

No. 20720

**NETHERLANDS
and
SENEGAL**

**Agreement concerning the encouragement and protection of
investments. Signed at Dakar on 3 August 1979**

Authentic text: French.

Registered by the Netherlands on 30 January 1982.

**PAYS-BAS
et
SÉNÉGAL**

**Accord relatif à l'encouragement et à la protection des
investissements. Signé à Dakar le 3 août 1979**

Texte authentique : français.

Enregistré par les Pays-Bas le 30 janvier 1982.

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[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF SENEGAL CONCERNING THE ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of the Netherlands and the Government of the Republic of Senegal,

Desiring to intensify economic co-operation between the two States;

Considering the Agreement on economic and technical co-operation between the Kingdom of the Netherlands and the Republic of Senegal concluded at Dakar on 12 June 1965;²

Desirous of creating conditions favourable to capital investment by nationals and companies of one of the two States in the territory of the other State; and

Recognizing that the encouragement of such investment may stimulate economic initiative and increase the prosperity of the two nations,

Have agreed as follows:

Article 1. 1. The term "capital investments" shall comprise every kind of asset, including all kinds of rights and interests.

2. The term "proceeds" shall mean the amounts realized from profit or interest on capital investment.

3. The term "nationals" shall comprise with regard to either Contracting Party natural persons having the nationality of that Contracting Party in accordance with its law.

4. The term "companies" shall refer with regard to either Contracting Party:

(a) Without prejudice to the provisions of subparagraph (b) below, to legal persons constituted in accordance with the law of that Contracting Party;

(b) To legal persons controlled, directly or indirectly, by nationals of that Contracting Party but constituted in accordance with the law of the other Contracting Party.

Article 2. Each Contracting Party, in accordance with its legislation, shall encourage and allow in its territory capital investments of nationals and companies of the other Contracting Party.

Article 3. Neither Contracting Party shall subject nationals and companies of the other Contracting Party, in respect of their capital investments in the territory of the above-mentioned Party, the professional and economic activity

¹ Came into force on 5 May 1981, the date of the last of the notifications (effected on 14 April 1980 and 5 May 1981) by which the Contracting Parties informed each other of the completion of the constitutional requirements, in accordance with article 12 (1).

² United Nations, *Treaty Series*, vol. 602, p. 231.

in which they engage in connection with those investments or the administration, management, maintenance, enjoyment and use of those investments, to conditions less favourable than those to which its own nationals and companies, or those of third States, are subjected.

Article 4. 1. Capital investments made by nationals and companies of one Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2. Nationals and companies of one Contracting Party may not be directly or indirectly dispossessed of their capital investments in the territory of the other Contracting Party except for reasons of public interest, by non-discriminatory legal proceedings and against fair compensation.

The compensation shall correspond to the real value of the investment in question and shall be established and paid without undue delay; it shall be effectively available and freely transferable in the currency of the country of the national or company concerned or in any other convertible currency.

The legality of the above measures and the amount of compensation shall be verifiable by ordinary judicial proceedings without prejudice to the provisions of articles 10 and 11 of this Agreement.

3. If nationals and companies of one Contracting Party incur, as a result of war or other armed conflict, revolution or uprising in the territory of the other Contracting Party, losses of capital investments located there, they shall receive from the latter Contracting Party, as regards restitution, indemnity, compensation or other damages, a treatment no less favourable than that accorded to nationals and companies of that Party. In respect of the transfer of such payments, the Contracting Parties shall mutually guarantee to grant to the rights of nationals and companies of the other Contracting Party a treatment no less favourable than that accorded to similar rights of nationals and companies of a third State.

Article 5. The provisions of articles 3 and 4 of this Agreement shall also apply to the proceeds from capital investments.

Article 6. In respect for the principle of freedom of transfer and in accordance with its legislation, each Contracting Party shall authorize nationals and companies of the other Contracting Party to transfer to the country of the other Contracting Party, without restrictions or undue delays, invested capital, dividends and proceeds of any kind from invested capital, as well as the proceeds from the liquidation or sale of their assets. The transfer shall be effected in the currency provided at the time when the investment was constituted; if the investment was in kind, the transfer shall be made in a convertible currency established by mutual agreement.

Article 7. The Contracting Party in whose territory an investment approved by it has been made, for which a financial guarantee against non-commercial risks has been granted by the other Contracting Party or by one of its nationals, shall recognize the subrogation of the guarantor in the rights of the investor, which are transferred by virtue of the guarantor's obligation to make a payment to the investor in respect of damages.

Article 8. If the legislation of one of the Contracting Parties or international obligations currently existing or to be established in the future between the Contracting Parties, in conjunction with this Agreement, establish a regula-

tion to the effect that capital investments made by nationals or companies of the other Contracting Party shall receive a treatment more favourable than the one provided for in this Agreement, the Agreement shall not affect the regulation in question. Each Contracting Party shall abide by any other commitments assumed by it concerning capital investments made in its territory by nationals or companies of the other Contracting Party.

Article 9. Without prejudice to any special tax privilege granted by one of the Contracting Parties under an international agreement on the avoidance of double taxation, by virtue of its participation in a customs union, an economic union or similar institutions, or on the basis of reciprocity, that Contracting Party shall, in respect of the levying of taxes, duties and charges as well as the granting of tax deductions and exemptions, accord to nationals of the other Contracting Party engaged in economic activities in its territory a treatment no less favourable than that accorded to its own nationals or to nationals of third States, if the latter treatment is more favourable.

Article 10. The Contracting Party in the territory of which a national of the other Contracting Party makes or intends to make an investment shall assent to any request on the part of such national to submit, for arbitration or conciliation, any dispute that may arise in connection with that investment, to the centre established by the Washington Convention of 18 March 1965 on the settlement of investment disputes between States and nationals of other States.¹

Article 11. 1. Disputes concerning the interpretation or application of this Agreement shall, if possible, be settled by the Governments of the two Contracting Parties.

2. If a dispute cannot be settled in this manner, it shall be submitted to an arbitral tribunal at the request of one of the two Contracting Parties.

3. The arbitral tribunal shall be established *ad hoc*; each Contracting Party shall appoint one member and the two members shall agree to select as chairman the national of a third State, who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within a period of two months, and the Chairman within a period of three months, after one of the Contracting Parties has notified the other that it wishes to submit the dispute to an arbitral tribunal.

4. If the time-limits provided for in paragraph 3 of this article are not observed, and in the absence of any other arrangement, each Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the two Contracting Parties or is disqualified for another reason, the Vice-President shall make the appointments. If the Vice-President is also a national of one of the two Contracting Parties or is also disqualified, the next-ranking member of the Court who is not a national of one of the Contracting Parties shall make the appointments.

5. The arbitral tribunal shall take its decisions by majority vote. Its decisions shall be binding. Each Contracting Party shall pay the costs arising from the activity of its own arbitrator as well as the cost of its representation in the proceedings before the arbitral tribunal; the costs of the Chairman and the other costs shall be borne equally by the two Contracting Parties. The arbitral tribunal

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

may establish another arrangement concerning expenses. For the rest, the arbitral tribunal shall determine its own procedure.

6. The tribunal shall decide on the basis of respect for the law.

7. If the Parties consent, the tribunal shall settle the case *ex aequo et bono*.

Article 12. 1. Each of the Contracting Parties shall notify the other of the completion of the constitutional procedures required for the application of this Agreement, which shall enter into force on the date of the last notification.

This Agreement shall remain in force for 10 years and shall be extended for an unlimited period unless denounced in writing by one of the two Contracting Parties one year before it expires.

On the expiry of a period of 10 years, this Agreement may be denounced at any time, but it shall remain in force for one year after its denunciation.

2. In the case of the Kingdom of the Netherlands, this Agreement shall apply to the territory of the Kingdom in Europe and to the Netherlands Antilles.

3. In view of the time-limits mentioned in paragraph 1 of this article, the Government of the Kingdom of the Netherlands may separately terminate the application of this Agreement in respect of the Netherlands Antilles.

4. In respect of capital investments made before the date of expiry of this Agreement, articles 1 to 11 shall continue to be applicable for an additional period of 10 years after the expiry of this Agreement.

Article 13. On the date of entry into force of this Agreement, the provisions of this Agreement shall supersede articles 3, 4, 5, 5 *bis*, 5 *ter* and 10 concerning investments in the Agreement on economic and technical co-operation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Senegal concluded at Dakar on 12 June 1965.

IN WITNESS WHEREOF the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE at Dakar on 3 August 1979 in duplicate in the French language.

For the Government
of the Kingdom of the Netherlands:

[Signed]

EMERIC EITEL SYDNEY DE JONGH
Ambassador of the Kingdom
of the Netherlands

For the Government
of the Republic of Senegal:

[Signed]

OUSMANE SECK
Minister of Finance and
Economic Affairs