

# **AGREEMENT BETWEEN THE GOVERNMENT OF BURKINA FASO AND THE GOVERNMENT OF THE REPUBLIC OF BENIN CONCERNING RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of Burkina Faso, on the one hand,

And

The Government of the Republic of Benin, on the other hand, hereinafter referred to as the "Contracting Parties";

Desiring to intensify economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party;

Whereas the beneficial influence that may exercise such an agreement with a view to improving the business contacts and to enhance confidence in the field of investment;

Recognizing the need to promote and protect foreign investment in order to stimulate entrepreneurship; and promote economic prosperity of both contracting parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every asset any and all direct or indirect, in cash or in kind, invested or reinvested services in any sector of the economy.

The following shall be considered in particular, though not exclusively, as investments within the meaning of this Agreement:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, security interests, usufruits and similar rights;
- b) Stocks, shares and any other forms of participation in companies;
- c) Debt claims and all other rights relating to performance having an economic value;
- d) Intellectual property rights, such as copyrights, patents, industrial designs, trademarks, trade names, know-how, goodwill and other similar rights recognized by the national laws of each Contracting Party;
- e) The concessions under public law, including concessions to search for, extract or exploit natural resources, as well as any right conferred by law, by contract or by decision of the competent authorities in accordance with the law.

Any alteration of the form in which legal capital assets and other assets are invested or reinvested shall not affect their character as investments within the meaning of this Agreement. such investments shall be carried out in accordance with the laws and regulations in force in the host country. if the investment is made by an investor through a body referred to in the letter c) of subparagraph 2 below, in which it holds a participation in the capital, the investor shall cease to enjoy the benefits of this Agreement to the extent of such indirect participation provided, however, that these benefits are not if it has invoked the dispute settlement mechanism provided for by another foreign investment protection agreement concluded by the Contracting Party in whose territory the investment is made.

2. The term "investor" means persons who invest in the territory of the State of the other Contracting Party in accordance with this Agreement:

- a) Natural persons who according to the laws of the Contracting States (2), are considered to be its citizens;
  - b) Legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise organised under the law of the two contracting parties, and which have their head office and their effective economic activities in the territory of the State of the same Contracting Party;
  - c) Legal entities established in accordance with the law of any country which are directly or indirectly controlled by nationals of a Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party.
3. The term "returns" means the net income tax reported by an investment and in particular, though not exclusively profits, dividends, interests and licence fees.
4. The term "territory" means
- a) In respect of Burkina Faso; the territory under its sovereignty, including the territorial sea and underwater areas and other maritime and air space over which the mainland exercises in accordance with international law, sovereign rights or jurisdiction.
  - b) With respect to the Republic of Benin, the territory of the Republic of Benin, including the territorial sea and the airspace above the territorial sea and territory over which the Republic of Benin exercises sovereignty, as well as the contiguous zone and continental shelf and the exclusive economic zone over which the Republic of Benin exercises sovereign rights or jurisdiction in accordance with its national law and international law;
5. The term "companies"
- Legal persons, firms or associations incorporated or constituted under the law in force.

## **Article 2. Promotion and Protection**

1. Each Contracting Party shall promote investments in as far as possible its State territory by investors of the other Contracting Party and admit such investments in accordance with its national laws and regulations. the existing investments in each case, in a fair and equitable manner.
2. Where a Contracting Party has admitted an investment made in the territory of a State by investors of the other Contracting Party, it shall, in accordance with its national laws and regulations, the necessary authorizations relating to such investment, including those regarding the recruitment of the senior management or technical in their choice regardless of his or her citizenship. for this, neither Contracting Party shall, subject to the measures strictly necessary for the maintenance of public order. by Discriminatory Measures Arbitrary or impair the management, use, enjoyment or use of investments of nationals or companies of the other contracting party in its territory.
3. Returns from investments and in the event of their reinvestment in accordance with the legislation of one Contracting Party shall enjoy the same protection as the original investment.

## **Article 3. National Treatment and Most-favoured Nation**

1. Each Contracting Party shall protect State investments within its territory by investors of the other Contracting Party in accordance with its national laws and regulations and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale or liquidation of such investments.
2. Each Contracting Party shall state in the territory of a fair and equitable treatment to investments of investors of the other contracting party. this treatment shall not be less favourable than that granted by each contracting party to investments in the territory of a State by its own investors or by investors of any third State if the latter is more favourable treatment.
3. The treatment shall not apply to privileges granted by either contracting party to nationals or companies of any third country, either because of its membership in a customs union, economic or a common market or a free exchange zone or its association with either of them.
4. The treatment granted under the present article shall not apply to advantages accorded by a Contracting Party to nationals or companies of any third State by virtue of a double taxation agreement or any other arrangement relating to taxation.

## **Article 4. Free Transfer**

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to investors, after the fulfilment of tax obligations, the free transfer of funds in convertible currency and liquid investments related to their including

- a) Capital and additional funds necessary for the maintenance or extension of the investment;
- b) Returns according to Article 1, Paragraph (3) of this Agreement,
- c) Payments arising from borrowing or other contractual obligations assumed for purposes of an investment
- d) The total or partial proceeds of sale, alienation or liquidation of an investment;
- e) Any compensation owed to an investor in accordance with article 5 of the Agreement.

The transfer shall be effected without delay into in force.

2. if it has not otherwise agreed with the investor transfers shall be made in accordance with the national laws and regulations in force of the Contracting Party in the territory of the State of which the investment has been made, at the official rate of exchange applicable on the date of transfer.

3. the guarantees provided for by this article shall be at least equal to those accorded to investors of the most favoured nation in similar situations.

## **Article 5. Compensation for Expropriation and Losses**

1. Neither Contracting Party shall take, either directly or indirectly, measures of expropriation, nationalization or other measures of this nature or the same effect against investments of investors of the other contracting party unless the measures are taken for reasons of public interest, duly established by law, without discrimination and in accordance with due process.

2. The Contracting Party which would be required to take such action shall contribute to the claimant, without undue delay, fair and equitable compensation in the amount will correspond to the market value of the investment concerned on the day before the date on which the measures taken or are publicly available.

3. The provisions for the purpose of fixing and the payment of compensation shall be made in a prompt no later than at the moment of the expropriation. in the event of late payment, the compensation shall include interest at market conditions as from the date of its receipt. the compensation shall be paid to investors in convertible currency and freely transferable.

4. Investors of one Contracting Party whose investments suffer damage or loss due to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection, or any similar event in the territory of the other contracting party benefit, on the part of this latter in a non-discriminatory manner and not less than that accorded to its own investors or investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other indemnities, the most favourable treatment.

## **Article 6. Implementation**

This Agreement shall also cover, as regards the implementation of future investments made prior to its entry into force by investors of one Contracting Party in the territory of the other contracting party, in accordance with its laws and regulations. however, this Agreement shall not apply to disputes that may arise before its entry into force.

## **Article 7. Additional Obligations**

Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or under existing international conventions or undertaken by the parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.

## **Article 8. Subrogation**

1. If one contracting party or its designated agency makes payment to its own security under a financial investors against non-commercial risks in connection with an investment in the territory of the State of the other contracting party, the latter shall recognize, by virtue of the principle of the subrogation, assignment of any right or title to the former investor of that Contracting Party or its designated agency by it. the other Contracting Party shall be justified to deduct taxes and other

obligations of public due and payable by the investor.

2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.

3. Any dispute between one Contracting Party and the insurer to an investment of the other Contracting Party shall be settled in accordance with the provisions of article 9 of this Agreement.

## **Article 9. Settlement of Disputes Relating to Investments**

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled amicably, as far as possible through consultations and negotiations between the parties to the dispute.

2. In the absence of an amicable settlement by direct arrangement between the parties to the dispute within six months from the date of the written notification, the dispute shall be submitted, at the choice of the investor

a) Either to the competent court of the Contracting Party in whose territory the investment has been made;

b) Or to arbitration by the Common Court of Justice and Arbitration (CCJA) of OHADA;

c) To arbitration or the International Centre for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, on 18 March 1965.

d) An ad hoc tribunal which, unless otherwise agreed between the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

To this end, each Contracting Party gives its consent irrevocable that any investment dispute may be submitted to the arbitration procedure.

3. Neither of the Contracting Party, Party to the dispute, can raise an objection, at any stage of the arbitration proceedings or of the execution of an arbitral award, on account of the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy.

4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party, Party to the dispute, in the territory of which the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreements to be concluded in connection with investment as well as the Principles of International Law

5. The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the award according to its national law.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible, between the two Contracting Parties through diplomatic channels.

2. If the dispute is submitted to a joint commission composed of the representatives of the Parties; it shall meet without delay and at the request of either party.

3. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations, it shall be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.

4. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. the arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party informed the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.

5. If the periods specified in paragraph (4) above have not been made, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. if the President of the International Court of Justice is a national of either Contracting Party or if he is unable to perform this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. if the Vice-President is a national of either Contracting Party or if he is prevented from exercising his mandate, the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and principles of international law. the decision of the Tribunal shall be adopted by a majority of votes. it shall be final and binding on the contracting parties.

7. The tribunal shall determine its own rules of procedure.

8. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

## **Article 11. Entry Into Force and Termination**

1. This Agreement shall be subject to ratification and shall enter into force thirty days after the date of receipt of the latter of the two notifications to the fulfilment by the two contracting parties constitutional procedures in their respective countries.

It shall remain in force for a period of ten years. it may be revised in writing at the request of either Contracting Party twelve (12) months after notification to the other contracting party. unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years each contracting party reserving the right to denounce it by written notification at least six months before the date of expiry of the current validation period.

2. Investments made prior to the date of expiry of this Agreement shall remain subject to it for a period of ten years from the date of such expiry.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement.

Done at Brussels, May 2001 18. each in two originals in the French language.

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 BENIN,

THE MINISTER OF PUBLIC WORKS AND TRANSPORT

Joseph Sourou ATTIN