

Agreement between the Government of the State of the Arab Republic of Egypt and the Government of Republic of Niger on the Promotion and Reciprocal Protection of Investments

The Government of the Arab Republic of Egypt and the Government of Republic of Niger hereinafter referred to as the Contracting Parties,

Intending to create favourable conditions for the realization of investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments on the basis of the present Agreement shall stimulate the flow of capital and contribute to the development of the mutually beneficial trade and economic, scientific and technical co-operation,

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1. The term "Investment" shall mean Funds such as assets associated with any form of economic activity in general and not limited to:

(a) Movable property and property rights related to Mattel mortgage liens, forms of utilization, pledge, guarantees and other similar rights;

(b) Stocks and all forms of contribution in the capital even if simple majority and its direct and indirect revenues for the companies established in the province and in the territorial waters of any of the Contracting Parties;

(c) Claims to money invested and rights arising from participation for the purpose of creating economic values;

(d) Exclusive rights to intellectual property: copyrights, patents, utility models, industrial designs, non-commercial models, technological processes, and know-how;

(e) Rights conferred by law or by a contract to conduct business activity related in particular to exploration, development, extraction and exploitation of natural resources including those located in the territorial waters of the Contracting Parties.

Any change in the form of investments shall not affect their character as investments if such change is in compliance with the legislation of the Contracting Party in the territory or in the territorial waters of which the investments were made;

2. The term "returns" indicates the amounts yielded from particular investments and include in particular profit, dividends, interest, and other equivalents;

3. The term "national" means natural persons who obtained the nationality of one of the two countries.

4. The term "company" means all legal persons, as well as all commercial companies or other companies established according to the regulations in force in the state and its headquarters in the territory of that State.

This agreement shall apply on the territory of each Contracting Party, as well as marine areas outside the territorial waters in which both parties practiced sovereign rights and jurisdiction in accordance with international law.

Article 2. Encouragement of Investment

1. Each Contracting Party shall accept and encourage investments located in a province by the citizens and companies of the

other Contracting Party in accordance with its laws, and gives them at any state fair and equitable treatment.

2. No Contracting Party may take arbitral or discriminatory measures in its territory that impede the investments of the citizens or the companies of the other Contracting Party in the management, use or utilization.

3. Investment returns in the case of re-investing will benefit the same protection as the original investment, according to the laws of the Contracting Party concerned.

Article 3. Protection of Investments

1. Investments of citizens or companies of either Contracting Party in the other Contracting Party region would benefit of full protection and security.

2. Investments of citizens or companies of either Contracting Party shall not be subject in the territory of the other Contracting Party to actions of expropriation, nationalization, or other measures having a similar effect and remove them directly or indirectly.

3. If the public or national interest calls for an exception of the above paragraph 2 of this Article, the following conditions should apply:

(a) Actions shall be taken following a legal procedure.

(b) Measures shall not be discriminatory.

(c) These procedures shall provide for the payment of immediate, adequate and effective compensation.

4. The amount of compensation should be proportional to the real value of the investments in question and is assessed in line with the official conditions prevailing on the eve of the adoption of a measure of expropriation, nationalization, or a similar measure taken or due to public reasons. Compensation for expropriation, nationalization, or similar measures, shall be sufficiently calculated at a time of determining the moment of payment of the compensation. The legality and public nature of the expropriation, nationalization or a similar measure, and the amount of compensation shall be reviewed.

5. Compensation shall be paid in convertible currency at the official conversion applicable at the time of the conversion, according to the rules of the conversion of the Contracting Party that was paid to according to the compensation and shall be freely transferred.

6. Transfers must be made within three months from the date of a filing of a request of full compensation in accordance with the transfers the laws of the Contracting Party that issued the expropriation.

In the event of late payment, compensation will include bank interest, calculated from the beginning of the date of filing to the date of actual payment.

7. In the case of disagreement on the amount of compensation, the citizens or companies concerned may bring a claim under the laws of the Contracting Party that issued the expropriation, meaning that an assessment of the expropriated investment will be done by the competent authority or the legal authority in the said party in accordance with the principles mentioned in this Article.

8. In the event that the investments of citizens or companies of the Contracting Parties suffer losses due to war of any other armed conflict, revolution, or a state of emergency or revolt in the other Contracting Party province, they shall benefit from the latter party of the same treatment offered to investors of the State of any third country, including refund, compensation or any other measures.

Article 4. Transfer of Investments Returns

1. Each Contracting Party must guarantee to the citizens and companies of the other Contracting Party who are doing their investments in its territory, after the fulfilment of all tax obligations, the freely transfer of the follows:

a) Interest, dividends, profits after deposit returns and any other current returns.

b) Fees for intellectual property rights provided in paragraph 1, letter d) and e) of Article 1.

c) The amounts needed to repay loans that are contracted legally.

d) The revenue generated from the sale, total or partial liquidation of investments, including the values higher than the

invested capital.

e) Compensation for expropriation or losses provided in paragraphs 2 and 3 of Article 4 above.

2. Citizens of any of the contracting parties who were permitted to invest in the territory or in the territorial waters of the other Contracting Party are agreed to transfer a percentage of profits to their countries of origin.

3. Transfers referred to in paragraphs 1 and 2 of this Article are done at the official conversion rate applicable in the aforementioned date according to the applicable rules of transfers in the territory of the Contracting Party, in which investment is made and in a convertible currency and freely transferred and agreed upon after general (unanimous) agreement or compensation for the real value Investment.

Transfers shall be made no later than three months from the date on which the request is legally filed.

Article 5. Subrogation

1. In the event that one of the Contracting Parties or its designated agency ("first Contracting Party") make payments to compensate investments made in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognize the legality of the first Contracting Party's rights to:

a) Make the transfers, taking into account that the first Contracting Party is acting in accordance with its laws or because of a legal act, concerning all the rights and entitlements of the citizens and companies of the first Contracting Party.

b) The right of the first Contracting Party to subrogate the rights and entitlements mentioned and also to exercise these rights and claim their benefits to the same extent that is provided for the citizens and companies of the first Contracting Party.

2. The first Contracting Party in all circumstances has the rights of:

a) The same treatment in respect of rights and entitlements issued in accordance with a transfer.

b) All payments received for the reasons mentioned above and for entitlements that citizens and companies of the first Contracting Party have the right to obtain in accordance with the present Agreement for the purpose of the concerned investment and the appropriate revenue.

Article 6. Treatment

If from the laws of one of the Contracting Parties or from the rights in accordance with international agreements on encouragement of investments of both Contracting Parties, result a more favourable treatment than that accorded in the present agreement for investments of citizens or companies of the other Contracting Party the most favourable treatment should be applied.

Article 7. Specific Investments According to Special Arrangement

This Agreement should be applied on investments made before this Agreement enters into force by the citizens and companies of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party.

However, the present Agreement does not apply to disputes that may arise prior to its entry into force.

Article 8. Settlement of Disputes between the Contracting Parties

1. As far as possible the disputes that may arise between the Contracting Parties concerning the interpretation or application of this Agreement should be settled through diplomatic means.

2. If the dispute cannot be settled in this way, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

3. Composition of the arbitral tribunal: each Contracting Party shall appoint a member, and the two members by a mutual agreement shall choose a citizen of a third country to be the President, who shall be agreed upon by the Contracting Parties.

The members shall be appointed within two months and the president within three months after one of the contracting parties notify the other party of its intention to present the dispute to an arbitral tribunal.

4. If periods specified in paragraph 3 were not complied with or there is an error in the appointment order, each Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. In the event that the President of the International Court of Justice is a national of one of the Contracting Parties, or if death or another reason prevents him to fulfil this task, the Vice President of the Court can make them.

If the Vice President is also a citizen of one of the Contracting Parties, or if another reason prevents him to fulfill this task, the member of the Court, which immediately follows in seniority and who is not a citizen of one of the Contracting Parties will make the previous appointments.

5. The tribunal's decision shall be adopted by a majority of votes and it shall be binding. Each Contracting Party shall bear the expenses relating to the appointment of its member and the fees for its representation in the arbitral proceedings and both Contracting Parties shall bear the president expenses and other related costs. Under exceptional circumstances, the arbitral tribunal may determine other rules regarding the expenses. The arbitral tribunal shall determine its own procedures.

6. The provisions of this Agreement are applied while retaining the provisions of Article 27 of the Convention on the Settlement of Investment Disputes between States and Nationals of other countries that was signed on 18th of March 1965.

In the case of subrogation to any Contracting Party in accordance with Article 5 of this Agreement, the latter party is free to bring a claim before to the arbitral tribunal referred to in this Agreement.

Article 9. Entry Into Force and Duration of the Agreement

1. Each Contracting Party shall notify the other party at the completion of the legal procedures for the entry into force of the present Agreement. This Agreement shall enter into force one month after the date of last notification.

2. This Agreement shall remain in force for a period of ten years, unless either party notifies the other of its intention to terminate it before twelve months from the date of expiry.

3. For investments made prior to the effective date of the notice of termination of the Agreement, the provisions of Articles 1 to 10 shall remain in force for those investments are for a period of 10 years from that date.

4. The Contracting Parties may, by mutual agreement, make an amendment of the provisions of the present Agreement.

These amendments shall enter into force according to the procedures described in this Agreement.

5. In the event of the expiration of the term of this Agreement, the investments made during that validity of this Agreement shall benefit from the protection provided herein for an additional ten years.

In witness thereof, the undersigned legal delegations have signed this Agreement in two originals in Arabic and French, each of them equally authentic.

Signed in Niamey on Wednesday, 04/03/1998

For the Government of Arab Republic of Egypt

For the Government of Republic of Niger