

AGREEMENT BETWEEN THE GOVERNMENT OF BURKINA FASO AND THE GOVERNMENT OF CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Burkina Faso and the Government of hereinafter referred to as the "Contracting Parties

DESIRING to intensify their economic cooperation by creating favorable conditions for the realization of investments by investors of one of the Contracting Parties in the territory of the other Contracting Party

CONSIDERING the beneficial influence that such an agreement could have in improving business contacts and strengthening confidence in the field of investments

RECOGNIZING the need to encourage and protect foreign investment with a view to stimulating private economic initiative and promoting the economic prosperity of both Contracting Parties

Have agreed as follows:

Article 1. DEFINITIONS

For the purposes of this Agreement :

1. The term "investments" shall mean any assets of any kind and any direct or indirect contribution in cash, kind or services, invested or reinvested in any sector of economic activity whatsoever.

The following shall be considered, but not limited to, investments for the purposes of this Agreement

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

(b) shares, stocks and all other forms of participation in companies

(c) debt claims and all other rights concerning benefits of economic value;

(d) intellectual property rights such as copyrights, patents, industrial designs, trademarks, service marks, trade names, know-how, goodwill and all other similar rights recognized by the national laws of each Contracting Party

(e) concessions under public law, including concessions for the exploration, extraction or exploitation of natural resources, and any other rights granted by law, by contract or by decision of the competent authorities pursuant to the law.

No change in the legal form in which the assets, capital and other property have been invested or reinvested shall affect their character as "investments" within the meaning of this Agreement.

Such investments shall be made in accordance with the laws and regulations in force in the host country.

If the investment is made by an investor through an organization referred to in subparagraph 2(c) below, in which the investor has an equity interest, the investor shall enjoy the benefits of this Agreement to the extent of such indirect interest, provided, however, that such benefits shall not accrue to the investor if the investor invokes the dispute settlement mechanism provided for in another foreign investment protection agreement concluded by a Contracting Party in whose territory the investment is made.

2. The term "investor" means the subjects who make investments in the territory of the State of the other Contracting Party, in accordance with this Agreement:

a) natural persons who, according to the law of the two (2) Contracting Parties, are considered to be their citizens;

b) legal entities, including companies, corporations, business associations and other organizations, which are incorporated or otherwise organized in accordance with the laws of both Contracting Parties and which have their registered office and effective economic activities in the territory of the State of the same Contracting Party

c) legal entities established, in accordance with the legislation of any country, which are controlled, directly or indirectly, by nationals of a Contracting Party or by legal entities having their registered office, together with actual economic activities, in the territory of that 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. The term "territory" means:

(a) with respect to Burkina Faso; the territory under its sovereignty including the territorial sea as well as the submarine areas and other air and maritime spaces over which such continental part exercises, in accordance with international law, sovereign rights or jurisdiction.

b) with respect to the Republic

5. The term "companies" shall mean legal persons, firms or associations constituted or created under the legislation in force.

Article 2. PROMOTION AND ADMISSION

1. Each contracting Party shall, as far as possible, promote investments made in the territory of its State by investors of the other contracting Party and shall admit such investments in accordance with its national laws and regulations. It shall treat investments in each case in a fair and equitable manner.

2. Where a Contracting Party has admitted an investment made in the territory of its State by investors of the other Contracting Party, it shall grant, in accordance with its national laws and regulations, the necessary authorizations relating to such investment, including those relating to the recruitment of managerial or technical personnel, at their option, without regard to its citizenship. To this end, neither contracting party shall hinder, by arbitrary or discriminatory measures, the administration, use or enjoyment of investments of nationals or companies of the other contracting party in its territory.

3. The income from the investment and, in the event of its reinvestment in accordance with the legislation of a Contracting Party, shall enjoy the same protection as the initial investment.

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

1. Each Contracting Party shall protect in the territory of its State investments made by investors of the other Contracting Party in accordance with its national laws and regulations, and shall not impede, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, increase, sale or liquidation of such investments.

2. Each contracting party shall ensure in the territory of its State fair and equitable treatment of investments made by investors of the other contracting party. Such treatment shall not be less favorable than that accorded by each contracting party to investments made in the territory of its State by its own investors or by investors of any third State, if the latter treatment is more favorable.

3. The treatment shall not extend to privileges granted by a contracting party to nationals or companies of third countries by reason of its membership in or association with a customs or economic union, a common market or a free trade area.

4. The treatment accorded by this Article shall not extend to advantages granted by a Contracting Party to nationals or companies of a third State under a double taxation agreement or any other arrangement in the field of taxation.

Article 4. FREEDOM OF TRANSFER

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall guarantee to such investors, after the discharge of tax obligations, the free transfer in convertible currency of the liquid assets relating to such investments and in particular :

(a) the capital and additional funds necessary for the maintenance and expansion of the investment

(b) income in accordance with Article 1, paragraph (3) of this Agreement;

(c) moneys derived from borrowings or other contractual obligations to be incurred for the purpose of an investment; and

(d) amounts arising from the sale, partial sale, disposition or liquidation of an investment; (e) any compensation due to an investor pursuant to Article 5 of this Agreement.

The transfer shall be made promptly at the prevailing rate.

2. If not otherwise agreed with the investor, transfers shall be made in accordance with the national laws and regulations of the contracting Party in whose territory the investment was made, at the rate of exchange officially applicable on the date of the transfer.

3. The guarantees provided for in this Article shall be at least equal to those accorded to most-favored-nation investors 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 such measures or measures to the same effect against investments of investors of the other contracting party, unless the measures are taken for reasons of public utility, duly established by law, without being discriminatory and in accordance with the legal procedure.

2. The Contracting Party which is obliged to take such measures shall pay to the rightful owner, without undue delay, fair and equitable compensation in an amount corresponding to the market value of the investment concerned on the day before the measures are taken or made public.

3. Arrangements for the determination and payment of the compensation shall be made promptly at the latest at the time of expropriation. In case of delay in payment, the compensation shall bear interest at market rates from the date it is due. The compensation shall be paid to the investors in convertible and freely transferable currency.

4. Investors of one of the Contracting Parties whose investments suffer damage or loss due to war or any other armed conflict, revolution, state of national emergency, revolt, insurrection, or any other similar event in the territory of the other Contracting Party, shall be accorded by the latter non-discriminatory treatment at least equal to that accorded to its own investors or to investors of the most favored nation with respect to restitution, indemnification, compensation, or other damages, whichever is more favorable.

Article 6. IMPLEMENTATION

This Agreement shall also cover, as regards its future application, 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 7. OTHER OBLIGATIONS

Where a matter relating to investments is governed both by this Agreement and by 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.

Article 8. SUBROGATION

1. Where either Contracting Party 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, by virtue of 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. In accordance with the guarantee given for the investment concerned, the insurer shall be entitled to assert all rights which the investor could have exercised if the insurer had not been subrogated to it.

3. Any dispute between a Contracting Party and the insurer of 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 INVESTMENT DISPUTES

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

2. If the parties to the dispute fail to reach an amicable settlement by direct agreement within six months from the date of written notification, the dispute shall be submitted, at the option of the investor :

(a) either to the competent court of the Contracting Party in whose territory the investment was made :

(b) or for arbitration by the Common Court of Justice and Arbitration (CCJA) of OHADA

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

(d) or an ad-hoc tribunal which, failing any other arrangement between the parties to the dispute, shall be constituted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

To this end, each of the Contracting Parties irrevocably consents to the submission of any investment dispute to such arbitration procedure.

3. No contracting party to a dispute may object at any stage of the arbitration proceedings or of the enforcement of an arbitral award to the fact that the investor, as an adverse party to the dispute, has received compensation for all or part of its losses under an insurance policy.

4. The arbitral tribunal shall decide the dispute on the basis of the national law of the Contracting Party, party to the dispute, in whose territory the investment is located, including the rules relating to conflict of laws, the provisions of this Agreement, the terms of any special agreements entered into with respect to the investment, and the principles of international law.

5. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce such awards in accordance with its domestic 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 by diplomatic means.

2. Failing this, the dispute shall be submitted to a joint commission composed of representatives of the Parties, which shall meet without delay at the request of the most diligent Party.

3. If the joint committee is unable to settle the dispute within six months of the commencement of negotiations, it shall be submitted to an arbitration tribunal at the request of one of the Contracting Parties.

4. The said tribunal shall be constituted in the following manner: Each Contracting Party shall appoint an arbitrator, and the two arbitrators shall together appoint a third arbitrator, who shall be 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 one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.

5. If the time limits laid down in paragraph (4) above have not been observed, either Contracting Party shall request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is invited to make the necessary appointments. If the Vice-President is a national of one of the Contracting Parties or is prevented from serving, the most senior member of the International Court of Justice who is not a national of any of the Contracting Parties shall be invited to make such 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 vote. 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 costs of its arbitrator and his representation in the arbitration proceedings. The costs of the Chairman and other costs shall be borne equally by the Contracting Parties.

Article 11.. ENTRY INTO FORCE, DURATION AND EXPIRATION

1. This Agreement shall be subject to ratification and shall enter into force 30 days from the date of receipt of the last of the two notifications relating to the completion by the two Contracting Parties of the 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 expiry of its period of validity, it shall be tacitly renewed each time 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 period of validation.

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

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

Done at

In two originals, each in the French language

FOR THE GOVERNMENT OF BURKINA FASO

FOR THE GOVERNMENT OF