

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF EQUATORIAL GUINEA ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Equatorial Guinea, hereinafter referred to as the Contracting Parties.

Wishing to develop economic cooperation between the two States and to create favorable conditions for Equatorial Guinean investments in France and French investments in Equatorial Guinea,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

1. The term "investment" means assets such as property, rights and interests of every kind, and in particular but not exclusively

(a) movable and immovable property and other real rights such as mortgages, liens, usufructs, bonds and similar rights

(b) shares, stock options, and other forms of participation, even if minority or unfair, in companies incorporated in the territory of one of the Parties

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

(d) copyrights, industrial property rights (such as patents, licenses, trademarks, industrial models and designs), technical processes, registered names and clientele

(e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime areas of the Contracting Parties, provided that such assets shall be or have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime areas 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 investments, provided that such change is not contrary to the legislation of the State in whose territory or maritime zones the investment is made.

2. The term "nationals" means natural persons possessing the nationality of one of the Contracting Parties.

3. The term "companies" means any legal entity formed in the territory of one of the Contracting Parties in accordance with the legislation of that Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in the territory of one of the Contracting Parties and formed in accordance with the legislation of that Party.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

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

5. The term "maritime zones" means the marine and submarine areas over which the Contracting Parties exercise, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2.

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

Article 3.

Each Contracting Party undertakes to ensure in its territory and in its maritime zones fair and equitable treatment, 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.

Article 4.

Each Contracting Party shall apply to the nationals or companies of the other Party in its territory and maritime zones, in respect of their investments and activities related to such investments, the treatment accorded to its own nationals or companies, or the treatment accorded to the nationals or companies of the more favoured Nation, if this is more advantageous. In this connection, nationals authorized to work in the territory and maritime zones of one of the contracting parties shall be afforded appropriate material facilities for the exercise of their professional activities.

This treatment shall not, however, extend to the privileges which a Contracting Party grants to the nationals or companies of a third State by reason of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

Article 5.

1. 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.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to deprive, directly or indirectly, the nationals and 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 particular undertaking.

Any measures of dispossession which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, calculated on the real value of the investments concerned, shall be assessed in relation to a normal economic situation prior to any threat of dispossession.

This indemnity, its amount and the modalities of its payment are fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. Until the date of payment, it shall accrue interest at the rate agreed upon by the Contracting Parties.

3. Investors of one of the contracting parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime areas of the other contracting party shall receive from the latter treatment no less favourable than that accorded to its own investors or to those of the most favoured nation. In any event they shall receive adequate compensation.

4. Without prejudice to paragraph 3 of this Article, nationals or companies of a Contracting Party who, in one of the situations referred to in paragraph 3, suffer losses in the territory and maritime zones 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, if such destruction was not caused in combat action or was not necessitated by the exigencies of the situation,

shall in all circumstances be entitled to appropriate restitution or compensation. Payments resulting from any of the provisions of this Article are freely transferable.

Article 6.

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 of

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

(b) royalties derived from the intangible rights referred to in paragraph 1(d) and (c) of Article 1;

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

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

(e) the compensation for loss of possession or loss as provided for in Article 5, paragraphs 2 and 3 above.

Nationals of each of the Contracting Parties 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 normal rate of exchange officially applicable on the date of transfer.

Article 7.

Insofar as the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, 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.

Investments by nationals or 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 preceding paragraph unless they have first obtained the approval of the latter Party.

Article 8.

Any dispute relating to investments between one of the Contracting Parties and a national or a company of the other Contracting Party shall, as far as possible, be settled amicably 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 the dispute to the arbitration of 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 signed in Washington on March 18, 1965.

Article 9.

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.

Investments which have been the subject of a special undertaking by one of the Contracting Parties 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 undertaking insofar as it contains provisions more favourable than those provided for in this Agreement.

Article 11.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels;

2. If the dispute is not settled within six months from the date of its submission by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal;

3. The said tribunal shall be constituted for each particular case in the following manner:

Each contracting party shall appoint one member and both members shall appoint, by mutual agreement, a national of a third State who shall be appointed chairman by both contracting parties. All members shall be appointed within two months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits set forth in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any applicable agreement, invite the Secretary-General of the United Nations to make the necessary designations. If the Secretary-General is a national of either Contracting Party

If the Secretary-General is a national of either Contracting Party or is for any other reason unable to serve, the most senior Deputy Secretary-General, not being a national of either Contracting Party, shall make the necessary appointments.

5. The Arbitration Tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules of procedure. It shall interpret the award at the request of either Contracting Party.

Unless the tribunal provides otherwise, having regard to the particular circumstances, the costs of the proceedings, including the fees of the arbitrators, shall be divided equally between the two Governments.

Article 12.

Each of the parties shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial period of ten years; it shall remain in force until such time as either Party gives one year's notice through diplomatic channels.

At the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Done in Paris, on March 3, 1982, in two originals, each in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic:

JEAN-CLAUDE TRICHET,

Sous-Directeur des Affaires bilaterales a la Direction du Tresor,

Ministere de L'economie et des finances.

For the Government

of the Republic of Equatorial Guinea :

LUCIANO EDJANG MBO,

State Commissioner of the Ministry of Public Works, Housing, Urban Planning and Transport.

Exchange of Letters

Dear Mr. President

I have the honor to refer to the Agreement signed today between the Government of the Republic of Equatorial Guinea and

the Government of the French 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 3:

(a) Any restriction on the purchase and transport of auxiliary raw materials, energy and fuels, as well as means of production and exploitation of any kind, any obstacle to the sale and transport of products within the country and abroad, as well as any other measure having a similar effect, shall be considered as de jure or de facto obstacles 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 move within the country made by nationals of a Contracting Party in connection with an investment in the territory of the other Contracting Party.

2. With respect 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.

3. With regard to Article 8:

Pending the accession of Equatorial Guinea to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States signed in Washington on March 18, 1965, the Contracting Parties agree that any investment dispute between one of the Contracting Parties and a national or a company of the other Contracting Party shall be settled in accordance with the provisions of the Convention.

The contracting parties agree that any investment dispute between one of the contracting parties and a national or company of the other contracting party shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those Rules.

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

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

JEAN-CLAUDE TRICHET,

President of the French Delegation.

Monsieur le President,

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

"I have the honor to refer to the agreement signed today between the Government of the Republic of Equatorial Guinea and the Government of the French Republic on the reciprocal encouragement and protection of investments and to specify that the interpretation of this agreement is as follows

1. With regard to Article 3:

(a) Any restriction on the purchase and transport of auxiliary raw materials, energy and fuels, as well as means of production and exploitation of any kind, any obstacle to the sale and transport of products within the country and abroad, as well as any other measure having a similar effect, shall be considered as de jure or de facto obstacles 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 move within the country made by nationals of a Contracting Party in connection with an investment in the territory of the other Contracting Party.

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The contracting parties agree that any investment dispute between one of the contracting parties and a national or company of the other contracting party shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those Rules.

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

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

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

of my highest consideration.

LUCIANO EDJANG MBO,

President of the Delegation of Equatorial Guinea.