

# **Treaty between the Gabonese Republic and the Federal Republic of Germany on the encouragement and mutual protection of of capital investments**

THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF GABON

DESIRING to deepen economic cooperation between the two countries,

DECLARING to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State;

RECOGNIZING that the promotion and the contractual protection of these investments are likely to stimulate private economic activity and increase the prosperity of the two peoples,

HAVE AGREED AS FOLLOWS:

## **Article 1.**

Each Contracting Party shall, as far as possible, promote the investments of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws, in particular in accordance with the laws on the Gabonese Investment Fund. It will in any case treat capital investments fairly and equitably.

## **Article 2.**

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

(2) Each Contracting Party shall, in its territory, treat nationals and companies of the other Contracting Parties no less favorably than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments.

## **Article 3.**

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

(2) Investments of nationals or companies of a Contracting Party may only be expropriated in the territory of the other Contracting Parties for the general good and for compensation. The compensation must correspond to the value of the expropriated investment, be actually usable and freely transferable, and be made immediately. At the latest at the time of expropriation, appropriate provisions must be made for the setting and performance of the compensation. The legality of the expropriation 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, national necessity 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 are freely transferable.

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

## **Article 4.**

Each Contracting Party guarantees to the nationals or companies of the other Contracting Parties the free transfer of capital, income and, in the case of liquidation, the liquidation proceeds.

## **Article 5.**

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 On the basis of legal transactions to the former Contracting Parties and their entry into all these rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 3 (2) and (3) and Article 4 shall apply mutatis mutandis to the transfer of payments to the Contracting Party concerned on the basis of the transferred claims.

## **Article 6.**

(1) Provided that the parties concerned have not made a derogation from the competent authorities of the Contracting Party in whose territory the investment is situated, transfers pursuant to Article 3 (2) or (3), Article 4 or Article 5 shall be effected without delay and with regard to current transactions On the date of the transfer.

(2) The rate valid for current transactions is based on the par value (par value) agreed with the International Monetary Fund and must be parity (parity) within the fluctuation margin permitted under Article IV (3) of the Agreement on the International Monetary Fund.

(3) If there is no conversion rate for a Contracting Party at the time of transfer, as defined in paragraph 2, the official rate determined by that Contracting Party for its currency in relation to the US dollar or any other freely convertible currency or gold shall be applied. Where such a price is not fixed, the competent authorities of the Contracting Party in whose territory the capital is invested shall allow a conversion rate which is fair and fair.

## **Article 7.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty 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.**

(1) The term "investments" includes all assets, in particular but not exclusively:

- a) Ownership of movable and immovable property as well as other rights in rem, such as mortgages, liens or the like;
- b) Share rights in companies and other types of participations;
- c) Claims for money or services having an economic value;
- d) Copyright, industrial property rights, technical procedures, trade names and goodwill;
- e) Public-law concessions, including concession and concession concessions.

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

(2) The term "income" refers to the amounts that are attributable to an investment as a profit or interest for a certain period of time.

(3) The term "nationals"

a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) As regards the Republic of Gabon:

Gabonese according to the Gabonese nationality law.

(4) The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person, any trading company or other company or association with or without legal personality who is domiciled in the territory of the Federal Republic of Germany and who is entitled under the laws to impose unlimited or unlimited liability on the part of its members, is aimed at profit or not;

b) As regards the Republic of Gabon:

Any legal person or any commercial or other company or association with or without legal personality established in the territory of the Gabonese Republic and which is lawful in accordance with the law whether or not the liability of its members, members or members is limited or unlimited, is aimed at profit or not.

## **Article 9.**

This contract shall also be subject to investments made 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 Treaty. The agreement of 27 February 1953 on German foreign debt shall remain unaffected.

## **Article 10.**

Each Contracting Party grants national treatment under this Treaty on account of the fact that, in the same matters, the national treaty is also granted by the other Contracting Party.

## **Article 11.**

(1) Any disputes 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 either Contracting Party or if he is also prevented from attending, the next member of the Court of Justice who is not a national of either Contracting Party 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 12.**

The provisions of this Agreement shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which may be permitted on the basis of the general rules of international law. Measures of this kind will be lifted no later than the actual end of the dispute, regardless of whether diplomatic relations are restored.

## **Article 13.**

This Agreement shall apply to the Land of Berlin, except for the provisions of Protocol 7, in so far as it relates to aviation, to the contrary to the Government of the Republic of Gabon within three months after the entry into force of this Treaty emits.

## **Article 14.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in LIBREVILLE.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for fifteen years and shall be extended indefinitely unless terminated in writing. After expiry of fifteen years, the contract may be terminated at any time, but remains valid for one year after termination.

(3) For investments made up to the date of the expiry of the contract, Articles 1 to 13 shall apply for at least fifteen years from the date of authorization of the investment, but at least for twelve years after the termination of this contract.

For the Federal Republic of Germany

Günther Harkort

For the Republic of Gabon

Ondo, Bonjean

## **Protocol**

At the time of signing the Treaty on the Encouragement and Mutual Protection of Capital Investments, concluded between the Gabonese Republic and the Federal Republic of Germany, the undersigned Plenipotentiaries have agreed, in addition, on the following arrangements which shall be considered as forming an integral part of the

Treaty:

(1) Ad Article 1

Investments made in accordance with the legislation of one of the Contracting Parties within the scope of its law by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

To the extent that an approval procedure is required for an investment, it shall enjoy such protection from the date of approval.

(2) Ad Article 2

(a) The following shall be considered as activities within the meaning of paragraph 2 of Article 2, in particular, but not exclusively, the administration, use and enjoyment of an investment, In particular, the following shall be considered as "less favourable treatment" within the meaning of paragraph 2 of Article 2 Any restriction on the supply of raw and auxiliary materials, of energy and fuel, and of means of production and operation of any kind, any impediment to the sale of products within the country and abroad, and any other measures having a similar effect. Measures taken for reasons of public safety, order, health or morals shall not be considered as "less favourable treatment" within the meaning of Article 2.

(b) The provisions of the Treaty shall not prevent the Government of Gabon from agreeing with German nationals or German companies, when admitting an investment, to special conditions which may relate to the participation of the Gabonese State in the capital, If such conditions are agreed upon, the provisions of Article 2 shall not apply. If such conditions are agreed upon, the provisions of Article 2 shall not thereby apply. Such conditions shall be valid only if derogatory measures have been specified and fixed in detail in the act of admission or, if such an act is not necessary, prior to the making of the investment in a special written arrangement with the nationals or companies of the other Contracting Party.

(c) Paragraph 2 of Article 2 shall not apply to entry, residence and employment as an employee.

(3) Ad Article 3

The provisions of paragraph 2 of Article 3 shall also apply to the transfer of a capital investment into public ownership, to its placing under public control or to similar interventions by public authorities, "expropriation" means the withdrawal or limitation of any property right which, alone or together with other rights, constitutes a capital investment.

(4) Ad Article 4

Any alienation for the purpose of relinquishing all or part of the investment shall also be considered a "liquidation" within the meaning of section 4.

(5) Ad Article 6

Any transfer which takes place within the period of time normally required for compliance with the transfer formalities shall be considered to be effected "without delay" within the meaning of paragraph 1 of Article 6. The time limit shall begin to run on the date of the submission of a request relating thereto and shall in no case exceed two months.

(6) Ad Article 8

a) The proceeds of the investment and, in case of reinvestments, the proceeds of their investment shall enjoy the same protection as the investment.

(b) Without prejudice to other procedures for determining nationality, any person who holds a national passport issued by the competent authorities of the Contracting Party in question shall be considered a national of that Party.

(7) The Contracting Parties shall guarantee the free choice of means of transport for goods and persons in connection with the execution of capital investments, taking into account existing and future agreements.

DONE at Bonn, on the sixteenth day of May, one thousand nine hundred and sixty-nine, in four copies, two of which are in the French language and two in the German language, each text being equally authentic.

For the Gabonese Republic

Ondo, Bonjean

For the Federal Republic of Germany

Günther Harkort

## **Exchange of Letters**

The President of the Gabonese Delegation

Bonn, May 16, 1969

Mr. President,

Referring to the Treaty signed today between the Gabonese Republic and the Federal Republic of Germany on the encouragement and mutual protection of capital investments, I have the honour to inform you of the following:

With a view to facilitating operations and encouraging the development of capital investments made by German nationals or companies, the Gabonese Republic grants to German nationals who, in connection with capital investments made by German nationals or companies in the Gabonese Republic, who wish to enter, stay and work as employees in the Gabonese Republic, the necessary authorizations, unless reasons of public order, security, health or morality prevent it.

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

Ondo, Bonjean

Mr.

Dr. Gunther Motz

President of the German Delegation

Bonn

The President of the German Delegation

Bonn, May 16, 1969

Dear Mr. President

I have the honor to acknowledge receipt of your letter of today's date which reads as follows

"In order to facilitate the operations and to encourage the development of capital investments made by German nationals or companies, the Gabonese Republic grants the necessary authorizations to German nationals who, in connection with capital investments made by German nationals or companies in Gabon, would like to enter, stay and work as employees in the Gabonese Republic, unless reasons of public order, security, health or morality prevent it.

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

Motz

Mr. President of the Gabonese Delegation