

AGREEMENT ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GUINEA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

The Government of the Republic of Guinea and the Government of the People's Republic of China (hereinafter referred to as the Contracting Parties),

Desiring to create favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the reciprocal encouragement, promotion and protection of investments on the basis of equality and mutual benefit will be conducive to the stimulation of business initiatives by investors and increase prosperity in both States;

Convinced that the promotion and protection of such investments would succeed in stimulating the transfer of capital and technology between the two States in the interests of their economic development;

Conscious that each Contracting Party has the right to create laws on the establishment and admission of investment in its territory;

Have agreed as follows

Article 1. Definitions

For the purposes of this Agreement

(1) The term 'investment' means any kind of capital invested by investors of a Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, but not exclusively :

(a) movable and immovable property and other property rights such as mortgages, pledges, liens, usufructs and similar rights;

(b) shares, securities, capital and any other form of participation in such companies;

(c) applications for funds or any other activity having an economic value linked to an investment;

(d) intellectual and industrial property rights, in particular copyrights, patents, trademarks and registered names, technical process, know-how and goodwill;

(e) economic concessions granted by law or by contract authorised by law, including concessions for the purpose of prospecting, cultivating, extracting or exploiting natural resources.

Any change in the form in which capital is invested shall not affect its nature as an investment, provided that such change complies with the laws and regulations of the Contracting Party whose territory received the investment.

(2) The term 'investor' means

(a) any natural person having Guinean or Chinese nationality under the laws of the Republic of Guinea or the People's Republic of China respectively and making an investment in the territory of the other Contracting Party;

(b) legal entities, including companies, associations, partnerships and other organisations, constituted under the laws and regulations of the Republic of Guinea or the People's Republic of China respectively, and which have their registered office in the territory of the Republic of Guinea and the People's Republic of China respectively.

(3) 'Profit' means amounts derived from investments, including profits, dividends, interest, capital gains, licence fees and

other legitimate income.

(4) 'Territory' means the territory of each Contracting Party as well as the maritime areas adjacent to the outer limit of the national territorial sea in which each Contracting Party, in accordance with international law, exercises rights of sovereignty and/or jurisdiction.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall endeavour to promote investments made by investors of the other Contracting Party in its territory and shall admit and protect such investments in accordance with its laws and regulations.

(2) The investments of investors of each Contracting Party shall enjoy full and adequate protection and security in the territory of the other Contracting Party.

(3) Investments of investors of each of the Contracting Parties shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

(4) Without prejudice to its laws and regulations, neither Contracting Party shall take any unjustified or discriminatory measures against the management, maintenance, use, enjoyment and transfer of investments by investors of the other Contracting Party.

(5) Subject to its laws and regulations, a Contracting Party shall provide assistance and facilities for obtaining visas and work permits for nationals of the other Contracting Party engaged in activities relating to investments made in the territory of that Contracting Party.

Article 3. National Treatment and Most-favoured-nation Clause

(1) Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and related activities of investors of the other Contracting Party treatment no less favourable than that accorded to investments and related activities of its own investors.

(2) No Contracting Party shall subject investments and related activities of investors of the other Contracting Party to treatment less favourable than that accorded to investments and related activities of investors of any third country.

(3) The provisions of paragraph 2 of this Article shall not be construed to require a Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege under:

(a) any customs union, free trade area, economic union and any other international agreement leading to such unions, or similar institutions;

(b) any international agreement or arrangement relating to taxation;

(c) any arrangements to facilitate small-scale trade in frontier areas.

Article 4. Expropriation

(1) No Contracting Party shall expropriate, nationalize or take other similar measures (hereinafter referred to as 'expropriation') against investments of investors of the other Contracting Party in its territory unless the following conditions are fulfilled:

(a) general interest ;

(b) internal legal procedure; and

(c) absence of discrimination;

(d) offer of compensation.

(2) The compensation referred to in Paragraph 1 of this Article shall be equivalent to the amount of the investments expropriated immediately before the expropriation takes place or the impending expropriation is made known to the public, whichever occurs first. The amount is determined in accordance with generally accepted valuation principles. Compensation includes interest at the normal market rate from the date of expropriation to the date of payment. The compensation shall also be effected without delay, and shall be effectively convertible and freely transferable.

Article 5. Compensation for Damages and Losses

Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses as a result of war or other armed conflicts, a state of national emergency, insurrection, riot, revolt or other similar events occurring in the territory of the other Contracting Party, shall receive from the Contracting Party concerned treatment in respect of restitution, compensation, indemnification and other settlements no less favourable than that accorded to investors of its own State or any third State, whichever is more convenient to the investor in question.

Article 6. Transfers

(1) Each Contracting Party shall, subject to its laws and regulations, guarantee to investors of the other Contracting Party the transfer of their investments and profits held in its territory, including :

- (a) profits, dividends, interest and other legitimate income
- (b) proceeds of sale obtained from the total or partial sale or transfer of investments;
- (c) payments pursuant to a loan agreement relating to the investments;
- (d) licence fees or charges relating to the intellectual and industrial property rights referred to in Paragraph 1 (d) of Article 1;
- (e) payment of technical assistance or service fees, management fees;
- (f) payments relating to project contracts;
- (g) income of nationals of the other Contracting Party working in connection with an investment in its territory.

(2) Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid as provided for in Articles 4 and 5 of this Agreement.

(3) The transfer referred to above shall be made in a freely convertible currency and at a market rate of exchange prevailing and applicable within the Contracting Party accepting the investments and on the date of the transfer.

(4) In the absence of a currency exchange market, the cross rate resulting from the exchange rates applied by the International Monetary Fund on the date of payment shall be applied to convert the respective currencies into SDR (Special Drawing Rights).

Article 7. Subrogation

If one of the Contracting Parties or its designated agency makes a payment to its investors under a guarantee or contract of insurance against non-commercial risks which it has granted in connection with an investment made in the territory of the other Contracting Party, the latter recognises :

- (a) the assignment, whether by operation of law or in pursuance of a legal transaction in the other Contracting Party, of any rights or claims brought by the investors with the other Contracting Party or its designated agency, likewise,
- (b) that the first Contracting Party or designated agency is entitled, by virtue of subrogation, to exercise the rights and to guarantee the claims of that investor and to fulfil the obligations relating to the investment to the same extent as the investor.

Article 8. Settlement of Investment Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties relating to the interpretation and application of this Agreement shall, if possible, be settled by diplomatic means.

(2) If a dispute cannot be settled in this way within six (6) months from the start of negotiations, it shall be submitted, at the request of each Contracting Party, to the Arbitration Tribunal.

(3) This tribunal shall consist of three arbitrators. Within three (3) months of receipt of the written notice requesting arbitration, each Contracting Party shall appoint an arbitrator. These two arbitrators shall, within a further two (2) months, jointly select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitration tribunal.

(4) If the arbitration tribunal is not set up within five (5) months of receipt of the written notice requesting arbitration, one of the Contracting Parties shall, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of one or other of the Contracting Parties or is prevented from performing the said functions, the Member of the International Court of Justice immediately following in order of precedence who is not a national of one of the Contracting Parties or is not prevented from performing the said functions shall be invited to make the appropriate appointments.

(5) The arbitration tribunal shall determine its own procedure and deliberate in accordance with the provisions of this Agreement and the principles of international law accepted by both Contracting Parties.

(6) The arbitration tribunal shall take its decisions by majority vote. This award is final and binding on both Contracting Parties. At the request of either contracting party, the arbitration tribunal shall explain the reasons for its award.

(7) Each Contracting Party shall bear the costs of appointing the arbitrators and of the arbitration proceedings. The costs of the Chairman and any other legal costs shall be borne equally by the Contracting Parties.

Article 9. Settlement of Disputes between Investors and a Contracting Party

(1) Any dispute relating to investments within the meaning of 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 cannot be settled by consultations within six (06) months from the date on which it was raised by one or other of the parties to the dispute, it shall be submitted, at the investor's option, either to the competent court of the State where the investment was made, or to the international arbitration tribunal.

(3) In the case of international arbitration, the dispute shall be submitted either :

(a) to the International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on 18 March 1965;

(b) an ad hoc arbitration tribunal set up under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);

provided that the Contracting Party involved in the dispute may request the investor concerned to exhaust the internal administrative review procedures stipulated by the laws and regulations of that Contracting Party before resorting to an international arbitration tribunal.

(4) Once the investor has submitted the dispute to the competent court of the State in which the investment is made, to ICSID, or to the ad hoc arbitration tribunal referred to in Paragraphs 2 and 3 of this Article, the choice of one of the three procedures is final.

(5) The arbitral tribunal shall determine the arbitral award on the basis of :

(a) the provisions of this Agreement ;

(b) the laws of the State in which the investment was made, including its conflict of laws rules; and

(c) the principles of international law accepted by both Contracting Parties;

(d) specific bilateral agreements relating to investment between the Contracting Parties;

(e) other international investment treaties to which both Contracting Parties are or may become parties.

(6) The arbitration award shall be final and binding on both parties to the dispute. Both Contracting Parties undertake to enforce the award.

Article 10. Other Obligations

(1) Where a matter relating to investments is governed by both this Agreement and the national legislation of one of the Contracting Parties or by existing international conventions or conventions entered into by the parties in the future, the investors of the other Contracting Party may avail themselves of the provisions which are most favourable to them.

(2) Each Contracting Party shall respect any commitments it may enter into with investors of the other Contracting Party with regard to their investments.

Article 11. Application

(1) The application of this Agreement does not depend on the existence of diplomatic or consular relations between the two Contracting States.

(2) This Agreement shall apply to investments made before or after its entry into force by investors of a Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party concerned, but shall not apply to disputes arising before its entry into force.

Article 12. Consultations

(1) The representatives of the Contracting Parties may hold regular consultations in order to :

- (a) reviewing the implementation of this Agreement ;
- (b) exchanging information on investment opportunities; and
- (c) making proposals for the promotion of investment; and
- (d) to consider other matters relating to investment.

(2) Where either Contracting Party requests consultation on a matter relating to Paragraph 1 of this Article, the other Contracting Party shall respond promptly through diplomatic channels and the consultation shall be held alternately in Conakry and Beijing.

Article 13. Entry Into Force, Duration and Scope

(1) This Agreement shall enter into force on the thirtieth (30th) day following the date on which the two Contracting Parties have notified each other of the completion of their required legal procedures in their respective countries.

(2) This Agreement shall remain in force for a period of ten (10) years and thereafter shall remain in force for the same period until one of the Contracting Parties notifies the other in writing to terminate it twelve (12) months before the expiry of that period.

(3) With respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to have effect for an additional period of ten (10) years from the date of termination.

Article 14. Amendment

This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force in accordance with the same procedures required for the entry into force of this Agreement.

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

DONE at ____, this ____ day of November 2005, in two original copies, each in the French and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA