

Equatorial Guinea

Equatoria Guinea Investment Law (1992)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Equatoria Guinea Investment Law

GOVERNMENT GAZETTE

THE REPUBLIC OF EQUATORIAL GUINEA

No. 20 Malabo on 2 September 2002

SUMMARY

(Foreign Investment)

Law no. 7/1992, dated 30 April, on the Investment Regime in the Republic of Equatorial Guinea.

(Soc Foreign Investment)

Law no. 2/1994, dated 6 June, for the introduction of certain amendments to the

Law No. 7/1992 dated 30 April, on the Investment Regime in the Republic of Equatorial Guinea

Law no. 7/1992, dated 30 April, on the Investment Regime in the Republic of Equatorial Guinea.

The Government of Equatorial Guinea is fully determined in its objective to strengthen its support and the guarantees offered to the private sector, as it understands that this constitutes a fundamental framework for the country's economy upturn and for this purpose, it is committed to carry out the implementation of all development programs established, interested to grant advantages that it specifies in order for the private sector to better carry out its activities.

Taking into account the spirit and the criteria defined in the Common Investment Code of the countries of the Customs and Economic Union of Central Africa (UDEAC) and the vast experience on the implementation of Decree-Laws no. 10/1979, dated 17 December and no. 7/1985, dated 1 June respectively, on Foreign Capital Investment and the Special Investment Regime in Equatorial Guinea, it is appropriate given the current economic climate to adopt economic measures in order to facilitate and encourage the activities of the private sector.

By virtue of and after its approval by the

House of Peoples' Representatives during the Assembly held from 26 March to 1 April 1992, I approve this LAW ON THE INVESTMENT REGIME IN THE REPUBLIC OF EQUATORIAL GUINEA.

CHAPTER I GENERAL PROVISIONS

Article 1.-

1. Within the framework of this law, it is understood by investment any constant use of capital, which shall lead to obtaining an economic production.

2. It is understood by foreign capital investment, the investment realised by foreign natural or legal persons, as well as by Equatorial Guineans lawfully residing abroad.

3. Are considered investments the following:

a) Contributions in foreign currency that enter the country through the Central Bank.

b) Direct contributions to a company of Equatorial Guinea of assets. The valorisation of foreign assets, which shall be used by this company, may not exceed the value set for the payment of customs.

c) Direct contributions of foreign technical assistance, patents or manufacturing license, to a company of Equatorial Guinea. Such contributions of foreign technical assistance, patents, manufacturing license, shall be subject to the prior authorisation of the contracts in question and their assessment by the Ministry of Planning and International Cooperation.

d) The reinvestment of profits by foreign investors.

e) The contribution of any other assets, goods, or services, subject to the prior authorisation of the Ministry of Planning and International Cooperation.

4. Foreign investments shall be realised by means of:

a) Setting-up a company in Equatorial Guinea.

b) Participating in the constitution of a Equatorial Guinean company through the partial or total acquisition of shares or participations where it concerns a company whose share capital is not represented by shares. The acquisition of subscription rights shall be equated in this regard to the acquisition of shares.

c) The practice of business in Equatorial Guinea by foreign natural or legal persons, through the creation of branches, or establishments.

d) Any other form not covered in the previous paragraphs, after authorisation of the Ministry of Planning and International Cooperation.

Article 2.-

This Law's purpose is to:

1. Encourage and promote productive investment in the Republic of Equatorial Guinea.

2. Promoting the constitution and the development of economic activities aimed at the creation of new jobs and training opportunities of Equatorial Guineans, the production of goods and competitive services for consumption and export, the improvement of the quality of life in urban and rural sectors, and the increase of nationals' participation in the equity capital of companies.

Article 3.-

All investors whose projects have been approved in accordance with this Law shall automatically benefit from the advantages provided for in this Law.

Article 4.-

Mining companies in the extraction and those dedicated to the exploration and exploitation of hydrocarbons shall be governed by the special Law in this matter.

CHAPTER II: APPROVAL OF INVESTMENTS

Article 5.-1.

Subject to the approval of the foreign investments, in accordance with the provisions of paragraph 4 of this article, the Ministry of Planning and International Cooperation shall automatically approve all investment projects protected by this Law, provided that such projects are not on the negative list of reserved activities.

Such approvals or denials shall be provided within 60 days and after the filing of the application in an acceptable manner to the Ministry of Planning and International Cooperation.

Applications shall describe the project and its promoters, in addition to providing sufficient background to meet the requirements of paragraph 4 of this article. The application must detail any possible adverse impact on the environment, safety of workers or health, arising from the proposed project. It shall also indicate the specific actions that the promoters shall adopt to limit such consequences.

Foreign Investors must also specify in their applications the chosen forum for international arbitration.

2.- The negative list of reserved activities shall be issued by the National Investment Commission, which will be subject to review as many times as required.

The list shall identify those activities reserved exclusively to the State or national investors or activities prohibited from directly or indirectly receiving foreign capital. The National Investment Commission shall also indicate which activities may not benefit from some or all incentives laid down in this Law.

3.- Investors may request the amendment of the negative list in their favour. Such request shall be transmitted by the Ministry of planning and International Cooperation to the National Investment Commission for resolution. In case of approval, the negative list would be amended.

4.- The Ministry of Planning shall issue a certificate approving or rejecting the project, after having conducted a background enquiry on the foreign investors involved in the project.

Concerning background enquiries on the foreign investors involved in the project, they shall cover credit references, business background and moral character of the investors.

5.- The certificate of approval laid down in the previous section, shall specify the incentives and benefits granted to the company, in respect of the project; this shall describe or identify all requirements regarding its operation, including its export plan.

Article 6.-

For statistic purposes, the Ministry of planning and international cooperation shall keep a registry of Foreign Capital, in which all foreign capital investment as defined by this Law shall be registered.

CHAPTER III: INVESTMENT INCENTIVES

Article 7.-

1. With the exception of all the exclusions under the current negative list, established by Article 5, companies whose projects have been approved under this Law, shall have automatic access to the

companies whose projects have been approved under this Law, shall have automatic access to the following incentives:

- a) For the creation of new jobs, companies shall benefit from a reduction of the taxable base of income tax, of an equivalent amount of 50% of wages paid to national employees. The percentage set forth in this subsection shall remain in force for eighteen years without further modification.
 - b) For the training of national personnel, companies shall benefit from a reduction in their taxable income tax of an amount equivalent to 200% of the non-wage costs allocated to the training of national employees in the company. The percentage stated in this subsection shall remain in force for eighteen years.
 - c) For the promotion of non-traditional exports, companies shall receive a certificate of credit, valid for the payment of any tax or customs duty equivalent to 15% of the sums received in a commercial bank account of the company for its non-traditional exports. Upon presentation of the certificate of export and entry into the country of resources coming from such export, the Ministry of Economy and Trade shall deliver a certificate of credit in favour of the beneficiary company, endorsable to any third party, for the amount corresponding to the incentive. The percentage set forth in this subsection shall remain in force for eighteen years without further modification.
 - d) For the contribution to the regional or local development, companies that carry out approved projects in areas or localities far from main urban centres shall receive the following benefits:
 - Total amortisation of infrastructure costs, paid for and applicable to the tax year attributable to such costs, with the right to report to the following successive years the amortisation of the loss that may occur.
 - Total exemption from payment of all tax liabilities with the exception of the income tax, tax on sales, customs assessment and other liabilities imposed on its activity in remote areas.
 - e) For the participation of Equatorial Guineans in the capital of a company, whose projects have already been approved in accordance with this Law, the company shall benefit from a reduction of the taxable base of income tax, of an amount resulting from the application of 1% on the excess of 50% of the participation of nationals in the capital. To calculate this incentive, any change in the foreign participation in the capital of such companies shall be registered with the Ministry of Planning in order to keep the register of foreign capital up-to-date. The percentages agreed in this subsection shall be reviewable by the National Investment Commission.
2. The percentages of the incentives granted to a particular company under the preceding paragraph, shall be those in force at the time of the project approval, or other more favourable percentages subsequently promulgated.

Article 8.-

The losses for tax purposes that could result from the implementation of the incentives provided for in subparagraphs (a) and (b) of article 7 (1) of this Law shall not be deferred for later amortization.

CHAPTER IV: PRIVILEGES GRANTED TO INVESTORS

Article 9.-

Companies whose projects are approved under this Law shall be exempt from:

1. Any pre-licensing requirement for the import or export, and
2. Any "ad hoc" charge on imports or exports, prescribed by provisions without the force of law.

Article 10.-

Whenever required, the Ministry of Planning and International Cooperation shall certify those products, which may be imported or exported without a license and an "ad hoc" charge, referred to in paragraph 2 of article 9.

Article 11.-

Companies whose products were approved under this Law shall be entitled to receive the necessary permits for its local and foreign employees, which are required in order to undertake such projects, according to the current legal provisions on the subject.

CHAPTER V: GUARANTEES

Article 12.-

1. In accordance with its obligations under Public International Law, the Government of Equatorial Guinea is committed to provide a fair and equitable treatment for all investors in the national territory. Consequently, the Government will not expropriate nor interfere with the enjoyment of the investors rights nor breach their contractual obligations with the investors, except where the government acts in the public interest in exchange for a corresponding compensation, fair and adequate, and in a freely convertible currency.
- 2.- The foreign personnel of companies that undertake projects approved under this Law, and their

dependents shall enjoy in Equatorial Guinea, all the rights and protections provided for under International Law

3.- Foreign investors involved in projects approved under this Act, they will be entitled to convert into foreign currency and remit abroad the net profits of the company that were paid as dividends.

4.- Once the corresponding taxes paid, foreign investors may convert into foreign currency and transfer abroad the product of liquidation of the company, either for sale or total or partial provision of their registered investment, in accordance with Article 6 of this Law.

3. Companies approved under this Law shall be authorised to freely transfer abroad the necessary sums to pay its debts and other obligations related to the project, in foreign currency.

4. The certificate of approval granted by the Ministry of planning and international cooperation, and ratified by the Presidency of the Government, shall take effect for the purposes of national and multinational entities' programs of insurance against political risks.

Article 13.-

The natural or legal persons legally established in Equatorial Guinea may in accordance with the laws and regulations in force, conclude and execute any contract that they deem useful to their interests, especially in the domains of trade and finance, determine their production policy, distribution and marketing; and in general, perform all management act in accordance with the customs and practices in Equatorial Guinea.

CHAPTER VI: DISPUTE RESOLUTION

Article 14.-

Any dispute arising between the Government of the Republic of Equatorial Guinea and a foreign investor of a company whose project is approved under this Law, shall be resolved to the extent possible, through direct negotiations between the parties.

If such dispute could not be resolved by mutual agreement, within a three month period after the date requested for such negotiations, the dispute will be transferred to the Courts and Tribunals of the country; and in case of disagreement of one of the parties and after having exhausted all internal remedies, the dispute may be referred to an Arbitral Tribunal at the request of any of the parties. The Arbitral Tribunal shall be established and operate according to one of the following modalities chosen by the plaintiff:

1.- Treaties on the protection of investments concluded between Equatorial Guinea and the State of which the foreigner investor is a subject.

2. A conciliation or arbitration agreement agreed by both parties.

3. The Convention of 18 March of 1965 on the settlement of investment disputes between the State and nationals of other States, and,

4. The 'Complementary Mechanism', which was adopted on 27 September of 1978 by the Board of Directors of the International Centre for Settlement of Investment Disputes, applicable to investment cases in which one of the parties does not satisfy the jurisdictional requirements of the Convention mentioned in the preceding point.

The Government of Equatorial Guinea is committed, by virtue of this Law, to submit to the jurisdiction of any Arbitral Tribunal, constituted in accordance with this article. The consent to such jurisdiction by the foreign investor shall be explicitly stated in its application for approval of the project.

CHAPTER VII: THE CONSTITUTION OF ORGANISMS PROMOTING INVESTMENTS

Article 15.-

For the promotion of private investment, the Government creates an Investment Promotion Centre, as an autonomous institution dedicated to the promotion of private investment.

Article 16.-

The Centre will have the following functions:

1. To advise the Government on the policy on private investment, both foreign and domestic, and related issues.

2. To provide investors with useful information regarding investment opportunities, incentives, operating conditions of a company, laws and regulations, government procedures, etc.

3. To assist investors in resolving issues that may arise in their relations with the government.

4. To selectively promote foreign investment and the collaboration between private advertising companies, contacts abroad, and provide information and guidance on foreign and domestic sources specializing in technology, capital and business opportunities.

Article 17.-

The Investment Promotion Centre shall have the following organizational structure:

1. A Board of Directors nominated by the private sector. It shall be composed of five or more members, of which two represent the Government and shall be appointed by the Prime Minister of the Government, Private Sector and three appointed by the business association. The President and the Vice President shall come from the private sector and be elected by majority vote. The mandate of the board members shall be two years, renewable, and the Chairman shall have a term of four years. The duties of the Board shall be:

2. To review the recommendations of the Executive Director of the Centre on political matters; review annual work programs, objectives and performance of the Centre and collaborate with the Executive Director of the Centre, in the execution of major promotional events, and in the mobilisation of technical and financial assistance from abroad.

3. An Executive Director, nominated on the recommendation of the Council and supported with a small team of his choice, shall be responsible for managing the daily operations of the Centre. They shall earn competitive salaries on the market.

Article 18.-

The Government shall provide the resources to finance the Centre and complement, if necessary, such financing with resources from foreign donors or external private sources.

TRANSITIONAL PROVISION

Shall remain in force, privileged regimes and conventions agreed prior to the enactment of this Law, for companies that are operating in the Republic of Equatorial Guinea.

REPEAL PROVISION

Shall be repealed all provisions of equal or lower rank, which do not comply with this Law, in particular the Decree-Laws No. 10/1979, dated 17 November and No. 7/1985, dated 1 June.

FINAL DISPOSITION

This Law shall enter into force on the same day of its publication in the national media. Done in Malabo, 30th day of the month of April 1992.

FOR A BETTER GUINEA,

- OBIANG NGUEMA MBASOGO - PRESIDENT OF THE REPUBLIC.

Law no. 2/1994, dated 6 June for the introduction of certain amendments to the Law No. 7/1992 on 30 April, on the investment regime in the Republic of Equatorial Guinea.

For the purpose of strengthening the support and the guarantees to private investment in the country, on 30 April of 1992, the Government approved and promulgated the Law No. 7/1992, on the investment regime in the Republic of Equatorial Guinea.

Whereas it is necessary to make certain amendments to the aforementioned Law for investors, with the intention that investors may maximize the potential of incentives, privileges and guarantee provided for by this Law.

By virtue of and on the proposal of the Ministry of Economy and Finance, after deliberation by the Council of Ministers, in its meeting held on 11 March of 1994, and approved by the House of Peoples' Representatives, in their ordinary plenary sessions and held in Malabo, on 25 April to 24 May of the same year, I come to approve this Law which introduced certain amendments to the law No. 7/1992 dated 30 April, on the investment regime in the Republic of Equatorial Guinea.

SINGLE CHAPTER

AMENDMENTS TO THE LAW ON THE INVESTMENT REGIME IN THE REPUBLIC OF EQUATORIAL GUINEA.

Article 1.-

Article 1, paragraphs 2 and 3 of the Law No. 7/1992 is modified by adding to the text below the words 'abroad' and 'investment', leaving said paragraphs as such:

PARAGRAPH 2.

By foreign capital investment it is understood any investment carried out by foreign natural and legal persons, including citizens of Equatorial Guinea with legal residence abroad and with funds from abroad.

PARAGRAPH 3. The following is considered foreign investment:

Article 2.-

The text of article 5, paragraph 1 of the Law No. 7/1992 is modified by removing the phrases "subject to approval of foreign investment in accordance with the provisions of point 4 of this article, the Ministry of Economy and Finance" leaving said paragraph as such:

Economy and Finance, leaving said paragraph as such.

"Without prejudice to foreign investors, being subject to subsequent approval, the Ministry of Economy and Finance shall automatically approve all projects that are not in the Negative List of reserved activities. Such approvals or refusals will be provided within 60 days after the filing of the application to the Ministry of Economy and Finance in an acceptable manner to the Ministry. Applications shall describe the project and its promoters, providing sufficient background to meet the requirements of paragraph 4 of this article.

The application must detail any possible adverse impact on the environment, safety of workers or health arising from the proposed project. It shall also indicate or limit such consequences. They should also specify in their applications the chosen forum for international arbitration.

Article 3.-

The text of Article 7, paragraph 1, subparagraphs (a), (b), (c), (d) and (e) of the Law no. 7/1992, dated 30 April, is modified by removing respectively the texts of these subparagraphs, leaving them as such:

a).- For the creation of new jobs, companies shall benefit from an additional deduction when calculating their taxable annual income, of an amount equivalent to fifty percent (50%) of the total attributable to the project, of the salaries of the national employees of the company during the corresponding fiscal year.

b).- For the training of national personnel, companies shall benefit from a deduction under its annual taxable income in an amount equal to two hundred percent (200%) of the non-salary cost of training of national employees borne by the companies during the corresponding fiscal year.

c).- For the promotion of non-traditional exports, companies shall receive a certificate of credit for the payment of any tax liability or customs, of an amount equivalent to a fifteen percent (15%) of the foreign exchange received for its nontraditional exports, in commercial banks of Equatorial Guinea for its conversion to local currency.

d).- For the regional or local development companies carrying out approved projects in areas or locations far from large urban centres, shall benefit from:

- Full amortization as deductible costs in the tax year in which it was realised with the right to defer indefinitely into the future, all infrastructure costs paid by the company carrying out the project provided that works are of public or social use such as bridges, roads, schools, clinics or similar works.

- Exemption from all kinds of tax liabilities with the exception of sales tax, customs and other charges applicable to its operation in remote areas and,

- For the participation of Equatoguineans in the capital of the company, whose projects have been approved under this Law, companies shall benefit of a deduction percentage in their income tax rate of an amount equal to the percentage by which the minimum level of ownership of the company maintained by national investors during the year, has exceeded fifty percent (50 %).

Article 4.-

The text of Article 14 of Law No. 7/1992 is modified by removing the text in its entirety and replacing it with the following.

1.- If so requested by a foreign investor in the request for approval of an investment project, in accordance with article 5, the certificate of approval shall provide that any dispute, litigation, difference or claim that could arise between the investor and the Government, with regard to the approved project, which could not be resolved through amicable methods, shall be resolved through international arbitration.

2.- When a certificate of approval of an investment project provides that disputes are resolved through arbitration of the United Nations Commission on the International Trade Law in effect at the date of issuance of the certificate, unless otherwise agreed and stated in the certificate, between the Government and the foreign investor, in whose name the certificate for dispute resolution through another method shall be issued.

3.- The arbitration clause of a certificate of approval of an investment project shall include as well both the consent of the Government and that of the holder of the certificate, including the arbitral jurisdiction established in the certificate.

The award of the arbitral tribunal shall be final and binding on both parties.

4.- The provisions in this article do not limit the right of a holder of a certificate of approval, where it does not oblige any dispute resolution through international arbitration, to take advantage of available forums before the Equatoguineans Courts or take advantage of forums arising from a bilateral treaty on investment protection, between Equatorial Guinea and the country of which the holder of a certificate of approval of an investment project is a subject.

ADDITIONAL PROVISIONS

1.- By virtue of the restructuring of the various ministerial departments, wherever in the Law No. 7/1992 dated 30 April, a reference is made to the Ministry of Planning and International Cooperation, it shall be understood as Ministry of Economy and Finance.

2.- Ministry of Economy and Finance is hereby empowered to prepare the Rules of Application of this

actual Law, which will be submitted to the Government for its application.

REPEAL PROVISION

All provisions of equal or lower rank which are contrary to this Law shall be repealed.

Done in Malabo, on the sixth day of the month of June of the year one thousand nine hundred and ninety-four.