

# AGREEMENT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF BENIN AND THE KINGDOM OF THE NETHERLANDS

The Kingdom of the Netherlands

And

The Republic of Benin,

Hereinafter referred to as the Contracting Parties,

Desiring to enhance their traditional ties of friendship and to promote, develop and strengthen their economic relations, particularly with respect to investments made by nationals of one Contracting Party in the territory of the other contracting party,

Recognizing that an agreement on the treatment to be accorded to such investments will stimulate the flow of capital and the Technology and Economic Development of the Contracting Parties and a fair and equitable treatment of investments is desirable,

Have agreed as follows:

## Article 1.

For the purposes of this Agreement:

The term "investment" means all categories of assets, and particularly but not limited to:

- i) Movable and immovable property as well as any other rights in rem relating to all categories of assets;
- ii) The rights resulting from shares, stocks and other forms of participation in companies and joint ventures;
- iii) The rights of claim the rights related to other assets or rights relating to any performance having an economic value;
- iv) The rights in the field of intellectual property rights, technical processes, goodwill and know-how;
- v) The rights granted by law or contract from those legally trained, including concessions to prospecting, exploration, extraction and exploitation of natural resources;

b) The term "nationals" includes, for each of the two contracting parties:

- i) Natural persons having the nationality of that Contracting Party;
- ii) Legal persons constituted in accordance with the law of that Contracting Party;
- iii) Legal entities not established in accordance with the law of that Contracting Party but controlled directly or indirectly by natural persons as defined under (i) or by legal persons as defined in (ii).

c) The term "territory" means:

The Territory of the Contracting Party concerned and any area adjacent to the territorial sea, which, according to the law of that Contracting Party, and in accordance with international law, is the exclusive economic zone and the continental shelf of the Party in which it has jurisdiction or sovereign rights.

## Article 2.

Each Contracting Party undertakes, within the framework of its laws and regulations, to foster economic cooperation for the protection of investments made in its territory by nationals of the other contracting party. subject to its right to exercise the powers conferred by its laws and regulations, each Contracting Party shall admit such investments.

### **Article 3.**

1. Each Contracting Party undertakes:

- To ensure fair and equitable treatment of the investments made by the nationals of other contracting party; and
- do not impair unreasonable or discriminatory measures by the management, maintenance, use, enjoyment or disposal of such investments to their nationals.

2. Each Contracting Party shall accord to such investments full security and physical protection.

3. If a Contracting Party has special advantages accorded to nationals of a third State by virtue of agreements establishing customs unions, economic, monetary union or unions or similar institutions on the basis of agreements designed to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other contracting party.

4. Each Contracting Party shall observe any obligation it has assumed with regard to investments made by the nationals of other contracting party.

5. In particular, each Contracting Party shall accord to such investments treatment which is no less favourable than that accorded to particular investments made by its nationals or by nationals of any other State, in any case treatment which is the most favourable to the citizen concerned.

6. If the provisions of law of either Contracting Party or obligations under international law existing at present or hereafter established between the Contracting Parties shall, within the framework of additional provisions with respect to this Agreement contain rules) whether general or specific, entitling the investments of nationals of other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this agreement to the extent that it is more favourable than the present Agreement.

### **Article 4.**

As regards taxes, duties and charges and deductions and tax exemptions, each Contracting Party shall accord to nationals of the other contracting party engaged in an economic activity within its territory, treatment which shall not be less favourable than that it accords to its own nationals or to those of a third State under the same conditions, in any case treatment which is the most favourable to the nationals concerned. however, may not be taken into account in this context of special tax advantages accorded by that Contracting Party:

- a) Under an agreement for the avoidance of double taxation; or
- b) By virtue of its participation in a customs union, economic union, a monetary union or similar institution; or
- c) On the basis of reciprocity with a third State.

### **Article 5.**

The Contracting Parties will ensure that payments arising from investment activities may be transferred. transfers shall be made without any restriction or delay in a freely convertible currency. such transfers shall include in particular, though not exclusively:

- a) Profits, dividends, interests and other current income;
- b) Necessary funds:
  - i) For the acquisition of raw materials or of auxiliary, finished or semi-finished products; or
  - ii) To replace capital assets in order to safeguard the continuity of an investment;
- c) Additional funds necessary for the development of an investment;
- d) The funds in repayment of loans;

- e) Royalties or fees;
- f) The earnings of natural persons;
- g) Proceeds from the sale or liquidation of the investment;
- h) Payments arising out of a situation as referred to in article 7.

## **Article 6.**

Neither Contracting Party shall take of nationals of the other contracting party of measures depriving them of their investments directly or indirectly, unless the following conditions are met:

- a) The measures are taken in the public interest and under due process;
- b) The measures are not discriminatory or contrary to the commitments of the contracting party taking such measures;
- c) The measures are taken for the payment of just compensation.

Such compensation shall be commensurate with the real value of the Investment, concerned shall include the payment of interest at a normal commercial rate until the date of payment, and in order to be effective for applicants will be paid and made transferable without delay to the country concerned and by the designated claimants in the currency of the country of which they are nationals or in any freely convertible currency accepted by the claimants.

## **Article 7.**

The nationals of either Contracting Party who suffer due to a war or any other armed conflict, revolution, a national state of emergency, revolt, riot, insurrection or losses in relation to their investments made in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other *dommagesintérêts* treatment, which shall not be less favourable than that accorded to nationals of a contracting cetterpartie or to nationals of any other State, in any case treatment which is the most favourable to the nationals concerned.

## **Article 8.**

If the investment of a national of either Contracting Party are insured against non-commercial risks or may be subject to the payment of damages, under the system provided for by law, regulation or by a public contract, any subrogation of the insurer or reinsurer or an agency designated by one of the Contracting Parties in the rights of the said nationals, in accordance with the terms of the insurance or any other compensation paid shall be recognized by the other contracting party.

## **Article 9.**

Each Contracting Party consents to submit any dispute arising between a Contracting Party and a national of the other contracting par-tie concerning an investment made by that national in the territory of the other contracting party, the International Centre for Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes entreétats and nationals of other States, opened for signature at Washington on 18 March 1965. a juridical person who is a citizen of either Contracting Party and which, before the dispute is controlled by nationals of the other Contracting Party, shall be in accordance with article 25 (2) (b) of the said Convention, deemed to be a national of the other contracting party for the purposes of the Convention.

## **Article 10.**

The provisions of this Agreement shall also apply from the date of its entry into force, the investments made prior to that date.

## **Article 11.**

Each Contracting Party may propose to the other party for consultations on any matter concerning the interpretation or application of this Agreement. the other party shall give sympathetic consideration to such a request and shall take all appropriate measures to allow such consultations.

## **Article 12.**

1. Any dispute between the contracting parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable period of time, be submitted through diplomatic channels, unless the parties otherwise agree, at the request of either party to an arbitral tribunal composed of three members. each Party shall appoint an arbitrator and the two arbitrators thus appointed shall propose ront by mutual agreement, as their chairman, a third arbitrator who shall not be a national of one of the two parties.
2. If a Party has not appointed its arbitrator and has not followed the invitation of the other party to do so within two months of such appointment, the other party may request the President of the International Court of Justice to make the necessary appointments.
3. If within two months after their appointment, the two arbitrators are unable to agree on the appointment of the third arbitrator, either party may request the President of the International Court of Justice to make the necessary appointments.
4. If in the cases specified under paragraphs (2) and (3), the President of the International Court of Justice cannot discharge the said function or if he is a national of either Contracting Party, the Vice-President shall be requested to make the necessary appointments. if the Vice-President cannot discharge the said function or if he is a national of either Contracting Party, the member of the Court next in seniority who is not a national of either party shall be requested to make the necessary appointments.
5. The Tribunal shall act in accordance with the law. before taking its decision, it may at any stage of the proceedings the parties to propose an amicable settlement of the dispute. the foregoing provisions shall not affect the competence of the Tribunal to decide ex aequo et bono if the parties so agree.
6. The tribunal shall determine its own procedure, unless the parties agree otherwise.
7. The tribunal shall take its decision by a majority of votes. the decision shall be final and binding on the parties.

## **Article 13.**

In respect of the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom located in Europe, the Netherlands Antilles and Aruba, unless the notification referred to in article 14 (1) provides otherwise.

## **Article 14.**

1. This Agreement shall enter into force thirty days after the date on which the contracting parties have notified each other in writing that the constitutionally required procedures for this purpose have been completed. this Agreement shall remain in force for a period of fifteen years.
2. If there has been notified by either contracting party at least six months before the expiration of the period of validity of the present Agreement shall be tacitly extended for a period of ten years, the contracting parties reserving the right to terminate this Agreement by notification at least six months before the expiry of the current period of validity.
3. The foregoing articles shall continue in force for investments have been made prior to the date of termination of the present Agreement, for a period of fifteen years from the date of expiry.
4. Taking into account the periods referred to in paragraph (2), the Kingdom of the Netherlands shall be entitled to terminate separately for the implementation of this agreement for each of the parts of the Kingdom.

Done at Cotonou, 13 / 12 / 01 in two originals in the Dutch, French and English languages, all texts being authentic, provided that in case of difference of interpretation, the French text shall prevail.

For the Kingdom of the Netherlands,

(s.) SASKIA N. BAKKER

H.E. Ms. Saskia N. Bakker

The Business Manager a.i.

Embassy of the Kingdom of the Netherlands

For the Republic of Benin,

(s.) KOLAWOLE A. IDJI

H.E. Mr. Kolawolé A. Idji

The Minister of Foreign Affairs and African Integration