

Agreement between the Government of the French Republic and the Government of the Federal Republic of Nigeria on the reciprocal encouragement and protection of investments

The Government of the French Republic and the Government of the Federal Republic of Nigeria hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investment in Nigeria and Nigerian investment in France

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 on the following provisions:

Article 1.

For the purposes of this Agreement

1. (i) The term "investment" means assets such as property,

(i) "Investment" means assets such as property, rights and interests of every kind, and in particular but not exclusively

(a) Movable and 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 contracting parties;

(c) Bonds, debts and rights to all benefits of 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 located in the maritime zone of the Contracting Parties.

(ii) It is understood that such assets must be or have been invested in accordance with the laws of the Contracting Party in whose territory or maritime area the investment is made, whether before or after the entry into force of this Agreement.

(iii) Any change in the form of investment of the assets shall not affect their characterization as an investment, provided that such change is not contrary to the laws of the Contracting Party in whose territory or maritime area the investment is made.

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

3. The term "investor" means any national or any legal person incorporated in the territory of one of the Contracting Parties, in accordance with the laws 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 persons having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

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

5. This Agreement shall apply to the territory of each Contracting Party and to the maritime area of each Contracting Party, hereinafter defined as the economic area and the continental shelf which extend beyond the limits of the territorial waters of each Contracting Party and over which they have, in accordance with international law, sovereign rights and jurisdiction

for the purpose of exploring, exploiting and conserving natural resources.

Article 2.

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

Article 3.

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, fair and balanced treatment, in accordance with the principles of international law, of investments made by investors of the other Party and to ensure that the exercise of the right so recognized is not hindered in law or in fact.

Article 4.

1. Each Contracting Party shall, in its territory and maritime zone, apply to investors of the other Party, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its investors, or the treatment accorded to investors of the most favoured Nation, whichever is more favourable. In this respect, nationals authorized to work in the territory and maritime zone of one of the Contracting Parties shall be provided with appropriate material facilities for the exercise of their professional activities.

2. This treatment shall not, however, extend to the privileges which a Contracting Party grants to investors from a third State by virtue 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 investors of either Contracting Party, as well as the income derived therefrom and the reinvestment of such income, shall enjoy full protection and security in the territory and maritime area of the other Contracting Party.

2. (i) The Contracting Parties shall not take any measure of expropriation or nationalization or any other measure the effect of which is to dispossess

(i) Contracting Parties shall not take expropriation or nationalization measures or any other measures the effect of which is to dispossess, directly or indirectly, investors of the other Party of investments belonging to them in their territory and in their maritime zone, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

(ii) 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.

(iii) This compensation, its amount and the manner in which it is to be paid, shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It produces,

until the date of payment, interest calculated at the rate agreed by the Contracting Parties.

3. The investors of one of the contracting parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt, occurring in the territory or maritime zone of the other contracting party,

shall be accorded by the latter Party treatment no less favourable than that accorded to its own investors or to those of the most favoured nation.

Article 6.

1. Each contracting Party shall, in the territory or maritime area of which investments have been made by investors of the other contracting Party, accord to such investors the free transfer of

(b) royalties from intangible rights designated in paragraph 1(d) and (e) of Article 1;

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

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

(e) The compensation for loss or dispossession provided for in Article 5, paragraphs 2 and 3, above.

2. Nationals of each of the Contracting Parties who have been authorized to work in the territory or maritime area of the other Contracting Party, in respect of an investment made by an investor of the first Contracting Party, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration determined in accordance with the legislation of the first Contracting Party, in accordance with the principle of fair and equitable treatment.

3. The transfers referred to in the preceding paragraphs shall be effected without delay at the normal rate of exchange officially applicable on the date of transfer.

Article 7.

1. Insofar as the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad it may be granted, on a case-by-case basis, to investments made by investors of that Party in the territory or maritime area of the other Party.

2. Investments made by investors of one of the Contracting Parties in the territory or maritime zone of the other Party may only obtain the guarantee referred to in the above paragraph if they have first obtained the approval of the latter Party.

Article 8.

1. Any dispute relating to investments between one of the Contracting Parties and an investor of the other Party shall, as far as possible, be settled amicably between the two Parties concerned.

2. If such a dispute has not been settled within six months from the time when it was raised by either of the Parties 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.

1. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime area of the other Party, makes payments to one of its investors, it is thereby subrogated to the rights and actions of that investor.

2. The said payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the 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 investors of the other contracting party shall be governed, without prejudice to the provisions of this Agreement by the terms of that undertaking insofar as it contains provisions more favourable than those contained 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 of its being raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration 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 by both Contracting Parties as Chairman. 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 out 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 appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. (i) The arbitration tribunal shall take its decisions by a majority vote.

Such decisions shall be final and binding on the Contracting Parties.

(ii) The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

Article 12.

1. 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.

2. The Agreement is concluded for an initial period of ten years, after which it will remain in force, unless one of the Parties denounces it through diplomatic channels with a one-year notice.

3. Upon 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 a further period of fifteen years.

Done at Paris, this 27th day of February 1990, in two originals, each in the English and French languages, both texts being equally authentic.

For the Government of the French Republic:

Pierre Beregovoy

Minister of State, Minister of the Economy, Finance and Budget

For the Government of the Federal Republic of Nigeria:

Olu Falae,

Minister of Finance and Economic Development

PROTOCOL

Upon the signing of the Agreement this day between the Government of the French Republic and the Government of the Federal Republic of Nigeria on the reciprocal encouragement and protection of investments, the Contracting Parties have also agreed on the following provisions which shall form an integral part of the Agreement.

1. With respect to Article 2:

It is understood that the two Contracting Parties shall consult each other, as necessary, on any matter relating to this Agreement, in particular with regard to the transfer of technology and the effects of investments on the environment. They shall also facilitate access to the information necessary for investors of one of the Contracting Parties for investment projects envisaged by such investors in the territory or maritime area of the other Contracting Party.

2. With respect to Article 3:

(a) The principle of fair and equitable treatment shall apply, *inter alia*, to all investment-related activities relating to the procurement, sale and transportation of raw, auxiliary and finished materials, energy and fuels, both domestically and abroad, as well as to any other operation or activity relating to investments covered by this Agreement.

(b) Both Contracting Parties shall deal, within the framework of their laws and regulations, with problems relating to the entry, residence, work and movement within their respective territories encountered by nationals of the other Contracting

Party and members of their families engaged in activities related to investments covered by this Agreement.

3. With respect to Article 5:

The rate of interest agreed by the Contracting Parties shall be the official rate of interest on the Special Drawing Right as fixed by the International Monetary Fund.

Done at Paris, this 27th day of February 1990, in two originals, each in the English and French languages, both texts being equally authentic.

For the Government of the French Republic:

PIERRE BEREGOVOY,

Minister of State, Minister of the Economy, Finances and Budget

For the Government of the Federal Republic of Nigeria

OLU FALAE,

Minister of Finance and Economic Development