

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF DJIBOUTI ON RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Government of the French Republic and the Government of the Republic of Djibouti, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in Djibouti and Djibouti investments in France,

Convinced that the encouragement and protection of such investments are conducive to stimulating the transfer of capital and technology between the two countries in the interests of their economic,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" shall mean all assets, such as property, rights and interests of any kind and, more particularly but not exclusively:

(A) movable and immovable property and any other rights in rem, such as mortgages, liens, usufructs, sureties and similar rights;

(B) shares, stocks and other forms of participation, even minority or indirect, in companies established in the territory of one of the Contracting Parties;

(C) bonds, claims and rights to any services having an economic value;

(D) intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial designs and models, technical processes, know-how, registered names and customers;

(E) concessions granted by law or under contract, including concessions for the prospecting, cultivation, extraction or exploitation of natural resources, including those in the maritime zone of the Contracting Parties.

This Agreement shall apply to investments made from the date of its entry into force and to investments existing on the same date, provided that such investments must be or have been made in accordance with the legislation of the Contracting Party on the territory or in the maritime area of which the investment is made.

This Agreement shall not apply to disputes which have arisen before its entry into force.

No change in the form of investment of the assets shall affect their classification as an investment, provided that such modification is not contrary to the legislation of the Contracting Party in whose territory or sea area the investment is made.

2. The term "investor" means:

(A) Nationals, meaning individuals possessing the nationality of one of the Contracting Parties.

(B) Any legal person constituted in the territory of one Contracting Party, in accordance with the law of that State and having its headquarters therein, or controlled directly or indirectly by nationals of one Contracting Party, or legal persons having their registered office in the territory of one of the Contracting Parties and constituted in accordance with the law of that Party.

The following shall, in particular, be considered as legal persons within the meaning of this Article: companies, on the one

hand, and non-profit-making organizations with legal personality,

3. "Income" means all amounts produced by an investment, such as profits, royalties, or interest, over a given period. Investment income and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as an investment.

4. This Agreement shall apply to the territory of each Contracting Party and to the maritime zone of each of the Contracting Parties hereinafter defined as the economic zone and the continental shelf extending beyond the limit Of the territorial waters of each Contracting Party and on which they have sovereign rights and jurisdiction in accordance with international law for the purposes of the exploration, exploitation, and preservation of natural resources.

5. Nothing in this Agreement shall be construed as preventing either Contracting Party from making any provision for the regulation of investments by foreign investors and the terms and conditions of such investors as part of measures to preserve and To encourage cultural and linguistic diversity.

## **Article 2. Scope of the Agreement**

For the purposes of this Agreement, it is understood that the Contracting Parties are responsible for the actions or omissions of their public authorities or any other entity over which the Contracting Party exercises a trusteeship, representation, or responsibility for its international relations or sovereignty.

## **Article 3. Investment Encouragement and Admission**

Each Contracting Party shall encourage and permit investment by investors of the other Party in its territory and maritime zone within the framework of its legislation and the provisions of this Agreement.

## **Article 4. Fair and Equitable Treatment**

Each Contracting Party undertakes to ensure, in its territory and maritime area, fair and equitable treatment, in accordance with the principles of international investment law, of investors of the other Party and to ensure that the exercise of the right so recognized is not hindered either in law or in fact. In particular, although not exclusively, any restriction on the purchase and transport of raw and auxiliary materials, energy and fuels, as well as of means of production and exploitation of all kinds, any impediment to the sale and transport of products within the country and abroad, and any other measures having a similar effect, shall be considered as de jure or de facto obstacles to fair and equitable treatment.

The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and residence, work and movement permitted by nationals of one Contracting Party in respect of an investment made In the territory or in the maritime zone of the other Contracting Party.

## **Article 5. National Treatment and Treatment of the Most-favoured-nation**

Each Contracting Party shall, in its territory and in its maritime area, apply to investors of the other Party in respect of their investments and activities relating to such investments treatment no less favorable than that accorded to its investors or treatment granted to investors of the most-favored-nation, if the latter is more advantageous. Nationals authorized to work in the territory and in the maritime zone of one of the Contracting Parties shall be entitled to the material facilities appropriate for the exercise of their professional activities.

Such treatment shall not, however, extend to privileges granted by a Contracting Party to investors of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other Form of regional economic organization.

The provisions of this Article shall not apply to tax matters.

## **Article 6. Expropriation and Compensation**

1. Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory and maritime zone of the other Contracting Party,

2. The Contracting Parties shall not take expropriation or nationalization measures or any other measures the effect of which is to deprive investors of the other Party, directly or indirectly, of their investments in their territory and in their maritime zone, except for reasons of public utility and provided that such measures are neither discriminatory nor contrary

to a particular commitment.

Any dispossession measures which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, equal to the actual value of the investments concerned, must be assessed in relation to the economic situation prevailing on the eve of any threat of dispossession.

Such compensation, the amount thereof, and the terms of payment thereof shall be fixed not later than the date of the dispossession. This compensation is effectively realizable, paid without delay, and freely transferable. It produces interest calculated at the appropriate market interest rate until the date of payment.

3. Investors of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt in the territory or maritime zone of the other Contracting Party, shall enjoy treatment no less favorable than that the other Contracting Party accords to its own investors or to those of the most favored nation.

## **Article 7. Free Transfer**

Each Contracting Party shall, in the territory or maritime area from which investments have been made by investors of the other Contracting Party, grant to such investors the free transfer of:

(A) interest, dividends, profits and other current income;

(B) royalties arising from the intangible rights referred to in paragraph 1 (d) and (e) of Article 1;

(C) payments made for the repayment of loans duly contracted;

(D) proceeds from the sale or the total or partial liquidation of the investment, including capital gains on invested capital;

(E) compensation for dispossession or loss provided for in Article 6, paragraphs 2 and 3 above.

Nationals of either Contracting Party who have been authorized to work in the territory or in the maritime zone of the other Contracting Party in respect of an approved investment are also authorized to transfer to their country of origin an appropriate quota of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal exchange rate officially applicable on the date of the transfer.

Where, in exceptional circumstances, capital movements to or from third countries cause or threaten to cause a serious imbalance in the balance of payments, either Contracting Party may temporarily apply safeguard measures in respect of transfers, provided that such measures are strictly necessary, applied on an equitable, non-discriminatory and bona fide basis and that they do not exceed a period of six months.

The provisions of the preceding paragraphs of this Article shall not preclude the exercise in good faith by a Contracting Party of its international obligations and of its rights and obligations in respect of its participation or its association with an area free trade, customs union, common market, economic and monetary union or any other form of regional cooperation or integration.

## **Article 8. Settlement of Disputes between an Investor and a Contracting Party**

Any dispute relating to investments between one Contracting Party and an investor of the other Contracting Party shall be settled amicably between the two parties concerned. The Contracting Parties may facilitate this settlement through diplomatic channels.

If such a dispute can not be settled within nine months of the date on which it was raised by one of the parties to the dispute, it shall be submitted at the request of the investor concerned:

(A) the competent court of the Contracting Party in whose territory the investment is made; or

(B) the arbitration of an ad hoc arbitral tribunal established under the arbitration rules of the United Nations Commission on International Trade Law ("UNCITRAL"); or

(C) arbitration or conciliation of the International Center for the Settlement of Investment Disputes (ICSID) in accordance with the rules governing the Additional Facility for the administration of procedures by the Secretariat of the Center (Additional Facility Rules); or

(D) Arbitration of the International Center for the Settlement of Investment Disputes (ICSID), established by the Convention for the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on 18 March 1965, if the two Contracting Parties shall have become members of the said Convention.

In the event that the dispute is such as to give rise to liability for actions or omissions of public authorities or bodies dependent on one of the two Contracting Parties within the meaning of Article 2 of this Agreement, such body shall be required to give unconditional consent to the use of arbitration by the International Center for the Settlement of Investment Disputes (ICSID) within the meaning of Article 25 of the Investment Disputes Settlement Convention Between States and nationals of other States, signed at Washington on 18 March 1965.

## **Article 9. Guarantees and Subrogation**

1. To the extent that the regulations of one of the Contracting Parties provide a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case examination, to investments made by investors of that Party in the territory or maritime area of the other Party.
2. Investments of investors of one Contracting Party in the territory or in the maritime zone of the other Contracting Party shall not be eligible for the security referred to in the preceding paragraph unless they have previously obtained the approval of the latter Party.
3. If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment made in the territory or maritime area of the other Party, makes payments to one of its investors, it shall thereby be subrogated to the rights and actions of that investor.
4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the procedures referred to in Article 8 of this Agreement or to pursue the actions thus introduced until the outcome of the procedure.

## **Article 10. Specific Undertakings**

Investments which have been the subject of a special commitment by one Contracting Party to investors of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of this undertaking to the extent that it contains more favorable provisions than those provided for in this Agreement. The provisions of Article 8 of this Agreement shall apply even in the event of a specific undertaking providing for the renunciation of international arbitration or designating an arbitral tribunal different from those referred to in Article 8 of this Agreement.

## **Article 11. Settlement of Disputes between Contracting Parties**

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through the diplomatic channel.
2. If the dispute has not been settled within a period of six months but has been raised by either of the Contracting Parties, it shall be submitted at the request of one or both of the Contracting Parties, to an arbitral tribunal.
3. The said tribunal shall be constituted for each individual case in the following manner: each Contracting Party shall appoint one member, and the two members shall designate by agreement a national of a third State who shall be appointed Chairman of the tribunal by both Parties Contracting. All members shall be appointed within a period of two months from the date on which one of the Contracting Parties has informed the other Contracting Party of its intention to submit the dispute to arbitration.
4. If the time-limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if for any other reason he is prevented from serving in that capacity, the most senior and non-national Of the Contracting Parties shall make the necessary appointments.
5. The arbitral tribunal shall take its decisions by a majority of votes. These decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the tribunal otherwise provides, in the light of particular circumstances, the costs of the arbitral proceedings, including the vacations of the arbitrators, shall be distributed equally among the Contracting Parties.

## **Article 12. Entry Into Force and Duration**

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial term of ten years. It shall remain in force after that term, unless one of the Parties denounces it through the diplomatic channel with one year's notice.

Upon the expiry of the period of validity of this Agreement, investments made while it is in force shall continue to be protected by its provisions for a further period of twenty years.

In witness whereof the undersigned representatives, being duly authorized thereto by their respective Governments, have signed this Agreement.

Signed at Paris (France) on 13 December 2007 in two originals in French.

For the Government of the French Republic

The Secretary-General of the Ministry of Foreign and European Affairs

For the Government of the Republic of Djibouti

The Ambassador of Djibouti in France