Agreement between the Government of the French Republic and the Government of the Arab Republic of Yemen on the promotion and protection of investments

The Government of the French Republic and the Government of the Arab Republic of Yemen (hereinafter referred to as the "Contracting Parties"),

Desiring to enhance economic cooperation between the two States and create favourable conditions for investments French Arab Republic of Yemen and Yemen in France,

Convinced that the promotion and protection of such investment within the scope of an international agreement will be conducive to stimulating business flows, the transfer of capital and technology between the two countries in the interest of their economic development and prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1.1. The term "investment" means assets, rights and interests of every kind, and in particular, but not exclusively:

(a) Movable or immovable property as well as all other real rights such as mortgages, liens, usufructs, bonds and similar rights;

(b) Shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the parties;

(c) Bonds, debts and rights to all benefits having an economic value;

(d) Copyrights, industrial property rights (such as patents, licenses, trademarks, industrial models and layouts), technical processes, registered names and goodwill;

(e) Concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those in adjacent maritime areas,

provided that such assets shall be or have been invested in accordance with the laws of the Contracting Party in whose territory or maritime zones the investment is made, whether before or after the entry into force of this Agreement.

Any change in the form of investment of the assets shall not affect their qualification as investment provided that such change is not contrary to the legislation of the State in whose territory or maritime zones the investment is made.

1.2. The term "income" means all sums produced by an investment and, in particular, but not exclusively, profits, royalties, fees, dividends and interest, during a given period.

The income from the investment and, in case of reinvestment, the income from its reinvestment shall enjoy the same protection as the investment.

1.3. The term "nationals" refers to natural persons possessing the nationality of one of the Contracting Parties.

1.4. The term "companies" refers to all legal persons, such as, in particular, companies, trading companies or associations incorporated in the territory of one of the Contracting Parties in accordance with the laws of that Party and having their registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws

of that Party.

1.5. The term "maritime areas" means the marine and submarine areas over which the Contracting Parties exercise, in accordance with International Law, sovereignty, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

2.1. Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by the nationals and companies of the other Party in its territory and in its maritime zones.

2.2 Each Contracting Party undertakes to ensure fair and equitable treatment in its territory and maritime zones, in accordance with the principles of international law, to the investments of the nationals and companies of the other Party and to ensure that the exercise of the right so recognized is not hindered either in law or in fact. Each Contracting Party undertakes not to hinder by unjustified or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments made by nationals or companies of the other Contracting Party in its territory or in its maritime zones.

Each Contracting Party undertakes to honour any obligations it may have entered into in respect of investments of nationals or companies of the other Contracting Party.

2.3. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime zones of the other Contracting Party.

Article 3. Treatment of Investments

3.1. Each Contracting Party shall apply to the nationals or companies of the other Party in its territory and in its maritime zones, in respect of their investments and activities related to such investments, the treatment accorded to its nationals or companies, or the treatment accorded to the nationals or companies of the most favoured Nation, if this is more advantageous. In this respect, nationals authorized to work in the territory and maritime zones of one of the Contracting Parties must be able to benefit from all appropriate facilities for the exercise of their professional activities.

3.2. The provisions of this Agreement relating to national or most-favoured-nation treatment shall not require a Contracting Party to extend to the nationals or companies of the other Contracting Party the advantages of any treatment, benefit or privilege accorded by the first Contracting Party under an Agreement relating to an existing or future customs union, common market, external tariff area or other form of regional economic organisation.

Article 4. Compensation for Damage or Loss

4.1. Investors of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, revolt or state of national emergency occurring in the territory or maritime zones of the other Contracting Party shall receive from the latter treatment no less favorable than that accorded to its own investors or to those of the most-favoured-nation.

4.2. Nationals or companies of a Contracting Party which, in any of the situations referred to in paragraph 4.1, suffer losses in the territory and maritime areas of the other Contracting Party as a result of:

(a) The requisition of their property by the forces or authorities of the said Party;

(b) The destruction of their property by the forces or authorities of the said Party, where such destruction was not caused in combat action or was not necessitated by the exigencies of the situation, shall in all circumstances receive appropriate restitution or compensation.

Article 5. Dispossession

5.1. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess directly or indirectly (hereinafter referred to as "dispossessory measures"), the nationals or companies of the other Party of investments belonging to them in its territory and maritime zones, except in the public interest and provided that such measures are not discriminatory or contrary to any specific undertaking.

Any measures of dispossession which may be taken must give rise to the payment of prompt and adequate compensation, the amount of which, calculated on the real value of the investments concerned, must be assessed in relation to a normal

economic situation prior to any threat of dispossession and, in particular, before the dispossession becomes publicly known.

This compensation, its amount and the manner of its payment shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It shall bear interest until the date of payment at the rate agreed by the Contracting Parties.

5.2. Legal provisions shall be made to give the nationals and companies concerned the right to a prompt review of the legality of the measures taken against their investments or revenues and of their valuation by an appropriate procedure and by an authority (administrative or judicial) independent of the Contracting Party carrying out the expropriation, in accordance with the principles set out in this paragraph. This is without prejudice to the right to arbitration in accordance with Article 8 below.

Article 6. Transfers

Each Contracting Party, in whose territory or maritime zones investments have been made by nationals or companies of the other Contracting Party, shall grant to such nationals or companies the free transfer without restriction:

(a) interest, dividends, profits and other current income;

(b) royalties derived from intangible rights referred to in paragraph 1.1(d) and (e) of Article 1

(c) payments made for the repayment of regularly contracted loans;

(d) the proceeds from the total or partial liquidation of the investment, including capital gains;

(e) the compensation for dispossession or loss provided for in Articles 4 and 5 above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime zones of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the official rate of exchange applicable on the date of transfer.

Article 7. Guarantees

To the extent that the legislation of one of the Contracting Parties provides for a guarantee for investments made abroad, such guarantee may be granted, after examination on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zones of the other Party.

The investments of the nationals and companies of one of the Contracting Parties in the territory or maritime zones of the other Party may not obtain the guarantee referred to in the above paragraph unless they have previously obtained the approval of the latter Party.

Article 8. Arbitration In the Event of a Dispute between a National or Company of a Contracting Party

Any investment dispute between one of the Contracting Parties and a national or company of the other Contracting Party shall be settled as amicably as possible between the two Parties concerned.

If such a dispute has not been settled within six months from the time when it was raised by either Party to the dispute, it shall be submitted at the request of either Party to arbitration by the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

Article 9. Subrogation

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of such national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue the actions brought before it until the proceedings have been completed.

Article 10. Specific Commitments

Investments which have been the subject of a specific commitment by one Contracting Party to the nationals and companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that commitment insofar as it contains provisions more favorable than those provided for in this Agreement.

Article 11. Disputes between the Contracting Parties

11.1. the disputes concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

11.2. If, within a period of six months from the time at which it was raised by either Contracting Party, the dispute is not settled, it shall be submitted, at the request of either Contracting Party to an arbitral tribunal.

11.3. the arbitral tribunal shall be constituted for each individual case in the following way:

Each Contracting Party shall appoint one member of the arbitral tribunal within two months from the date of notification by a Contracting Party to the other Contracting Party of its intention to submit the dispute to arbitration. The two Members shall appoint by mutual agreement a third member who shall be a national of a third country and who shall be appointed as Chairman of the arbitral tribunal by the two contracting parties; the Chairman shall be appointed within two months of the appointment of the last of the other two members.

11.4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

11.5. The arbitration tribunal shall take its decision by a majority of votes. Such decisions shall be final and enforceable automatically to the Contracting Parties.

The tribunal shall determine its own rules. It interprets the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, in light of the particular circumstances, legal costs, including the costs of the arbitrators, shall be shared equally between the two Governments.

Article 12. Entry Into Force

Each of the Contracting Parties shall notify each other of the completion of the internal procedures necessary for the entry into force of this Agreement. Such notification shall be made as soon as possible. This Agreement shall enter into force one month after the date of receipt of the last notification.

Article 13. Duration of the Agreement

This Agreement is concluded for an initial period of ten years and shall continue in force thereafter the term unless one of the Parties denounces through diplomatic channels with one year notice.

On expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of fifteen years.

Done in Paris, April 27, 1984, in duplicate, each in the French and Arabic languages, both texts being equally authentic.

For the Government of the French Republic :

JEAN-CLAUDE TRICHET,

Deputy Director of the Treasury Department

For the Government of the Yemen Arab Republic

MOHAMED-AHMED AL JUNAID,

Minister of Development and President of the Central Planning Organization

EXCHANGE OF LETTERS

EXCHANGE OF LETTERS N° 1

April 27, 1984

Dear Mr. President

I have the honor to refer to the Agreement signed today between the Government of the French Republic and the Government of the Yemen Arab Republic on the reciprocal encouragement and protection of investments and to inform you that the interpretation of this Agreement is as follows

1. With regard to Article 1, paragraph 1.1

With regard to investments made before the date of signature of this Agreement, the treatment provided for in this Agreement shall apply unless the Contracting Party in whose territory or maritime zones the investment was made notifies the other Contracting Party, on a case-by-case basis, within six months from the date of signature of this Agreement, of a decision to the contrary.

In this eventuality, consultations shall be held between the Contracting Parties at the request of one of them to seek a mutually acceptable solution. In the meantime, or in the absence of such consultations, the treatment of the investment concerned shall continue to be determined by the specific agreements entered into prior to the signing of this Agreement.

2. With respect to Article 1, paragraph 4

The nationality of "a company controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties and constituted in accordance with the laws of that Party" shall be recognized by the Contracting Party in whose territory or maritime zones the investment is made, prior to its realization.

In the event of disagreement as to the nationality of the company concerned, consultations shall be held between the two Contracting Parties in order to reach a mutually satisfactory agreement.

3. With regard to Article 3

(a) Any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect, shall be considered as legal or de facto impediments to fair and equitable treatment;

(b) The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and authorization to reside, work and travel submitted by the nationals of a Contracting Party in connection with an investment in the territory of the other Contracting Party.

4. With regard to Article 5

The rate of interest agreed upon by the Contracting Parties shall be the official rate of interest of the special drawing right as fixed by the IMF.

I should be obliged if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

The President of the French delegation :

JEAN-CLAUDE TRICHET,

Deputy Director of the Treasury Department

27 April 1984

Monsieur le President,

I have the honor to acknowledge receipt of your letter of today, which reads as follows

"I have the honor to refer to the Agreement signed today between the Government of the French Republic and the Government of the Yemen Arab Republic on the reciprocal encouragement and protection of investments and to inform you that the interpretation of this Agreement is as follows

1. With regard to Article 1, paragraph 1.1

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In this eventuality, consultations shall be held between the Contracting Parties at the request of one of them to seek a mutually acceptable solution. In the meantime, or in the absence of such consultations, the treatment of the investment concerned shall continue to be determined by the specific agreements entered into prior to the signing of this Agreement.

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The nationality of "a company controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties and constituted in accordance with the laws of that Party" shall be recognized by the Contracting Party in whose territory or maritime zones the investment is made, prior to its realization.

In the event of disagreement as to the nationality of the company concerned, consultations shall be held between the two Contracting Parties in order to reach a mutually satisfactory agreement.

3. With regard to Article 3

(a) Any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect, shall be considered as legal or de facto impediments to fair and equitable treatment;

(b) The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and authorization to reside, work and travel submitted by the nationals of a Contracting Party in connection with an investment in the territory of the other Contracting Party.

4. With regard to Article 5

The rate of interest agreed upon by the Contracting Parties shall be the official rate of interest of the special drawing right as fixed by the IMF.

I should be grateful if you would inform me of your Government's agreement to the contents of this letter.

I have the honor to confirm my Government's agreement to these terms.

Please accept, Mr. President, the assurances of my highest consideration.

The Chairman of the Delegation of the Yemen Arab Republic

MOHAMED-AHMED AL JUNAID,

Minister of Development and President of the Central Planning Organization

EXCHANGE OF LETTERS NO. 2

April 24, 1984

Dear Mr. President

I have the honor to refer to the Agreement signed today between the Government of the French Republic and the Government of the Yemen Arab Republic on the reciprocal encouragement and protection of investments and to inform you

that the interpretation of this Agreement is as follows, with regard to articles 8 and 9:

Pending the accession of the Yemen Arab Republic to the Convention on the Settlement of Disputes between States and Nationals of Other States signed in Washington on 18 March 1965, The Contracting Parties agree that any investment dispute between one of the Contracting Parties and a national or company of the other Party shall be finally settled under the arbitration rules of the United Nations Commission on International Trade Law as adopted by the General Assembly of the United Nations in its resolution 31-98 of December 15, 1976.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

The President of the French delegation :

JEAN-CLAUDE TRICHET,

Deputy Director of the Treasury Department

April 24, 1984

Mr. President,

I have the honor to acknowledge receipt of your letter of today, which reads as follows

"I have the honor to refer to the Agreement signed today between the Government of the French Republic and the Government of the Yemen Arab Republic on the reciprocal encouragement and protection of investments and to inform you that the interpretation of this Agreement is as follows, with regard to Articles 8 and 9:

Pending the accession of the Yemen Arab Republic to the Convention on the Settlement of Disputes between States and Nationals of Other States signed in Washington on 18 March 1965, The Contracting Parties agree that any investment dispute between one of the Contracting Parties and a national or company of the other Party shall be finally settled under the arbitration rules of the United Nations Commission on International Trade Law as adopted by the General Assembly of the United Nations in its resolution 31-98 of December 15, 1976.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

I have the honour to confirm the agreement of my Government with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

The Chairman of the Delegation of the Yemen Arab Republic

MOHAMED-AHMED AL JUNAID,

Minister of Development and Chairman of the Central Planning Organization