

COMMON CONVENTION ON INVESTMENTS IN THE STATES OF THE CUSTOMS AND ECONOMIC UNION OF CENTRAL AFRICA^{*}

The Common Convention on Investments in the States of the Central African Customs and Economic Union was adopted at Yaoundé, Cameroon, by the Council of Heads of State of the Customs and Economic Union of Central Africa, at its meeting on 14 December 1965 (Act No. 18/65-UDEAC-15 of the 14th December 1965). It entered into force on 1 April 1966. Fiscal and taxation reforms in 1992 and 1994 have modified the tax and customs incentive regimes under the Convention. The members of the Central African Customs and Economic Union (UDEAC) are Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon.

Federal Republic of Cameroon,
Central African Republic,
Republic of Congo-Brazzaville,
Republic of Gabon,
Republic of Chad.

PART I.

General guarantees.

1. The acquired rights of any kind shall be guaranteed to undertakings lawfully established in the countries forming the Customs and Economic Union of Central Africa hereafter referred to as the "Union".
2. Within the framework of their exchange regulations, the member States of the Union shall guarantee the free transfer of:
 - (a) Capital;
 - (b) Profits lawfully acquired;
 - (c) Funds arising from the transfer or winding-up of business activities.
3. Undertakings whose capital derives from other countries, shall be able to acquire rights of any kind deemed necessary for the exercise of their activities: real property and industrial rights, concessions, official authorisations and permits, participations in government contracts under the

^{*} Source: *International Legal Materials*, vol. 7, March 1968, p. 221. The text of the Convention appears also in Federal Republic of Cameroon (1966). *Official Gazette of the Federal Republic of Cameroon*, "Common Convention on Investments in the States of the Customs and Economic Union of Central Africa", 1 April 1966, pp.609-618 [Note added by the editor].

same conditions as undertakings in the member countries of the Union.

4. In the exercise of their professional activities foreign employers and workers shall rank as the nationals of the member States of the Union.

They shall benefit from Labour and Social Welfare legislation under the same conditions as the nationals of the States of the Union. They may participate in trade union activities and be members of organisations for defending their professional interests within the framework of existing laws.

In addition, foreign undertakings and their management shall be represented under the same conditions as the undertakings or nationals of the member countries of the Union in the commercial assemblies and in organisations representing professional and economic interests within the framework of the laws of each State.

5. Foreign employers and workers may not in their private capacity be subject to duties, taxes or contributions of any kind other than or higher than those levied on the nationals of countries of the Union.

Foreign undertakings shall enjoy the same rights and protection regarding trade-marks and patents, trade labels and names and any other industrial properties as undertakings possessing the nationality of the member countries of the Union.

The conditions of access to judicial or administrative courts applicable to foreign undertakings and workers shall be the same as those guaranteed to nationals of the States of the Union by their respective laws.

PART II.
Preferential schedules.

CHAPTER I.
Common provisions.

Section 1.

6. Subject to the conditions laid down in the following articles, any undertaking wishing to launch a new activity or to expand to an important extent an activity already existing in a country of the Union, excluding commercial activities, may benefit from a special decision admitting it to a preferential schedule. The undertaking must undertake to utilise in priority local raw materials and in general local products.

7. Undertakings which may benefit from preferential schedule must belong to one of the following categories:

- (1) Industrial-plantation undertakings engaged in the processing or conditioning of
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- products;
- (2) Stock-farming undertakings equipped with installations for protecting the health of livestock;
- (3) Industrial undertakings that prepare or process animal or vegetable products;
- (4) Lumbering industries;
- (5) Fishing undertakings equipped with installations for the conservation or the processing of products;
- (6) Industries for the manufacture or assembly of finished articles or goods;
- (7) Undertakings engaged in the mining activities of extracting, improving or processing mineral substances and allied operations;
- (8) Petroleum prospecting undertakings;
- (9) Power-production undertakings;
- (10) Undertakings engaged in the development of touristic regions.

8. The following criteria shall in particular be taken into consideration during the examination of projects:

- (1) The importance of the investments;
- (2) Participation in the implementation of the economic and social plans;
- (3) Creation of employment and vocational training;
- (4) Participation of nationals of the countries of the Union in the formation of capital;
- (5) The use of technically guaranteed equipment;
- (6) Priority use of local raw materials and, in general, local products;
- (7) Registered office established in a country of the Union.

Section 2. Approval procedure.

9. This convention comprises two categories of investment schedules:

- (1) The first category concerns undertakings established in a State of the Union, the market of which does not include the other member States of the Union.

Schedules I and II set forth in Part III of this convention which concern the above undertakings shall be granted in accordance with the procedure peculiar to each State.

- (2) The second category concerns companies the market of which includes or is likely to include the territories of two or more States. It comprises schedules III and IV which shall be granted according to a procedure common to all the member States.

In addition establishment conventions may be concluded with undertakings according to the procedure determined either by national laws or by this convention.

10. The application for approval shall be addressed to the appropriate Ministry of the State

concerned and presented in the forms laid down in article 1 of act No. 12/65-UDEAC-34 regulating the single tax rules (standard form annex 1).

The Minister shall as the case may be transmit the application file to an investments board for its advice.

11. For each undertaking, the decision of approval:

- shall specify the preferential schedule to which the approved undertaking is admitted and shall fix its term,
- shall list the activities for which the approval is granted,
- shall specify the obligations incumbent on the undertaking, particularly its equipment programme,
- shall stipulate the special rules for international arbitration.

Any operations effected by the approved undertaking which do not fall within the scope of those listed by the decision of approval shall remain subject to the fiscal and other provisions of ordinary law.

CHAPTER II. *Economic advantages.*

Section 1. -- Installations and supplies.

12. The assistance of public credit institutions may be granted to undertakings admitted to preferential schedules upon the intervention of the appropriate authorities of each State.

13. Within the framework of exchange regulations, approved undertakings may be given priority in the granting of foreign currency in order to buy equipment goods and raw materials, products and containers necessary for their operations.

Section 2. -- Sale of products.

14. Protective customs measures with regard to imports of similar competitive goods may, if necessary, be instituted in favour of undertakings admitted to a preferential schedule.

Government and Army contracts shall, as far as possible, be reserved for them in priority.

PART III.

Special provisions to which national investment codes must conform in the case of undertakings belonging to only one State of the Union.

CHAPTER I.
General.

15. Having regard to the decision regarding the harmonization of development plans and in respect for the general principles laid down by this text, admission to any one of the preferential schedules provided for priority undertakings of all kinds classified in categories a, b and c of articles 51 of the Treaty instituting the Union, shall be granted according to the procedure peculiar to the State, where the undertaking is established.

In the case of undertakings defined in category c of article 51 of the Treaty instituting the Union, applications for approval shall be transmitted beforehand to the Secretary General of the Union, in conformity with the provisions of article 53 of the Treaty.

The grant of an internal preferential schedule may only be effected at the end of the consultation procedure laid down by article 55 of the Treaty.

The Management Committee of the Union shall be informed of each approval in respect of these categories of undertakings by the Government of the State where they are established or will be established.

16. Preferential tariff provisions may be granted by the Government of the State concerned to industries already established which wish to expand their production capacity. Such provision comprises the application of a reduced overall rate of 5% of the duties and taxes collected on imports of plant (excluding building materials, furniture and spare parts) provided that they conform with an equipment programme approved by the Government and that their value exceeds 10 million francs.

The conditions and procedure for according this tariff shall be governed by national legislation.

17. The undertakings classified in categories a, b and c of articles 51 of the Treaty instituting the Union may be admitted to one of the schedules defined below.

CHAPTER II.
Schedule I.

18. Schedule I shall entail for the companies admitted to it:

- (1) The application of an overall reduced rate of 5% of the duties and taxes collected on imports or a nil rate on equipment and building materials, machinery and tools directly necessary for the production and the processing of products.

- (2) Total exemption from import duties and taxes as well as from single taxes and indirect taxes levied inland:
- (a) On raw materials and products which enter either in whole or in part into the composition of finished or processed goods.
 - (b) On raw materials or products which while not constituting equipment and not entering into the composition of finished or processed goods are used up or lose their specific quality in the course of direct manufacturing operations.
 - (c) On raw materials and products intended for the handling and non-reusable packing of finished or processed products.

Equipment and building materials, machinery plants, raw materials or products benefiting from a reduction or exemption in respect of import duties and taxes shall be fixed in a list drawn up in accordance with the procedure proper to each State.

This list shall be published officially.

- (d) As the case may be on electric power.
- (3) The benefit of reduced or nil rates of export duties in the case of prepared or manufactured goods.
- (4) Goods manufactured by an undertaking admitted to schedule I shall be exempted from the inland tax on turnover and any other similar tax; they shall be subject to an internal consumption tax, the rate of which shall be subject to revision and the dates for the application of which shall be fixed by the decision of approval.

This tax shall be defined and applied according to Act No. 12-65-UDEAC-34 of the 14th December 1965. The duration of the benefits provided for under paragraphs 1, 2 and 3 of this article shall be fixed by the decision of approval. It may not exceed ten years.

19. Taking into consideration the economic social importance of the undertaking and the special conditions of its installation, schedule I may further comprise the following benefits:

- (a) Exemption from the tax on industrial and commercial profit during the first five years of operation, the first year being that in which the first sale or delivery was made either within the national market or for export.

Depreciation normally accounted for during the first five years may for tax purposes be charged against the three following years according to a procedure determined by the appropriate authorities of the State where the undertaking is established.

- (b) Exemption during the same period and under the same conditions from the business licence and land, mining or lumbering taxes.

20. The decision of approval may provide that for the duration of schedule I as defined above, no import duty or tax, no new tax or duty or additional part thereof of a fiscal nature may be collected in addition to the duties and taxes in force on the date of grant of the approval.

No law or regulation coming into force on a date subsequent to the date of admission of an undertaking to the provisions of schedule I may result in the restriction of the aforedefined provisions regarding the undertaking.

In addition, undertakings licensed under schedule I may request the benefit of any more favourable provisions which may be provided for by customs and fiscal laws of the States in accordance with article 43 of the Treaty setting up the Union and of Article 6 of this convention.

CHAPTER II. Schedule II.

21. The provisions of schedule II may be granted to undertakings of cardinal importance to national economic development, involving exceptionally high investments.

It comprises the stabilisation of the fiscal provisions, whether special or under common law, which are applicable to them according to the conditions set down below.

22. Tax stabilisation may likewise apply to the taxes by the parent or stockholding companies of the undertakings defined in article 21 above.

23. The tax provisions thus defined shall remain in force for a term not exceeding twenty-five years to which may be added, if need be, the normal periods required for installation.

24. During the period it is in force, the tax stabilisation provisions shall guarantee the beneficiary undertaking against any increase in the direct or indirect taxation which is applicable to it on the date of approval with regard to the basis of assessment, rate and the method of collection.

In addition all or part of the fiscal or customs provisions concerning schedule I may be extended to schedule II with the exception of the land consumption tax, the rate of which remains subject to revision.

The schedule of stabilized taxes and duties, as well as the rates applicable during the term of validity of schedule I shall be defined in the decision of approval.

Insofar as customs duties and taxes are concerned, the provisions of tax stabilization may only apply to the fiscal import duty and the turnover tax on imports. Imported equipment and building materials benefiting from the stabilisation of these two duties shall form the subject of a

limitation list appended to the decision of approval.

In case of modifications being introduced into the fiscal provisions fixed by ordinary law in pursuance of the provisions of article 43 of the Treaty instituting the Union and article 6 of this convention, the undertaking benefiting from tax stabilisation may apply for the benefit of such modifications.

Such undertaking may further apply to revert to the tax provisions of ordinary law.

25. No legislation or regulation which would nullify these provisions shall apply, during the same period, to undertakings benefiting from the provisions of tax stabilisation.

CHAPTER IV. Establishment conventions.

26. Any undertaking approved under one of the schedules I or II or considered as being especially important to the social and economic development plans of the member States of the Union, may benefit from an establishment convention granting it certain guarantees and imposing certain obligations on it in accordance with the following conditions:

The parent or stockholding companies of the aforementioned undertakings may likewise be parties to the convention.

Nothing in the establishment convention may constitute any undertaking, on the part of the States of the Union, to compensate the undertaking for losses, debts or deficiencies due to technical developments, economic circumstances or factors attributable to the undertaking itself.

27. The establishment convention shall define its term of validity and as the case may be:

- (a) The general conditions of operation, the minimum equipment and production programmes, the commitments of the undertaking regarding vocational training or social works provided for in the aforesaid programme as well as any obligation accepted by the two parties;
- (b) Various guarantees by the Government other than fiscal or customs guarantees such as:
 - guarantees as to financial, legal and economic stability and stable conditions for financial transfers and the marketing of goods;
 - guarantees as to entry and movement of labour, freedom of employment, and the free choice of suppliers and services;
 - guarantees as to the renewal of lumbering and mining permits if necessary;
- (c) Facilities for the use of hydraulic, electric, and other resources necessary for the exploitation, as well as the facilities for conveying products to the place of shipment

and the use of installations, whether already existing or to be built by or for the undertaking at the place of shipment;

- (d) The procedure for extending the term of the convention and the circumstances which will entail a cancellation or the forfeiture of all rights and the penalties designed to ensure that both parties fulfil their obligations.

28. The provisions regarding import taxes and duties laid down in schedule I may likewise be included either in whole or in part in the establishment convention for the term of validity of the latter.

If the establishment convention comprises provisions regarding internal taxation as set forth in schedule I they shall be restricted to the term of validity of the aforesaid schedule.

CHAPTER V.

29. Any grant of benefits similar to those laid down by the foregoing schedule but granted according to rules other than those defined below or any grant of higher benefits shall be subject to the preliminary agreement of the Council of Heads of State of the Union, after consultation with the Management Committee.

PART IV.

Special provisions applicable to undertakings and establishments of interest to two or more States of the Union.

CHAPTER I.

Scope.

30. This part applies to the undertakings classified in categories d and e of article 51 of the Treaty instituting the Union and defined article 7 of this convention.

31. Such undertakings may apply for admission to either of the two following schedules.

CHAPTER II.

Schedule III.

32. Admission to schedule III shall confer right to the following benefits:

- (a) Application during the period of installation of an overall reduced rate of 5% of the duties and taxes collected on imports of equipment goods. Total exemption may in exceptional cases be granted by the Management Committee:
- (b) Benefit of the single tax system in force in the Union.

33. The following fiscal benefits may in addition be granted:
- (1) Exemption from the tax on industrial and commercial profits during the first five years of operation, the first year being that during which the first sale or delivery was made.

Depreciation normally accounted for during the first five years may for tax purposes be charged against the following three years.
 - (2) Rates on structures: temporary exemption (for a maximum period of ten years) on new buildings, rebuilding or additions to buildings.
 - (3) Rates on land plots. Temporary exemption (for a maximum period of ten years) on land newly used for stockrearing or on reclaimed and sown land.
 - (4) Exemption for five years from the business patent licence.
 - (5) Exemption for five years from land, mining or lumbering taxes.

CHAPTER III.
Schedule IV.

34. Schedule IV shall further comprise the customs and fiscal benefits set forth in schedule III and in particular the application of the single tax and the benefit of an establishment convention.
35. The establishment convention shall define:
- (1) Its term of validity and procedure for its extension.
 - (2) Where necessary, various commitments by the undertakings, in particular:
 - the general conditions of operation,
 - minimum programmes of equipment and production,
 - vocational training or social works provided for by the aforesaid programme as well as any other obligations accepted by the undertaking with regard to the state of its establishment and the other States of the Union.
 - (3) various guarantees by the State of its establishment and the member States of the Union, in particular:
 - guarantees as to stability in the judicial, economic and financial fields as well as in the matter of financial transfers and the marketing of products;
 - guarantees as to entry and movement of labour, freedom of employment and the free choice of suppliers and services;
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- guarantees as to the renewal of lumbering and mining permits;
- guarantees as to facilities in the use of hydraulic, electric and other resources necessary for operations and facilities for the evacuation of products to the place of shipment and the use of installations existing or those to be created by or for the undertaking at this place of shipment.

36. In addition, undertakings of cardinal importance to the economic and social development of the States of the Union and involving exceptionally high investments may be granted stabilisation of the special or ordinary fiscal provisions applicable to them.

37. The applications drawn up as provided by article 11 shall be submitted to the appropriate authorities of the State of establishment.

After the appropriate examination, enquiry and fuller investigation, the appropriate authorities of the State of establishment shall transmit to the Secretary General of the Union these applications and, as the case may be, the data concerning the project of the establishment convention accompanied by the presentation report as provided under article 13 of the Treaty.

38. The Secretary General of the Union shall where necessary undertake in liaison with the appropriate authorities of the State of establishment of fuller investigation of the application with a view to its transmission to the States, in conformity with the provisions of article 55 of the Treaty.

39. Where the Management Committee receives an application as provided under article 55 of the Treaty it shall decide as the case may be on the rate or rates of the single tax to be applied to the project and shall determine the benefits and guarantees to be granted to the undertaking.

Where necessary, it shall give its decision on the data of the establishment convention, the final draft of which it shall approve.

40. The draft of the convention thus approved shall be transmitted to the Government of the State of establishment for signature. The convention shall be made enforceable within the territory of the Union by a decision of the Management Committee.

PART V.

Settlement of disputes.

CHAPTER I.

Procedure of withdrawal.

41. In the case of serious deficiencies on the part of an undertaking with regard to the provisions of the decision of approval:

- (1) The benefit of the advantages provided under either of schedules I or II may be withdrawn in accordance with the procedures established by the legislation of each

nation.

- (2) The benefit of the advantages laid down by either of schedules III or IV may be withdrawn by the Management Committee at the justifiable request of the State of establishment.

The Management Committee may seek the advice of a board of experts composed as follows:

- an expert designated by the Government of the State of establishment,
- an expert designated by the undertaking,
- an expert designated by the Government of the State of establishment,
- an expert designated by agreement between the aforesaid Government and the undertaking.

CHAPTER II. Procedure for appeal.

42. Undertakings which form the subject of a decision to withdraw approval may seek appeal.

In the case of an undertaking benefiting from the advantages provided under schedules I or II, the appeal shall be referred to an administrative court of the State of establishment within a maximum period of sixty days, with effect from the date of notification of the decision of withdrawal.

In the case of an undertaking benefiting from the advantages provided under schedules III or IV, the appeal shall be referred to the Council of Heads of State of the Union within a maximum period of ninety days with effect from the notification of the decision of withdrawal.

CHAPTER III. Arbitration.

43. Disputes arising out of the application of the clauses of an establishment convention and the calculation of any penalty due for nonfulfilment of the obligations assumed may be settled by arbitration the procedure for which shall be established by each convention.

Such procedure of arbitration shall always comprise the following provisions:

- (a) The nomination of an arbitrator by each party;
- (b) In the case of disagreement between the arbitrators, the nomination of a third arbitrator by agreement between the two parties or, in default thereof, by a highly qualified authority who shall be named in the convention;
- (c) The final and binding nature of the award rendered by a majority of the arbitrators who shall determine their own procedure and decide cases in equity;
- (d) Notwithstanding the foregoing provisions, in the case of undertakings, the initial capital of which was subscribed in the major part from abroad, the decision of

approval may provide for a procedure of international arbitration in replacement of the above procedure.

44. Any disputes arising out of the application of the decisions of approval to the various schedules may if necessary be settled by the arbitration procedure laid down by article 43 above if the latter exists in the national legislation.

PART VI.
Transitional provisions.

45. Any preferential schemes and establishment conventions granted prior to the promulgation of this convention to undertakings operating in the States of the Union shall specifically remain in force.

Provided always that such schemes and conventions may, on the initiative either of the Government or the undertakings concerned, form the subject of negotiations with a view to their adaptation to the provisions of this convention.

The procedure to be followed shall be that defined by articles 37 to 44 above.

Yaoundé, the 14th December 1965.

The President of the Federal Republic of Cameroon,

The President of the Central African Republic,

The President of the Republic of Congo,

The President of the Republic of Gabon,

The President of the Republic of Chad,

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