

Agreement between the Federal Republic of Germany and the Gabonese Republic on the mutual encouragement and protection of investments

The Federal Republic of Germany and the Gabonese Republic -

- hereinafter referred to as "Contracting Parties"

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement

1. The term "investments" means assets of any kind, in particular

a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;

b) Shares in companies and other kinds of participation in companies; ;

c) Claims on money used to create an economic value or claims on an economic value;

d) Intellectual property rights, such as, in particular, copyright, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;

e) Public-law concessions, including concession and concession concessions;

A change in the form in which assets are invested shall not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) As regards the Gabonese Republic:

Gabonese in the sense of the Gabonese nationality law;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality having its head office in the territory of the Federal Republic of Germany, whether or not its activity is directed at profit,

b) As regards the Gabonese Republic:

Every legal person, as well as any economic unit established in accordance with the Gabonese legislation.

Article 2. Promotion and Approval of Investments

(1) Each Contracting Party shall, as far as possible, promote investments of nationals or companies of the other Contracting Parties in its territory and allow such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

Article 3. Treatment of Investments

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to nationals or companies of third States because of their membership in a customs or economic union, a common market or a free trade zone or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

Article 4. Protection of Investments

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; it must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party which suffer losses in investments through war or other armed conflicts, revolution, emergency or turmoil in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party as regards their refunds, compensation, compensation or other consideration Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

Article 5. Transfer

(1) Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

a) Of the capital and additional amounts for the maintenance or expansion of the investment;

b) Of income;

c) To repay loans;

d) Of the proceeds in the case of partial or complete liquidation or disposal of the investment;

e) Of the compensation provided for in Article 4.

(2) Transfers under paragraph 1 of this Article and under Article 6 of this Agreement shall be effected without delay at the applicable rate.

(3) This rate must correspond to the cross-rate, which is derived from the exchange rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

Article 6. Subrogation

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by virtue of the rights of the former Contracting Party To the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims as may be exercised by the former Contracting Party to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

Article 7. Other Agreements

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are justified in the future constitute a general or specific rule which makes the investments of the nationals or companies of the other Contracting Parties more favorable than those laid down in this Agreement Is to be granted, this arrangement shall be subject to the provisions of this Agreement in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

Article 8. Existing Investments

This Agreement shall also apply to investments carried out by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Agreement.

Article 9. Treatment of Disputes between the Contracting Parties

(1) Any disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to order the chairman within three months after the one party to the agreement has informed the other that they intend to submit the dispute to an arbitration court.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the vice-president also has the nationality of one of the two contracting parties or if he is also prevented from doing so, the next member of the Court who is not a national of one of the two contracting parties shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

Article 10. Treatment of Disputes between a Contracting Party and an Investor of the

other Contracting Parties

- (1) Disputes with regard to investments between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the parties concerned.
- (2) If the dispute can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Parties. Each Contracting Party agrees to such a procedure by means of this Agreement. Unless otherwise agreed, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.
- (3) The arbitration award shall be binding and shall not be subject to any other means of appeal or other remedies other than those provided for in the said Convention. It is enforced under national law.
- (4) The Contracting Party involved in the dispute shall not claim as an objection during an arbitration proceedings or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part or all of the damage resulting from insurance.

Article 11. Continuation of the Agreement

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

Article 12. Final Provisions

- (1) This Agreement shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible.
- (2) This Agreement shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the period of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the Agreement in writing with a period of twelve months before the expiry of the Agreement. After ten years, the Agreement may be terminated at any time by a period of twelve months.
- (3) For investments made up to the date of the expiry of this Agreement, Articles 1 to 11 shall continue to apply for a further twenty years from the date of expiry of the Agreement.
- (4) Upon the entry into force of this Agreement, the Treaty of 16 May 1969 between the Federal Republic of Germany and the Gabonese Republic on the Promotion and Mutual Protection of Investments shall cease to have effect.
- (5) The provisions of this Agreement shall also apply to the Protocol annexed to this Agreement.

For the Federal Republic of Germany

Adalbert Rittmüller

For the Gabonese Republic

Casimir OYÉ MBA

Protocol

At the time of signing the Agreement between the Federal Republic of Germany and the Gabonese Republic on the Mutual Encouragement and Protection of Investments, the undersigned plenipotentiaries have further agreed upon the following provisions which shall form an integral part of the Agreement

(1) Ad Article 1

- (a) The proceeds of the investment or reinvestment shall enjoy the same protection as the original investment.

(b) Without prejudice to other methods of determining nationality, any person holding a national passport issued by the competent authorities of the Contracting Party concerned shall be considered in particular as a national of a Contracting Party.

(2) Ad Article 2

(a) Investments made in accordance with the legislation of a Contracting Party in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of the Agreement.

(b) The Agreement shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that international law permits the Contracting Party in question to exercise sovereign rights of jurisdiction therein.

(3) Ad Article 3

(a) "Activity" within the meaning of paragraph 2 of Article 3 means, inter alia, but not exclusively, the administration, use and enjoyment of an investment. Less favourable "treatment" within the meaning of Article 3 shall include: any unequal treatment in the case of restrictions on the purchase of raw and auxiliary materials, energy and fuel as well as means of production and operation of any kind, any unequal treatment in the case of obstacles to the sale of products within the country and abroad, as well as any other measures having a similar effect. Measures taken for reasons of security, public order, public health or morality shall not be considered as "less favourable treatment" within the meaning of Article 3.

(b) The provisions of Article 3 shall not require a Contracting Party to extend to individuals and companies resident in the territory of the other Contracting Party the benefits of tax advantages, exemptions and reductions which, in accordance with its tax laws, are accorded only to individuals and companies in its territory.

(c) The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and residence by persons of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; The same shall apply to workers of one of the contracting parties who wish to enter the territory of the other contracting party in connection with an investment and to stay there in order to carry out a remunerated activity. Applications for work permits shall also be given sympathetic consideration.

(4) Ad Article 4

Compensation may also be claimed if there has been State intervention in the company which is the subject of the investment and if the economic substance of the company has been substantially impaired as a result.

(5) Ad Article 5

Any transfer shall be deemed to be effected "without delay" within the meaning of paragraph 2 of Article 5 if it takes place within the period normally required for compliance with the transfer formalities. The time limit shall begin to run on the date of the submission of a request therefor and shall in no case exceed two months.

(6) In the case of transport of goods or persons in connection with an investment, a Contracting Party shall not exclude or impede transport undertakings of the other Contracting Party and, where necessary, shall grant the necessary authorizations for the transport. This provision shall apply to the carriage of

(a) of goods intended directly for investment within the meaning of the Agreement or purchased in the territory of a contracting Party or of a third State by an enterprise or on behalf of an enterprise in which goods within the meaning of the Agreement are invested

(b) persons travelling in connection with an investment.

Done at Libreville on 15 September 1998 in duplicate in the German and French languages, both texts being equally authentic.

For the Federal Republic of Germany

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For the Gabonese Republic

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