of this Agreement shall repeal articles 3, 4, 5, 5a and 5b, 10 regarding investments referred to in the agreement on economic and technical cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Senegal, signed at Dakar on 12 June 1965.

In WITNESS WHEREOF the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done at [place] on [date] in duplicate in the English language.

