

AGREEMENT BETWEEN THE GOVERNMENT OF BURKINA FASO AND THE GOVERNMENT OF THE REPUBLIC OF GHANA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Burkina Faso, on the one hand,

And

The Government of the Republic of Ghana, on the other hand, hereinafter referred to as the Contracting Parties.

Desiring to create conditions conducive to increased investment of nationals and companies of one State in the territory of the other State,

Recognising that the encouragement and reciprocal protection under an international agreement will stimulate private business initiatives and increase prosperity in both States.

Have AGREED AS FOLLOWS

Article 1. Definitions

1. FOR THE PURPOSES OF THIS AGREEMENT

a) The term "investment" shall mean any element of assets and, in particular, though not exclusively:

- 1) ownership of movable and immovable property and any other rights such as mortgages, liens or pledges;
- 2) stocks, shares and debentures of a company and any other form of participation in a company;
- 3) debt rights and all other rights relating to performance having an economic value;
- 4) intellectual property rights, know-how technical processes, and all similar rights recognized by the national laws of the two contracting parties;
- 5) business concessions granted by law or under contract, including concessions to search, culture, extract or exploit natural resources;

A change in the form in which assets are invested shall not affect their character as an investment, provided that such change is not contrary to the legislation of the Contracting Party in whose territory the investment has been made. The term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement.

b) The term "returns" means the amounts reported by an investment and in particular, though not exclusively, interests, capital gains, profits, dividends, royalties and fees;

c) The term "national" means

- 1) as regards Burkina Faso: persons whose status as nationals of Burkina Faso derives from the legislation in force in Burkina Faso.
- 2) as regards the Republic of Ghana: natural persons whose status as Ghanaian nationals derives from the legislation in force in the Republic of Ghana;

d) The term "company" means

- 1) as regards Burkina Faso: firms or associations, companies incorporated or constituted in accordance with the legislation in force in Burkina Faso.

2) as regards the Republic of Ghana: firms or associations, companies incorporated or constituted in accordance with the legislation in force in the Republic of Ghana;

e) The term "territory" means

1) as regards Burkina Faso: the territory under the sovereignty of Burkina Faso, including the territorial sea, as well as the seabed and subsoil, air space and maritime areas over which Burkina Faso may exercise, in accordance with international law, sovereign rights or jurisdiction.

2) as regards the Republic of Ghana: the territory of the Republic of Ghana, including the territorial sea and the airspace, as well as any maritime area beyond the territorial sea of the Republic of Ghana which has been or may hereafter be designated under the laws of the Republic of Ghana and in accordance with international law as an area within which the Republic of Ghana may exercise rights with respect to the seabed and subsoil and their natural resources.

Article 2. Investment Promotion

Each Contracting Party shall encourage companies and nationals of the other contracting party to invest capital in its territory and create favourable conditions for this purpose, and admit such investments in accordance with its national laws and regulations.

Article 3. Protection of Investments

1. Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security and appropriate in the territory of the other contracting party.

2. No Contracting Party shall in any way hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment or disposal of investments of nationals or companies of the other contracting party in its territory.

3. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other contracting party.

Article 4. Most-favoured Nation

1. No Contracting Party shall in its territory or returns to investments of nationals and companies of the other contracting party treatment no less favourable than that which it accords to investments or returns of nationals or companies of any third State.

2. No Contracting Party shall in its territory to nationals or companies of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded to nationals or companies of any third State.

3. The most-favoured-nation clause does not extend to the privileges granted by either contracting party to nationals or companies by virtue of any third State

a) Membership in a customs union, a common market or a free trade area or any existing or future regional economic organization or measures leading to the formation of a customs union or free trade area of either Contracting Party which is or may become a party, or

b) An international agreement or arrangement or any domestic legislation relating wholly or partially to taxation.

Article 5. Compensation for Losses

Nationals or companies of one Contracting Party whose investments have suffered losses in the territory of the other contracting party due to war or any other armed conflict, revolution, state of emergency, national revolt riot, insurrection or occurring in that territory will be accorded by the other contracting party, as regards restitution, indemnification, compensation or any other consideration, treatment no less favourable than that accorded by the other Contracting Party to companies or to nationals of a third State. resulting payments shall be freely transferable.

Article 6. Compensation for Expropriation

1. Investments of companies or nationals of either Contracting Party shall not be subjected to any expropriation, or

nationalisation measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation) in the territory of the other contracting party except for reasons of public interest, in which case the expropriating Contracting Party to investments of nationals or companies of the other Contracting Party, shall accompany the measure of expropriation by

a) The Compensation and Full genuine value of the expropriated investment immediately before the expropriation or before the impending expropriation shall be made public, whichever is sooner.

b) The compensation shall be paid without undue delay. such compensation shall not be paid within six months from the date of its determination, it will produce interest at a normal commercial rate from that date until the date of payment.

2. A national or company affected by expropriation shall have a right under the law of the Contracting Party involved in the expropriation, to prompt review by a judicial or other independent authority of that party of its case and the valuation of its investment in accordance with the principles set out in paragraph 1 of this article.

3. Where a contracting party expropriating the assets of a company which has incorporated or constituted under the law in force in any part of the territory of that Party and in which nationals or companies of the other contracting party own shares, the provisions of paragraph 1 and 2 of this article shall be applicable.

Article 7. Free Transfer

Each Contracting Party shall, in respect of investments, shall guarantee to nationals or companies of the other Contracting Party the free transfer of their investments and returns as defined in article 1 of this Agreement in their country of residence. transfers of currency shall be effected without undue delay in the convertible currency in which the capital was originally invested in convertible currency or any other agreed to by the investor and the Contracting Party concerned, whilst taking into account the right of the former contracting party from applying in an equitable manner and in good faith such measures as may be necessary to protect the integrity and independence of its currency of its external financial situation and its balance of payments. unless otherwise agreed, the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 8. Subrogation

1. If a Contracting Party or its designated agency makes payment under given an indemnity in respect of an investment made in the territory of the other Contracting Party, that Party shall recognize the first assignment to the contracting party or its designated agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such securities on the basis of the principle of subrogation to the same extent as the party indemnified.

2. The first Contracting Party or its designated agency by it shall be prétendre. in all circumstances, in respect of the rights and securities acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims, treatment as the party was entitled to receive indemnified by virtue of this Agreement in the light of the concerned and its related investment returns.

3. The first Contracting Party may freely dispose of any payments received by it or by a body designated by it in accordance with the acquired rights and claims in order to address all expenses incurred in the territory of the other contracting party.

Article 9. Settlement of Disputes with Respect to Investments between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between a national or company of a Contracting Party and the other contracting party concerning an obligation of the latter under this Agreement in connection with an investment of the investor of the first Contracting Party which have not been settled amicably shall be submitted, at the end of a period of six months from notification of a written claim, primarily to the competent court of the Contracting Party whose decisions or to an international arbitration if either party to the dispute so wishes.

2. Where the dispute is déferé to international arbitration, the investor and the Contracting Party concerned may by mutual agreement to refer the dispute

a) The International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965 and the additional facility for the administration of conciliation, arbitration and findings of fact; or

b) An international ad hoc arbitrator or arbitral tribunal to be established by a special agreement between the parties or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

3. If within a period of six months from written notification of the claim there is no agreement on one of the procedures mentioned above, the parties to the dispute shall be bound to submit the dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in force. The parties to the dispute may agree in writing to modify these rules.

4. The Contracting Party which is a party to a dispute may not at any stage of the proceedings invoke to justify its immunity or the fact that the investor has received compensation under an insurance contract, representing all or part of the incurred damage or loss.

Article 10. Disputes between the Contracting Parties

1. Disputes between the contracting parties relating to the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties thus cannot be settled within six months, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The two arbitrators so nominated shall select a national of a third State, with the consent of both Contracting Parties shall be appointed Chairman of the Tribunal. This shall be appointed within two months from the date of appointment of the other two members of the arbitral tribunal.

4. If within the periods specified in paragraph 3 of this article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make such appointments. If the President of the Court is a national of either Contracting Party or is otherwise prevented from discharging this task, the Vice President shall be invited to do so. If the Vice-President is a national of either Contracting Party or is prevented from discharging this task, the member of the International Court of Justice in its continued authority and who is a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal will decide by a majority of votes. The decision shall be binding on both contracting parties. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. However, the court may specify in its judgement that a higher proportion of costs shall be borne by one of the two parties.

The decision and this decision shall be binding on both contracting parties. The Tribunal shall select its own procedure.

Article 11. Consultations

The representatives of the Contracting Parties shall, where appropriate, meet to review the implementation of this Agreement. These meetings will be held on the proposal of one of the Contracting Parties at a place and date agreed upon through diplomatic channels.

Article 12. Application of other Rules

If the legislation of either Contracting Party or obligations under international law existing at present or hereafter established between the Contracting Parties in addition to this Agreement contain rules) whether general or specific, to which returns of investments and investors of the other contracting party to more favourable treatment than that accorded by this Agreement, such rules in relation to the extent that they are more favourable prevail over this Agreement.

Article 13. Application of this Agreement

This Agreement shall apply to investments made before or after its entry into force by investors of one Contracting Party in the territory of the other contracting party. It does not, however, apply to the various relating to an investment which occurred prior to its entry into force.

Article 14. Entry Into Force , Duration and Termination

1. This Agreement shall enter into force on the date of receipt of the last notification by which the Contracting Parties shall notify in writing of the completion of the procedures required by their national legislation. It shall remain in force for an initial period of ten (10) years. This Agreement may be amended in writing by either contracting party twelve (12) months after notification to the other contracting party. Unless it can be terminated by either contracting party at least six (6) months before the end of the period of validity, whenever it shall be extended for a further period of ten (10) years under the same conditions.

2. In the event of termination of this agreement will have been formally notified, the provisions of articles 1 to 13 of this Agreement shall remain in force for a further period of ten (10) years in respect of investments made prior to the date of termination of this Agreement.

In WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Brussels on 18 May 2001 in two originals in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF BURKINA FASO,

THE MINISTER OF TRADE, PROMOTION OF ENTERPRISE AND CRAFTSMANSHIP

Bedouma Alain YODA

Officer of the National Order

FOR THE GOVERNMENT OF THE REPUBLIC OF GHANA,

THE AMBASSADOR, PERMANENT REPRESENTATIVE, PERMANENT MISSION OF THE REPUBLIC OF GHANA TO THE UNITED NATIONS OFFICE IN GENEVA.

H.E. Mr. Kobina WUDU