

# **Agreement on the reciprocal promotion and protection of investments between the Government of the Republic of Mali and the Government of the People's Republic of China's**

The Government of the Republic of Mali and the Government of the 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 encouragement and reciprocal promotion and protection of investments on the basis of equality and mutual benefits are conducive to the stimulation of business initiatives of the investors and increasing prosperity in both States;

Convinced that the promotion and protection of such investments will promote the transfer of capital and technology between the contracting parties in the interest of their economic development;

Aware that each Contracting Party has the right to determine the laws on access to and establishment of investment in its territory;

Have agreed as follows:

## **Article 1. General Definitions**

1. The term "investment" means every kind of assets invested by investors of one Contracting Party in accordance with the legislation in force in the territory of the other contracting party, and shall include, inter alia:

- (a) Movable and immovable property and other property rights such as mortgages, liens, pledges, retention, usufruits and other similar rights;
- (b) Shares, bonds, capital or any other form of participation in companies;
- (c) Claims to money or any other rights to claim having an economic value associated with an investment;
- (d) Intellectual and industrial property rights, including copyrights, patents, trademarks, protected designations of origin, technical process, know-how and goodwill;
- (e) Commercial concessions granted by law or pursuant to a legal agreement, including concessions to cultivate, extract, explore or exploit natural resources.

Any change in the form of capital invested does not affect its as an investment provided that the change is carried out in accordance with the legislation of the Contracting Party in whose territory the investment has received.

2. The term "investor" means,

- (a) Natural persons having the nationality of China or Mali under the law of one of the Contracting Parties and investing in the territory of the other contracting party;
- (b) Legal entities, including companies, associations, partnerships and other organizations established or constituted under the law of one of the contracting parties and having its registered office in the territory of one of the Contracting Parties.

3. The term "revenue" means the amounts generated by investments, including the profits, dividends, interests, capital gains, royalties and all other lawful income.

4. The term "territory" means the territory of either Contracting Party, including the territorial lands, internal waters and the

territorial waters and airspace, as well as the maritime zones beyond the territorial sea over which each Contracting Party, in accordance with international and national rights, exercises sovereign rights and jurisdiction.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall endeavour to encourage investments of investors of the other Contracting Party in its territory, and shall admit such investments in accordance with its legislation.
2. Investments made by investors of either Contracting Party shall enjoy a constant protection and security in the territory of the other contracting party.
3. Subject to its laws, neither Contracting Party shall take any unjustified discriminatory measures or the management, maintenance, use, enjoyment or disposal of investments of investors of the other contracting party.
4. In accordance with its laws, the Contracting Party concerned shall provide assistance and facilitate procedures for obtaining visas and working to permit nationals of the other contracting party engaged in activities related to investments in its territory.

## **Article 3. Treatment of Investments**

1. Investments of investors of each Contracting Party shall permanently enjoy fair and equitable treatment in the territory of the other contracting party.
2. Subject to its laws, each Contracting Party shall accord to investments and activities related to these investments made by investors of the other Contracting Party the treatment applied at least equal to the investments and associated activities of its own investors.
3. The treatment accorded by one Contracting Party to investments and activities related to these investments made by investors of the other Contracting Party shall be at least equal to that applied to investments and activities related to these investments of investors of a third State.
4. The provisions of paragraph 3 of this article shall not be interpreted as an obligation of one Contracting Party to access to investors of the other contracting party treatment, preference or privilege by virtue of:
  - (a) Any customs union, free trade area, economic union and any international agreement resulting in such unions or similar institutions;
  - (b) Any international agreement or arrangement relating wholly or mainly to taxation;
  - (c) Any arrangements for facilitating trade in small scale frontier border areas.

## **Article 4. Expropriation**

1. Neither Contracting Party shall expropriate or nationalize or take other similar measures (hereinafter "expropriation") against investments of investors of the other Contracting Party in its territory unless the following conditions are met:
  - (a) For the public interest;
  - (b) In accordance with their national judicial procedure;
  - (c) Without discrimination;
  - (d) Against compensation.
2. The compensation referred to in paragraph 1 of this article shall be equivalent to the market value of the expropriated investment and immediately before the expropriation took place when the expropriation or who will take place is known to the public, which means earlier. Such market value shall be determined in accordance with generally recognized principles of valuation. The compensation shall include interest calculated at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall be made without delay, and be effectively convertible and freely transferable.

## **Article 5. Indemnification and Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a national state of emergency, revolt, riot or other similar events, shall be accorded by that Contracting Party treatment within regards to restitution, indemnification, compensation or other remedies, at least equal to the relatively preferential treatment accorded to investors of its own State or of a third State.

## **Article 6. Transfers**

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

- (a) Profits, dividends, interests and other legitimate income;
- (b) Income from the sale or the total or partial liquidation of investments;
- (c) Compensation in accordance a loan agreement relating to investments;
- (d) Royalties or fees relating to intellectual and industrial property rights referred to in paragraph 1 (d) of article 1;
- (e) Costs of technical assistance or technical service and management;
- (f) Payments relating to lump-sum works;
- (g) Earnings of nationals of either Contracting Party working in connection with an investment in the territory of the other contracting party.

2. Nothing in paragraph 1 of this article shall affect the free transfer of compensation paid pursuant to articles 4 and 5 of this Agreement.

3. The transfers mentioned above shall be made in a freely convertible currency and at the rate of exchange applicable on the date of transfer on the market of the Contracting Party receiving such investments.

4. In the absence of a market for foreign exchange, the rate to be applied peer calculated at the rate of exchange in the currency of the Contracting Parties and special drawing rights (SDRs) prescribed by the International Monetary Fund on the date of payment.

## **Article 7. Subrogation**

If one Contracting Party or its designated agency makes a payment to its investor, in respect of investments made in the territory of the other Contracting Party under a guarantee or a contract of insurance against non-commercial risks (wars, internal riots change currency convertibility of expropriation, nationalization or other similar mesures), the latter recognizes that:

- (a) The assignment of the rights and claims of the investor in the first Contracting Party or its designated agency by law or legal proceedings of the first Contracting Party;
- (b) The first Contracting Party or its designated agency is entitled by virtue of subrogation, to the same extent as the investor to exercise the rights or claims of that investor and assume the obligations related to the investment.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Any dispute arising between the Contracting Parties concerning the interpretation or application of this agreement should, as far as possible, be settled by consultation through diplomatic channels.

2. If the dispute cannot thus be settled within six months from the beginning of negotiations, it shall be at the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. The Tribunal shall be composed of three arbitrators. within three months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint an arbitrator. Those two arbitrators shall, within two months, together select a national of a third country which has diplomatic relations with both contracting parties as Chairman of the arbitral tribunal.

4. Where an arbitral tribunal is not constituted within five months from the receipt of the written notice requesting arbitration, either Contracting Party shall have the right, 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 citizen of either Contracting Party or

is prevented from carrying out the function, the said member of the International Court of Justice in seniority who is a citizen of either Contracting Party or prevented from carrying out the said functions shall be invited to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall render its award in accordance with the provisions of this Agreement and the principles of international law recognized by both contracting parties.

6. The arbitral tribunal shall render its award by a majority of votes. The award shall be final and binding on both contracting parties. the arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in the arbitral proceedings. The cost of the Chairman and the Tribunal shall be borne in equal parts by the contracting parties.

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

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

2. If the dispute cannot be settled by negotiations within a period of six months, one of the Parties to the dispute shall be entitled to submit the dispute to a competent court of the Contracting Party where investment or to international arbitral tribunal.

3. In the case of international arbitration, the dispute shall be submitted

(a) To the International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the settlement of disputes between States and Nationals of Other Countries adopted at Washington on 18 March 1965; or

(b) To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL);

Provided that the Contracting Party involved in the dispute requests the investor to exhaust the local administrative review procedure specified by the laws and regulations of the Contracting Party before submitting the dispute to the above-mentioned arbitration procedure.

4. Once the investor has submitted the dispute to a competent court of the Contracting Party hosting the investment, or to ICSID, or the ad hoc Arbitral Tribunal specified in paragraphs 2 and 3 of this article, the choice of one of the three procedures shall be definitive.

5. The arbitral tribunal shall render its award in accordance with:

(a) The provisions of this Agreement;

(b) Laws of the country where the investment, including its rules on the Conflict of Laws;

(c) Principles of international law recognized by both contracting parties;

(d) Specific bilateral agreements on investment between the contracting parties;

(e) Other international agreements relating to investment to which the contracting parties adhere or accession.

6. The arbitral award shall be final and binding upon both parties to the conflict. Both Contracting Parties shall commit themselves to the enforcement of the award.

## **Article 10. Other Obligations**

1. If the legislation of either Contracting Party or international obligations existing or established thereafter between the Contracting Parties result in a situation which entitles the investments made by investors of the other Contracting Party to a more favourable treatment than that provided for by this Agreement, such situation shall not be affected by this Agreement.

2. Each Contracting Party shall undertake any obligation it may have entered into with the investors of the other Contracting Party as regards their investments.

## **Article 11. Application**

1. The application of the provisions of this Agreement shall be independent of the existence of diplomatic or consular relations between the Contracting Parties.

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

## **Article 12. Consultations**

1. The representatives of the Contracting Parties shall meet regularly in order to:

- (a) Review the implementation of this Agreement;
- (b) The exchange of information on investment opportunities;
- (c) Make proposals on promotion of investment;
- (d) Studying other issues in connection with investments.

2. If one of the contracting parties is a consultation on any matter relating to paragraph 1 of this article, the other Contracting Party shall give prompt response through diplomatic channels and consultations shall be held alternatively in Beijing and in Bamako.

## **Article 13. Entry Into Force , Duration and Termination**

1. This Agreement shall enter into force on the thirtieth day following the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures necessary relating thereto has been accomplished.

2. This agreement is concluded for a period of ten years, and shall remain in force unless either contracting party notifies in writing the other Contracting Party to terminate this Agreement one year before the expiration of this Agreement.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a further period of ten years from such date of termination.

## **Article 14. Amendment**

This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures required for 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 Bamako on 12 February 2009, in duplicate copies in the English and Chinese languages, both texts being equally authentic.

For the Government of the Republic of Mali

Moctar OUANE

Minister for Foreign Affairs and International Cooperation

For the Government of the People's Republic of China

CHEN Deiming

Minister of Trade