

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF MAURITANIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Italian Republic and the Government of the Islamic Republic of Mauritania hereinafter referred to as the "Contracting Parties",

Desiring to create favourable conditions for greater economic cooperation between the two countries in particular as regards capital investments by the investors of one Contracting Party in the territory of the other contracting party,

Convinced that the encouragement and reciprocal protection of such investment based on international agreements will stimulate economic relations likely to promote the prosperity of both Contracting Parties,

Have AGREED AS FOLLOWS

## **Article 1. Definitions**

For the implementation of this Agreement:

1. The term "investment" means any kind of asset invested, before and after the entry into force of this Agreement by a natural or legal person of one Contracting Party in the territory of the other contracting party, in accordance with the laws and regulations of that Party, regardless of the chosen legal form and legal framework.

Without prejudice to the foregoing, including but not limited to the following elements as investments.

a) The movable and immovable property as well as any other rights in rem of property, including property rights guaranteed on a property of third parties, provided that they can be used for the purpose of investment in rem, property, including property rights guaranteed on a property of third parties, provided that they can be used for the purposes of investment,

b) Shares, bonds, partnership shares and other credit securities, as well as government securities and public securities in general;

c) The financial credits related to an investment; and the proceeds of a capital which are reinvested capital income and rights to any performance having economic value associated with an investment;

d) Copyrights, trademarks, patents, industrial designs and other intellectual property rights, and industrial know-how, trade secrets, trade names and goodwill;

e) An economic nature of any right conferred by law or under contract and any licences and concessions in accordance with the law in force in respect of economic activities, including the rights of exploration, extraction and exploitation of natural resources;

f) Any increase in the value of the initial investment.

Any modification of the legal form for investments chosen shall not affect their classification as investment.

2. The term "investor" means any natural or legal person of one Contracting Party who makes an investment in the territory of the other contracting party, as well as the associated with foreign subsidiaries and branches, controlled by natural or legal persons.

3. The term "natural person" means for each Contracting Party means a natural person having the nationality of that State in accordance with its legislation.

4. The term "legal person" means for each Contracting Party, any entity having its seat in the territory of one of the

Contracting Parties and recognized by it, such as public institutions, partnerships, capital, foundations and associations regardless of whether or not with limited liability agencies.

5. The term "income" refers to all sums produced or to be produced by an investment, including in particular income or interest, dividends, royalties, royalties for technical, assistance or other services, as well as any payment in kind.

6. The term "territory" indicates, in addition to the areas delimited by land borders, the maritime zones These include the maritime and submarine areas under the sovereignty of the Contracting Parties or over which they exercise sovereign or jurisdictional rights in accordance with international law.

7. The term "investment agreement" indicates an agreement that a Contracting Party may conclude with an investor of the other Contracting Party with a view to regulating the specific investment relationship.

8. The term "non-discriminatory treatment" means treatment no less favourable than the treatment between national treatment and most-favoured-nation

9. The term "access right" indicates the right to be admitted to invest in the territory of the other Contracting Party and subject to such limits as well as international agreements which are binding on both contracting parties.

10. The term "activities related to an investment" indicates, inter alia, organizing and monitoring the operation, maintenance and disposal companies of subsidiaries, offices and other agencies and organizations for the management of commercial activities, access to financial markets the demand for loans, issuing, sale and purchase of shares and other securities and the purchase of foreign exchange for imports are necessary for the conduct of business activities, the flow of goods and services, the supply, sale and transport of raw materials and processed, energy and fuel means of production and dissemination of trade.

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

1. Each Contracting Party shall encourage investors of the other contracting party to invest in its territory.

2. Investors of both Contracting Parties shall have a right of access to investment activities in the territory of the other Contracting Party that is no less favourable than that provided for Article III, paragraph 1.

3. Each Contracting Party shall always accord fair and equitable treatment to investments of investors of the other Contracting Party the Contracting Parties to certify that the management, maintenance, processing, use, enjoyment or disposal of investments in its territory by investors of the other contracting party, as well as the companies or firms or such investments have been made, are not subject to any unjustified or discriminatory measures.

4. Each Contracting Party shall establish and maintain in its territory a legal framework favourable to investors legal continuity of treatment, including respect in good faith all commitments to each investor.

5. The Contracting Parties shall establish any condition for achieving the development or continued investment could lead to the acceptance or the imposition of obligations relating to production for export and provide for the supply of goods or any similar status.

6. In accordance with its national laws and regulations, each Contracting Party shall accord to nationals of the other contracting party in its territory for an investment regulated by this Agreement adequate working conditions for the conduct of their professional activities each Contracting Party shall apply the most favourable treatment to issues relating to the entry and sojourn labour movement within its territory of nationals of the other contracting party, as well as members of their families.

Companies incorporated in accordance with the laws and regulations of one Contracting Party and which are owned or controlled by investors of the other Contracting Party shall be permitted freely to engage senior managers, regardless of their nationality, in accordance with the laws of the host party contracting

## **Article III. National Treatment and Most-favoured-nation Clause**

1. Each Contracting Party shall accord in its territory and returns to investments of investors relating to the other contracting party treatment no less favourable than that accorded to investments and income related to its own nationals or to those of third countries the same treatment applies to activities related to investment.

2. If the legislation of either Contracting Party or existing international obligations or may enter into force in the future in either Contracting Party, it was a legal situation in which investors of the other contracting party to a more favourable

treatment than is provided for by the present Agreement, the treatment accorded to investors of that other party shall apply to investors of the Contracting Party concerned to existing relations.

3. The provisions of paragraphs 1 and 2 of this article does not extend to the privileges and advantages which either Contracting Party may accord to investors of a third State by virtue of its membership in a customs union, economic or a common market or a free trade area, an agreement a regional or sub-regional economic multilateral international agreement or on the basis of agreements to avoid double taxation or or cross-border trade facilitation.

## **Article IV. Compensation for Damage or Losses**

If investors of either Contracting Party suffer loss or damage to their investments in the territory of the other Contracting Party owing to war, other forms of armed conflict or civil strife, state of emergency or other similar events, the Contracting Party in whose territory the investment has been made shall grant adequate compensation for losses or damages, regardless of whether they have been caused by government forces or by other subjects compensation shall be settled in a freely convertible currency and freely transferable without undue delay.

The Investor affected shall be entitled to the same treatment to nationals of the other Contracting Party and, in any event, no less favourable treatment accorded to qué that investors of third States.

## **Article V. Nationalisation or Expropriation**

1. Investments made within the framework of this Agreement shall be subject to any measure which may limit permanent or temporary ownership, possession or control, the enjoyment of investments, subject to national or local legislation in force and the provisions adopted by the competent judicial authorities.

2. Investments and activities associated with investments of investors of either Contracting Party shall not be discriminated, de iure or de facto, directly or indirectly, measures of expropriation, nationalization or requisition, any other similar measures, including measures affecting companies and assets controlled by the investor in the territory of the other contracting party except for public purposes or for reasons of national interest, in such cases, payment immediate, full and effective compensation is provided that such measures are taken on a non-discriminatory basis and in compliance with all the legal provisions and procedures

3. An appropriate amount of compensation shall be equivalent to the market value of the expropriated investment immediately before the time or expropriate or nationalize decision was announced or made public.

In the event of difficulties in establishing the market value effective, the latter shall be determined on the basis of the internationally recognized evaluation criteria.

The compensation shall be calculated in a freely convertible currency at the rate of exchange applicable on the date, expropriate or nationalize or decision was announced or made public and it shall include interest calculated on the basis of the EURIBOR parameters from the date of expropriation or nationalisation until the date of payment, and shall be freely transferred affected.

Upon its determination, the compensation shall be paid without undue delay and in any case within a period of one month.

4. If the object of expropriation is a joint venture company established in the territory of one of the two contracting parties, the compensation to be paid to an investor of a Contracting Party is calculated on the basis of the value of its participation in the joint enterprise, in accordance with the relevant documents and on the basis of the same evaluation criteria set out in paragraph 3 of this Article.

5. Nationals or companies of one of the two contracting parties who claim to have suffered expropriation of their investments or part thereof shall have the right to prompt review by the appropriate judicial or administrative authorities of the other contracting party, in order to verify whether the expropriation has taken place and, if so, whether the possible expropriation and compensation conforms to the principles of international law and with a view to deciding on all matters.

6. If after the expropriation expropriated investment is not used in whole or in part for the purposes laid down, the former owner and his / her partner / s have the right to the purchase price of the expropriated investment shall be calculated from the redemption date on the basis of the same evaluation criteria adopted at the time of calculating the compensation referred to in paragraph 3 of this Article.

## **Article VI. Repatriation of Capital, Profits or Income**

1. Each Contracting Party shall guarantee that all payments relating to an investment in its territory by an investor of the other Contracting Party may be freely transferred into and out of its territory and without undue delay after the payment obligations of all fiscal transfers shall include in particular, though not exclusively,

- a) The additional capital and capital, including reinvested profit used to maintain and increase investment;
  - b) The net income, dividends, royalties, payments for technical assistance and profits, interest and other services
  - c) The income arising from the total or partial sale or the total or partial liquidation of an investment;
  - d) The funds in repayment of loans secured for an investment and the payment of interest arising therefrom,
  - e) The remuneration and allowances to nationals of the other contracting party and to their work for services rendered in connection with an investment in the territory of the other Contracting Party, except to the extent and in the manner established by the national laws and regulations in force,
  - f) Any payments as compensation referred to in Article IV.
2. The tax obligations referred to in paragraph 1 above shall be paid when the investor has completed the procedures laid down by the legislation of the Contracting Party in whose territory the investment is made.
3. Without prejudice to the scope of article III of this Agreement, the Contracting Parties undertake to apply to transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to the investments made by investors of third States, where it would be more favorable.
4. In the event, or to cause serious problems associated with the balance of payments, a Contracting Party may temporarily be obliged to restrict the transfer of funds, such restrictions shall not be applied to investments relating to this agreement only if the Contracting Party is the relevant recommendations adopted in the cases specified by the International Monetary Fund such restrictions are adopted on an equitable, non-discriminatory basis and in good faith.

## **Article VII. Subrogation**

If a Contracting Party or any of its institutions have given a guarantee against non-commercial risks to an investment by one of its investors in the territory of the other Contracting Party and has made a payment to its investor on the basis of such a guarantee, the other Contracting Party shall recognize the assignment to the rights of the investor of the first Contracting Party with regard to the transfer of payment to the contracting party or its agency by virtue of such assignment the provisions of Articles IV, V and VI of this Agreement shall be applied.

## **Article VIII. Transfer Procedures**

The transfers referred to in Articles IV, V, VI and VII shall be effected without undue delay and in any case, within one month all transfers shall be effected in a freely convertible currency at the rate of exchange applicable on the date, or the investor has requested the transfer, with the exception of the provisions referred to in paragraph 3 of Article V, at the rate of exchange applicable on in case of expropriation or nationalisation.

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

1. Any dispute between the contracting parties concerning the interpretation and application of this Agreement shall, if possible, be settled through consultation and negotiation.
2. If within six months from the date on which either of the Contracting Parties has submitted a request in writing for the dispute is not settled, it shall be submitted at the request of one of the contracting parties to an ad hoc arbitral tribunal in accordance with the provisions of this Article.
3. The arbitral tribunal shall be constituted in the following way within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal the chairman shall be appointed within three months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this article, any appointment has not been made, in the absence of any other agreement, either Contracting Party may invite the President of the International Court of Justice to make the appointment if the President of the Court is a national of either Contracting Party or if he is otherwise may exercise this function, the member of the International Court of Justice the oldest who is not a national of either Contracting Party shall be invited to make the désignationparagraphe (3) of this article, any appointment has not been made, in the absence of any

other agreement, either Contracting Party may invite the President of the International Court of Justice to make the appointment if the President of the Court is a national of either Contracting Party or if he is otherwise may exercise this function, the member of the International Court of Justice the oldest who is not a national of either Contracting Party shall be invited to make the appointment.

5. The arbitral tribunal shall reach its decisions by a majority of votes and its decisions shall be binding on both contracting parties are the costs of the arbitral proceedings and their representative the proceedings the costs related to the Chair and any remaining costs shall be divided equally between the contracting parties the arbitral tribunal shall determine its own procedures.

## **Article X. Settlement of Disputes between an Investor and the Contracting Parties**

1. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning an investment, including a dispute concerning the amount of compensation shall be settled as far as possible through consultation and negotiation.

2. If the investor and a body of either Contracting Party has entered into an investment agreement, the procedure laid down by the Investment Agreement applies.

3. If, as provided for in paragraph 1 of this article, the dispute is not settled within six months from the date of the written request for this purpose, the investor concerned may submit the dispute to one of the bodies designated ci- après paragraphe 1 of this article, the dispute is not settled within six months from the date of the written request for this purpose, the investor concerned may submit the dispute to one of the following bodies designated.

a) The competent court of the Contracting Party having territorial jurisdiction,

b) The ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), the host Contracting Party undertakes in accépter to submit to arbitration,

c) The International Centre for Settlement of Investment Disputes (ICSID), for the implementation of the arbitral proceedings under the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, on 18 March 1965 if or when both contracting parties have adhered

4. According to paragraph 3 (b) of this article, the arbitration shall be conducted in accordance with the following provisions

The Arbitral Tribunal shall consist of three arbitrators, who, if they are not nationals of either Contracting Party, shall be nationals of States having diplomatic relations with both Contracting Parties, appointed by the President of the Arbitration Institute of the Stockholm/Paris Chamber as the Appointing Authority. The arbitration shall take place in Stockholm/Paris, unless otherwise agreed between the Parties concerned. In rendering its decision, the Arbitral Tribunal shall apply the provisions of the present Agreement, as well as the principles of international law recognized by both Contracting Parties. The arbitral decision in the territory of the Contracting Parties shall be executed in accordance with the respective national legislation and the international conventions on the subject to which they have acceded.

5. The Contracting Parties shall avoid negotiation through diplomatic channels any matter relating to arbitration or judicial proceeding unless those proceedings have not been concluded, where one of the Contracting Parties has not complied with the decision of the arbitral tribunal or the Ordinary Court within the period laid down by decision or within a period to be established on the basis of the provisions of domestic or the International Law Applicable in this case

## **Article XI. Relationship between Governments**

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties

## **Article XII. Application of other Provisions**

1. Where a matter is governed by this Agreement and by another international agreement to which both Contracting Parties subscribe, or the provisions of general international law, the contracting parties and their investors enjoy the most favourable provisions.

2. If the treatment accorded by a contracting party to investors of the other Contracting Party in accordance with its laws and regulations or other provisions, or a specific agreement or an authorization or other investment agreements, is more favourable than that provided for by this Agreement, the more favourable treatment shall be applied.

3. Successively on the date on which the investment has been made, any significant change to the legislation of the Contracting Party, which rule directly or indirectly, investment will not be applied retroactively and investments within the framework of this agreement will therefore be protected.

4. The provisions of this Agreement do not limit the application of national provisions aimed at preventing the avoidance or evasion of taxes and diversion of active compétences authorities of each Contracting Party shall provide at the request of the other contracting party any necessary information to that end.

### **Article XIII. Entry Into Force**

This Agreement shall enter into force on the date of the receipt of the latter of the two notifications with which the contracting parties will have notified each other to the fulfilment of its ratification procedures.

### **Article XIV. Duration and Termination**

1. This agreement is concluded for a period of ten (10) years and for a further period of five years unless one of the Contracting Parties denounces it no later than one year before its expiration.

2. In the case of an investment made prior to the date of termination as provided for in paragraph 1 of this article, the provisions of articles I to XIII shall continue to be effective for a further period of five years.

Done at Nouakchott 5 / 2003 / 04 in duplicate in the French language

For the Government of the Italian Republic

For the Government of the Islamic Republic of Mauritania