No. 24657

FRANCE
and
EQUATORIAL GUINEA

Agreement concerning the mutual promotion and protection of investments. Signed at Paris on 3 March 1982

Authentic texts: French and Spanish.
Registered by France on 26 March 1987.

FRANCE
et
GUINÉE ÉQUATORIALE

Accord sur l'encouragement et la protection réciproques des investissements. Signé à Paris le 3 mars 1982

Textes authentiques : français et espagnol.
Enregistré par la France le 26 mars 1987.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF EQUATORIAL GUINEA CONCERNING THE MUTUAL PROMOTION 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",

Desiring to develop economic co-operation between the two States and to create favourable conditions for the investments of Equatorial Guinea in France and French investments in Equatorial Guinea,

Convinced that the promotion and protection of such investments are likely to stimulate transfers 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. The term "investment" shall apply to assets such as property, rights and interests of any category, and particularly but not exclusively, to:

(*a*) Movable and immovable property and all other real rights such as mortgages, preferences, usufructs, sureties and similar rights;

(*b*) Shares, issue premiums and other forms of participation, albeit minority or indirect, in companies constituted in the territory of either Party;

(*c*) Bonds, claims and rights to any benefit having an economic value;

(*d*) Copyrights, industrial property rights (such as patents for inventions, licences, registered trade marks, industrial models and designs), technical processes, registered trade names and goodwill;

(*e*) Concessions accorded by law or by virtue of a contract, including concessions for prospecting, cultivating, mining or developing natural resources, including those situated in the maritime zones of the Contracting Parties;

It being understood that the said assets shall be or shall have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime zones the investment is made, before or after the entry into force of this Agreement.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary to the legislation of the State in whose territory or maritime zones the investment is made.

2. The term "nationals" shall apply to individuals having the nationality of either Contracting Party.

3. The term "companies" shall apply to any body corporate constituted in the territory of either Contracting Party in accordance with its legislation and having its

[1] Came into force on 23 September 1983, i.e., one month after the date of receipt (19 August 1983) of the last of the notifications by which the Parties had informed each other of the completion of the required internal procedures, in accordance with article 12.

registered office there or controlled, directly or indirectly, by nationals of one Contracting Party or by bodies corporate having their registered office in the territory of one Contracting Party and constituted in accordance with that Party's legislation.

4. The term "income" shall mean all the amounts yielded by an investment, such as profits, royalties or interest, during a given period.

Income from an investment and, in the event of reinvestment, income from its reinvestment shall enjoy the same protection as the investment itself.

5. The term "maritime zones" shall mean those maritime and submaritime zones over which the Contracting Parties exercise sovereignty, sovereign rights or jurisdiction, in accordance with international law.

Article 2. Each Contracting Party shall permit and promote, in accordance with its legislation and with the provisions of this Agreement, investments made in its territory and maritime zones by nationals and companies of the other Party.

Article 3. Each Contracting Party shall undertake to accord in its territory and maritime zones just and equitable treatment, in accodance with the principles of international law, to the investments of nationals and companies of the other Party and to ensure that the exercise of the right so granted is not impeded either *de jure* or *de facto.*

Article 4. Each Contracting Party shall accord in its territory and maritime zones to nationals or companies of the other Party, in respect of their investments and activities in connection with such investments, the same treatment as is accorded to its nationals or companies or the treatment accorded to nationals or companies of the most favoured nation if the latter is more advantageous. For this purpose, nationals who are authorized to work in the territory and maritime zones of either Contracting Party shall be entitled to enjoy the material facilities appropriate for the exercise of their professional activities.

Such treatment shall not, however, include privileges which may be extended by a Contracting Party to the nationals or companies of a third State by virtue of its participation in or association with a free-trade area, customs union, common market or any other form of regional economic organization.

Article 5. 1. Investments made by nationals or companies of one Contracting Party shall be fully and completely protected and safeguarded in the territory and maritime zones of the other Contracting Party.

2. The Contracting Parties shall not take any expropriation or nationalization measures or any other measures which could cause nationals and companies of the other Party to be dispossessed, directly or indirectly, of the investments belonging to them in its territory and maritime zones, except for reasons of public necessity and on condition that these measures are not discriminatory or contrary to a specific undertaking.

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

Such compensation, its amount and methods of payment shall be determined not later than the date of dispossession. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall yield, up to the date of payment, interest calculated on the basis of a rate of interest to be agreed by the Contracting Parties.

3. Investors of either Contracting Party whose investments have suffered losses as a result of a war or any other armed conflict, revolution, state of national emergency or uprising in the territory or maritime zones of the other Contracting Party shall be accorded by the latter Party treatment which is not less favourable than that accorded

to its own investors or to investors of the most favoured nation. They shall in any event receive adequate compensation.

4. Without prejudice to the provisions of paragraph 3 of this article, nationals and companies of one Contracting Party who, in one of the situations specified in paragraph 3, suffer in the territory and maritime zones of the other Contracting Party losses resulting from:

(*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, unless this has been caused in a combat action or necessitated by the exigencies of the situation, shall be granted restitution or appropriate compensation. Payments resulting from one of the provisions of this article shall be freely transferable.

Article 6. A Contracting Party in whose territory or maritime zones investments have been made by nationals or companies of the other Contracting Party shall accord to the said nationals or companies freedom of transfer of:

(*a*) Interest, dividends, profits and other current income;

(*b*) Royalties deriving from the intangible property listed in article 1, subparagraphs 1 (*d*) and 1 (*e*);

(*c*) Payments made towards the repayment of duly contracted loans;

(*d*) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation in the invested capital;

(*e*) The compensation for dispossession or loss provided for in article 5, paragraphs 2 and 3, 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 proportion of their remuneration.

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

Article 7. In so far as the regulations of one Contracting Party provide for guaranteeing external investments, a guarantee may be granted, on the basis of a case-by-case review, for investments made by nationals or companies of that Party in the territory or maritime zones of the other Party.

The guarantee referred to in the preceding paragraph shall not be available for investments by nationals and companies of one Contracting Party in the territory or maritime zones of the other Party unless the investments have been granted prior approval by the latter Party.

Article 8. Any dispute relating to investments between one Contracting Party and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

If any such dispute cannot be so settled within six months of the time when a claim is made by one of the parties to the dispute, the dispute shall, at the request of either party, be submitted for arbitration to 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 at Washington on 18 March 1965.[1]

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

Article 9. When one Contracting Party, by virtue of a guarantee issued in respect of an investment in the territory of the other Party, makes payments to one of its own nationals or companies, it shall thereby enter into the rights and shares of the said national or company.

Such payments shall be without prejudice to the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue actions brought before that body until the procedure has been completed.

Article 10. Investments which have been the subject of a specific undertaking by one Contracting Party *vis-à-vis* nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking, in so far as its provisions are more favourable than those laid down by this Agreement.

Article 11. 1. Disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channel.

2. If a dispute cannot be settled within six months of the time when a claim is made by one of the Contracting Parties, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The said tribunal shall, in each separate case, be constituted as follows:

Each Contracting Party shall designate one member, and the two said members shall, by agreement, designate a national of a third State, who shall be appointed Chairman by the two Contracting Parties. All the members shall be appointed within two months of the date on which one Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time-limits established in paragraph 3 above are not observed, one 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 if, for any other reason, he is prevented from exercising that function, the Assistant Secretary-General next in seniority shall, provided that he is not a national of either Contracting Party, make the necessary appointments.

5. The arbitral tribunal shall take its decisions by majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall adopt its own rules of procedure. It shall interpret its judgement at the request of either Contracting Party. Unless the tribunal decides otherwise, taking particular circumstances into consideration, legal costs, including leave for the arbitrators, shall be divided equally between the two Governments.

Article 12. Each Party shall notify the other Party of the completion of the respective internal procedures required by it for the entry into force of this Agreement, which shall take place one month after the date of the receipt of the last such notification.

This Agreement is concluded for an initial period of 10 years. It shall remain in force thereafter unless one year's notice of denunciation is given through the diplomatic channel by either Party.

Upon the expiry of the validity of this Agreement, investments made while it was in force shall continue to be protected by its provisions for an additional period of 20 years.

DONE at Paris on 3 March 1982, in two original copies, each in French and Spanish, both texts being equally authentic.

For the Government
of the French Republic:

[*Signed*]

JEAN-CLAUDE TRICHET

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For the Government
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[*Signed*]

LUCIANO EDJANG MBO

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