

# **AGREEMENT ON THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF BENIN AND THE REPUBLIC OF**

The Government of the Republic of Benin and the Government of the Republic of hereinafter referred to as the "Contracting Parties

DESIRING to strengthen economic relations and intensify cooperation between the two countries, with a view to promoting their development, in particular for investment by one Contracting Party in the territory of the other Contracting Party

CONVINCED that reciprocal protection of investments under a bilateral agreement is likely to stimulate private economic initiative and increase the prosperity of both countries;

HAVE AGREED AS FOLLOWS

## **Article 1. DEFINITIONS**

For the purposes of this Agreement:

1. The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, all kinds of assets invested by the natural or juridical persons constituted - including the Government - of a Contracting Party in the territory of the other Contracting Party.

It includes, but is not limited to:

(a) movable and immovable property as well as all other real rights such as mortgages, liens, usufructs, bonds and similar rights ;

(b) shares, securities, units and bonds of companies, as well as all other forms of participation in said companies;

(c) loans and receivables and all other rights to benefits of economic value;

(d) intellectual and industrial property rights, including in particular copyrights, patents, industrial designs, trademarks and registered names, commercial rights and clientele

(e) economic concessions granted by law or by contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources. Any change in the form of investment of assets does not affect their qualification as investments;

2. The term "investor" means: natural or legal persons including the Government of the Contracting Party investing in the territory of the other Contracting Party.

(a) "natural person" means: a person who is a national of one of the Contracting Parties under its nationality laws;

(b) "Company" means, for the purposes of the other Contracting Party, any legal person incorporated in the territory of one of the Contracting Parties in accordance with the laws and regulations of that Party, such as: public institutions, corporations, foundations, private companies, projects, establishments and organizations, and having their seat in the territory of either Contracting Party;

3. The term "income" means amounts net of taxes derived from an investment, including, but not limited to, profits, interest, dividends and license fees.

4. "Territory" means the national territory of each Contracting Party as well as the maritime areas adjacent to the outer limit of the national territorial sea, over which each Contracting Party may, in accordance with International Law, exercise sovereign rights or jurisdiction.

## **Article 2. PROMOTION AND PROTECTION OF INVESTMENTS**

1. Each Contracting Party undertakes to encourage investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.
2. Each Contracting Party undertakes to provide in its territory fair and equitable treatment to the investments of investors of the other contracting party and to protect and secure them; neither party shall take any measures of expropriation or discrimination against the investments of the other Contracting Party;
3. The Contracting Parties may exchange, as necessary, information on investment opportunities in their respective territories, in order to assist operators in identifying the most profitable ones for both Contracting Parties.

## **Article 3. NATIONAL TREATMENT AND MOST-FAVORED-NATION CLAUSE**

1. Investments made by "investors" of a contracting Party in the territory of the other contracting Party, as well as the benefits generated, shall receive fair and equitable treatment no less favorable than that accorded to investments of nationals of the latter Party or to investors of a third State.
2. Each Contracting Party undertakes to ensure in its territory, fair and equitable treatment to investors of the other Party with respect to the administration and use of their investments, which treatment shall be no less favorable than that accorded to its nationals or to investors of a third State.
3. Without prejudice to the provisions of paragraph 2 above, most-favored-nation treatment shall not extend to advantages, preferences or privileges accorded to investors of a third State by virtue of:
  - (a) a contracting party's participation in an existing or future free trade area, customs union, common market or similar economic organization;
  - (b) an international agreement relating in whole or in part to double taxation;

## **Article 4. EXPROPRIATION**

No contracting party shall take either directly or indirectly measures of nationalization or expropriation or other measures of the same character or effect against investments in its territory belonging to investors of the other contracting party, except for reasons of public utility, on a non-discriminatory basis and in accordance with due process of law.

The measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation.

The amount of such compensation shall be paid in freely convertible currency and shall correspond to the actual value of the investments concerned on the day before the measures were taken or made public.

In the event of delay in payment, the compensation shall bear interest at market rates from the date it is due.

## **Article 5. LOSS COMPENSATION**

Investors of a contracting party whose investments in the territory of the other contracting party suffer losses due to war or any other armed conflict, revolt, state of emergency, insurrection or mutiny, shall be accorded by the latter contracting party treatment no less favourable than that accorded to its own investors or to investors of any third state. Any payment made under this Article shall be prompt, equitable, effective and freely transferable.

## **Article 6. FREEDOM OF TRANSFER**

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall permit to such investors the free transfer of income and other payments, including in particular
  - (a) the income from investments defined in Article 1 above ;
  - (b) the compensation provided for in Articles 4 and 5 above
  - (c) the proceeds from the sale or liquidation of all or part of the investment
  - (d) the remuneration of nationals of a Contracting Party who have been authorized to work, in connection with an

investment, in the territory of the other Contracting Party.

## **Article 7. SUBROGATION**

1. Where one of the Contracting Parties or its designated agency makes payments to its own investors under a financial guarantee covering non-commercial risks in connection with an investment in the territory of the State of the other Contracting Party, the latter shall recognize, under the principle of subrogation, the assignment of any right or title of that investor to the first Contracting Party or its designated agency. The other Contracting Party shall be entitled to deduct taxes and other obligations of a public nature due and payable by the investor.
2. The first Contracting Party or the agency designated by it shall be entitled in all circumstances to the same treatment with respect to the rights and claims acquired under the assignment and any payments received under such rights and claims as the indemnified party was entitled to receive under this Agreement for the investment concerned and the income therefrom.

## **Article 8. 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, to the extent possible, through diplomatic channels.
2. Where a dispute cannot be settled by diplomatic means within six (6) months of the commencement of negotiations, it shall, at the request of either contracting party, be submitted to an arbitral tribunal;
3. The arbitral tribunal shall be constituted ad hoc in the following manner: each Contracting Party shall appoint an arbitrator and the two (2) arbitrators shall choose a national of a third State as Chairman of the arbitral tribunal. The arbitrators shall be appointed within three (3) months, the chairman within five (5) months, of the receipt of the notice of arbitration.
4. If the necessary appointments have not been made within the time limits specified in paragraph (3) of this Article, either Contracting Party may, in the absence of any other agreement, 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 prevented for any reason from performing the said functions, the Vice-President shall be invited to make the requested appointments.  
  
If the Vice-President is a national of either Contracting Party or is unable to perform the said function, the member of the International Court of Justice next in order of precedence who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and other Agreements in force between the Contracting Parties, in accordance with the principles of international law.
6. The tribunal shall determine the procedure. It shall decide by majority vote at the request of either Contracting Party. The award shall be final and binding on the Parties.
7. Each Contracting Party shall bear the costs of its own arbitrator and his representative. The costs of the Chairman and any other costs shall be borne equally by the Parties.

## **Article 9. SETTLEMENT OF INVESTMENT DISPUTES**

1. Any investment dispute under this Agreement between one of the Contracting Parties and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the two Parties.
2. If the dispute has not been settled within six (6) months from the time it was raised by either of the Parties concerned, it shall be submitted, at the request of the investor
  - (a) either to the national courts of the Contracting Party involved in the dispute ;
  - (b) to international arbitration, under the conditions described in paragraph 3 below;

Once an investor has submitted the dispute either to the courts of the Contracting Party involved or to international arbitration, the choice of either procedure shall be final.

3. In the event of recourse to international arbitration, the dispute may be referred to one of the following designated arbitral bodies, at the option of the investor

(a) the International Centre for 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 in Washington on March 18, 1965.

(b) to an ad hoc arbitration tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The arbitration body shall decide the dispute on the basis of the provisions of this Agreement, the law of the Contracting Party to the dispute, including the rules relating to the conflict of laws, the terms of any special agreements which may have been entered into with respect to the investment, and the principles of international law in this regard.

5. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party shall enforce them in accordance with its domestic law.

## **Article 10. CONSULTATION**

The contracting parties shall hold consultations as necessary to review the implementation of this Agreement. Such consultations shall be held at the proposal of either of the contracting parties, at a time and place to be mutually agreed upon through diplomatic channels.

## **Article 11. APPLICATION**

This Agreement shall, as far as its future application is concerned, also cover investments made before its entry into force by investors of one of the contracting parties in the territory of the other contracting party in accordance with its laws and regulations. However, this Agreement shall not apply to disputes which may arise before its entry into force.

## **Article 12. OTHER OBLIGATIONS**

Where a matter relating to investments is governed both by this Agreement and by the domestic law of one of the contracting parties or by existing or future international conventions of the parties, investors of the other contracting party may avail themselves of the provisions which are more favorable to them.

## **Article 13. ENTRY INTO FORCE**

This Agreement shall enter into force on the date of exchange of Instruments of Ratification by both Contracting Parties.

## **Article 14. DURATION AND TERMINATION**

This Agreement is concluded for a period of ten (10) years, renewable by tacit agreement, unless one of the Parties denounces it, in writing, twelve (12) months prior to its expiration. In the event of termination, this Agreement shall continue to apply to investments made prior to the date on which the notice of termination takes effect and Articles 1 and 13 shall remain in force for a period of ten (10) months.

Either Contracting Party may request, in writing, the amendment of all or part of this Agreement.

The parts amended by mutual agreement shall enter into force upon notification of their acceptance by both Contracting Parties.

DONE at COTONOU, on

In two original copies in the English and French languages, both texts being equally authentic.

For the Government of the Republic of Benin

For the Government of the Republic of