ECONOMIC COMMISSION FOR AFRICA
Standing Committee on Industry, Natural Resources and Transport
Second session
Addis Ababa, 3-13 December 1963

INVESTMENT LAWS AND REGULATIONS IN AFRICA
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This study was undertaken in accordance with resolution 43(IV)\(^1\) adopted on 27 February, 1962, by the Economic Commission for Africa at its fourth session. The resolution states that in the field of industrialization, ECA should encourage, initiate and propose studies, investigations, seminars and conferences designed to determine and promote the most effective means of advancing industrialization on a national, sub-regional and regional basis.

In the last ten years other regional commissions of the United Nations have also done a considerable amount of work in the field of industrial legislation.\(^2\)

\(^1\) This resolution established a Standing Committee on Natural Resources and Industrialization. Also see report of Thirty Fourth Session and Work Programme for 1962-1963 and 1964, particularly project 01-07: Legal and Legislative Aspects of Economic and Social Development. "Studies of law and legislation in African countries and territories bearing on aspects of economic and social development and assistance to governments at their request in adjusting such legislation to the needs of an expanding economy", and project 21-12: Industrial, Commercial, Monetary and Fiscal Legislation. "Study of the impediments to industrialization represented by existing industrial, commercial, monetary and fiscal legislation, with a view to formulating proposals for the harmonization of such legislation, to be considered by a conference at an appropriate time".

\(^2\) The Economic Commission for Latin America has produced about twenty documents on several aspects of industrial and commercial legislation. The most important among these are Industrial Development Laws in Central America, E/CN.12/CCT/235; Legal Arrangements in Force in Central America which concern fiscal incentives for industrial development, E/CN.12/CCT/236; and Comparison of fiscal Incentives for Industrial Development, E/CN.12/CCT/237. Economic Commission for Far East and Asia has mainly concentrated on Foreign Investment. See particularly Foreign Investment Laws and Regulations, 1951 E/CN.11/172, revised in 1957 in E/CN.11/122, and Investment Promotion, E/CN.11/2 and NF/L.34, 11 January 1961. The Economic Commission for Europe, since 1958, has studied questions relating to contracts of sale of several commodities, such as cereals, solid fuels, general conditions for the supply of plant and machinery. In 1961, the ECE drafted a European Convention on International Commercial Arbitration.

This is the first work of its kind undertaken since the Economic Commission for Africa came into being.
This study is based on the replies sent in by the governments, official texts of investment laws, economy policy statements and development plans. There are several gaps in the information collected. In certain cases, original texts were not available, in others, there were no means of verifying the changes that might have occurred in the meantime.

Part I of the study attempts to give a brief analysis of the approach to investments as incorporated in government pronouncements and legal provisions. Part II contains the presentation of policy statements, laws and regulations concerning economic development in general and investments in particular in thirty countries. The information is classified according to five major aspects: government policy, public and private sector, executive control, economic benefits and arbitration.

Since this is the first study of its kind, its conclusions cannot but be preliminary in character. A more comprehensive study to assess the relevance of a particular set of legal rules to the needs of development in the country would have to await a considerable amount of discussion among the economists on the one hand and development lawyers on the other. These discussions could perhaps form the basis of offering concrete suggestions about the particular set of legal framework which would be necessary in order to attain a given set of economic development objectives. This analysis can, therefore, be taken only as a first step in this direction.

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The year 1960 has been perhaps the most crucial date in the contemporary history of Africa. More than half the total number of new nations gained their political independence in that year. The next twelve months saw the formulation of economic policies and the drafting of development plans.

Almost simultaneously in early 1962, some seventeen countries had promulgated investment laws and modified the existing ones. Economic planning gives concrete expression to aspirations that lead to independence and investment legislation creates the framework that facilitates the realization of the development plans. It is not surprising, therefore, that the first set of laws to undergo rapid change happened to be those that affect investment.

In a developing economy, the function of investments is to push those factors which would lead to economic progress. Scarcity of capital, both domestic and foreign, must be channelled to provide for an infrastructure. The function of a comprehensive law is to announce and define the policy of the government with respect to areas of investments. The mechanism through which investments are administered and channelled brings in the consideration of strictly legal elements.

The purpose of investment laws is to enumerate and classify "pioneer" or "approved" industries. They describe the executive authority responsible for examining and supervising investments. They usually incorporate conditions of entry of foreign capital and the rules of remittance. Regulations also include tax provisions affecting investments which are applicable to beneficiary industries. Other features of these laws relate to employment of nationals, rules of compensation and the procedure of settlement of disputes. Investment laws thus serve not only to facilitate and often induce foreign and domestic investments but also create a recognizable structure of legal relationships involved. They provide the framework for government policy both for a potential investor.
and an administrator. The proper execution of these laws can lead to
augmenting and ultimately influencing the level of economic development.
To achieve a higher ratio of investment to product requires the adoption
of an over-all investment target based on an expected relationship
between the growth of investment and the growth of output.

5. In recent years, industrial development laws have become a universal
instrument for promoting industrialization in developing countries. They
provide an orderly framework by which societies today are organizing
themselves to reach economic goals. Laws embody changes which the
government hopes to make in carrying out their programmes of development.
The responsibility of the government in creating conditions conducive to
economic development is now generally accepted.

6. This decade in Africa is a period of trial and error in economic and
legal planning. As new Development Plans are formulated and new experience
is accumulated, investment codes and statutes will have to be modified
to be in harmony with economic objectives. This study attempts to
analyse some of these laws in a period of rapid economic transition.
A. **Inter-dependence of legal and economic processes**

7. History does not offer any answer to the question whether codification of certain concepts into laws accelerates their general acceptance in society. Legal sanction, therefore, cannot be said to assist or help social sanction. What is clear, however, is that the major problem of the present era is economic development. It encompasses almost all sectors of society. A jurist as a member of this society in transition cannot afford to be a mere observer. He must also make some positive contribution towards the common action of eliminating poverty.

8. In the past century of rapid economic expansion in the industrial centres, law and economics proceeded in an entangled fashion; laws were codified as economic needs for them came to be recognized. During the process of industrialization, economic advance, in general, took place at a faster pace than the enactment of statutes. For often it meant going through cumbersome legal procedure. The fundamental transformations in society induced legal institutions to keep pace with it. But this was a hazardous process in an era where planning was not considered necessary. Now, it is considered to be a major instrument to achieve higher levels of economic and social well-being. Under this new situation, legal structure cannot be left to the wasteful process of accidental development. The jurist now has the possibility of evolving a structure of development laws which is suited to carry out the economic and social transition. The main advantage is that in the pre-industrial countries, political, economic and legal revolutions can be carried out almost simultaneously.

9. At present in the developing countries, planners rarely include legal framework in their concept of a nation's economic problems. It may be that the present generation of lawyers, have received their education in universities, where the curricula are not yet adapted to the inter-dependence of economic needs and legal framework.  

of course, stems from historical reasons.

B. Legal Setting in Africa

10. Practically every State in Africa has had connexions with some part of Europe. The intricacies of a dual and, in some cases, a plural legal system stems from the superimposition of varieties of European law. This is perhaps the most confusing legacy in Africa.\(^1\)

11. The former British West African territories had legal systems derived from England.\(^2\) Different local statutory variations were often maintained by courts and encouraged by legal training. The ex-French territories, on the other hand, developed under direct administration. In this process, the continental commercial laws were modified but slightly. The conflicts of European code systems as represented by France, Germany and Spain have left an imprint in Cameroun, Niger, Ivory Coast and Guinea.

12. If a chart were to be drawn of the conflicting legal systems of Africa today, the resulting picture would be a mosaic of laws zigzaging across the continent.\(^3\) The main argument in the development era against dualism or even pluralism is that it leads to internal conflicts and uncertainties. One of the main objects of law is to offer certainty and flexibility in dealings. All systems of law at various times in history have been subjected to changes in social, economic and political conditions. Flexibility to meet the changing economic requirement is an essential attribute of modern law.

\(^1\) A.N. Alott, Judicial and Legal Systems in Africa 1962.

\(^2\) The impact of English law upon Africa can be summarized in two ways: firstly, it had a modifying influence on certain aspects of local customary law and secondly, it filled the gaps in the traditional law of usage brought about by new commercial and economic values. The latter bringing in its orbit mercantile law and commercial law.

\(^3\) See recommendation of the Conference of International Jurists held in Venice in October 1963. The Conference called on all African countries to undertake research in their own traditions and customs to harmonize their legislations.
13. The main question, however, is whether the existing legal systems in Africa are suitable for development purposes. There may be a lot of differences in the political forms of government that exist in Africa today. But one common factor emerges in each case and that relates to the policy of independent countries to foster economic development. It is evident that economic progress can be retarded by a piecemeal system of law and may be accelerated by a coherent legal system.1/ This transformation could facilitate commercial transactions and thereby establish certainty of economic activities in general and investments in particular.

G. Some aspects of development laws in Africa

14. The main provisions of the investment codes and related laws are incorporated in part II of this study. These provisions vary from country to country, reflecting some of the differences in the past legal framework and the extent to which an attempt was made to modify it to meet new needs. It has not been possible to see clearly how the provisions have changed over time in the same country. The main reason is that most countries in Africa have so far had no time to assess the significance of the initial legal changes. But the need for putting together in an integrated law the main provisions concerning investments arose after each country had prepared its development plan. The investment code is thus becoming a legal counterpart of the development plan.

15. Out of the thirty countries under study in Africa, only ten do not have an integrated law or code on investments. Almost all the ex-French colonies have a codified law on investments except Togo.

16. The four States of ex-French Equatorial Africa: Gabon, Central African Republic, Chad and Congo (Brazzaville) have, except for small differences, 

1/ It has been suggested that there is another positive factor in Africa. Since most of the local laws are unwritten, the existing flexibility may be utilized for new economic needs. See The Future of Law in Africa. Record of Proceedings of the London Conference. 28 December 1959 - 8 January 1960.
similar investment codes. \(^1\) The position is reversed as far as the ex-
English colonies are concerned. Almost all of them do not have an
integrated law on investments except Ghana. Sierra Leone has a Develop-
ment Ordinance which was passed in 1960. Nigeria has several income tax
and custom duties relief ordinances. In Tanganyika a bill affecting
foreign investments is awaiting the approval of parliament.

17. Among the other countries of Africa, Ethiopia has recently passed an
investment decree. Both the United Arab Republic and Liberia have various
decrees and statutes which contain relevant provisions on investments.

18. It is not easy to fit so many diverse provisions of codes and laws
into composite headings for analysis. In order to simplify the presenta-
tion, the main topics of the material in part II are discussed here under
the following headings:

(a) Economic policy statements.
(b) "Approved" enterprises.
(c) Patterns of administrative control.
(d) Foreign investments.
(e) Economic inducements.
(f) Arbitration.

(a) Economic policy statements

19. Most African countries are still in the process of formulating
precisely their economic objectives. Even when these have been decided,
it is not easy to locate them. In some cases, they have been embodied
in the constitution or in the development plan or in the investment codes.
But there are cases in which they are scattered in an important pronounce-
ment by the President or the Prime Minister, in ministerial speeches, in
parliamentary declarations and in various enactments. Thus, there is no
single source through which one can discover the full expression of the

\(^{1}\) They belong to the Equatorial Custom Union (Union douanière équatoriale)
to which Cameroun is associated.
national economic policy. Having said this, it is also important to add that government policy can only be related to a particular period of time. The pronouncements selected here, therefore, have value only in relation to a certain period when the Plan was formulated and investment code enacted.

20. The general impression on reading the pronouncements on national economic policy is that they have one dominant theme: to increase economic well-being mostly through a rapid industrialization. The means to attain this goal have often been spelled out in some detail. They relate to a better utilization of natural resources, to improving the infrastructure and social investments and to the development of one or other particular sector of the economy. These pronouncements are general and need not be interpreted as a comprehensive declaration of a national economic policy.

21. The Algerian Investment Code states that enterprises which encourage and aim at providing an infrastructure for the economy are 'of national significance'. The Ethiopian Development Plan spells out three basic aims: better utilization of resources, introduction of modern technology and increasing investments. Ivory Coast considers participation of government in developing unexploited resources as the main aim, while the United Arab Republic has underlined the desire to increase production in all sectors.

22. Some countries of the region have defined their aims in more detail. The Government of Sudan intends to concentrate its future programme in developing public utilities and hydro-electric power, while Nigeria considers the development of transport, communication and higher education as its objective. The Tunisian statement gives priority to developing production of iron ore and chemicals. A number of countries, particularly those with comprehensive development plans have expressed their general aim in quantitative terms: such and such an increase in this or that sector over a given period.
23. Although the economic significance of these policy statements is general in character, they often give indication of areas of development which are pre-occupying the attention of the government at a given time. But there is one area in the statements which may be of considerable interest to the potential investor. This relates to the main channels of investment and economic growth which will be through public ownership, mixed ownership, co-operative enterprise or private enterprise.

24. Of course, no government in Africa has reserved any of these sectors exclusively. But there are important differences among countries concerning the emphasis they place on one or the other or a particular combination of them. Statements on periodic or private sector are normally found in development plans, but they are sometimes also expressed in investment codes.\(^1\)

25. So far as the main social sectors, education, health and, to a varying extent, housing are concerned, all African Governments consider them as the proper field of public activity. Similar is the position in nearly all countries regarding public utilities, such as rail transport, communication, electric power, water supplies, etc. The same policy applies to construction of large projects such as irrigation dams, canals and ports.

26. The economic policies of the African Government may be subdivided in three groups depending upon the emphasis on a particular form of industrial organization.

27. At one extreme are the countries relying on the public sector as the main driving force for industrial development, and at the other, are those who expect to rely exclusively on private domestic as well as foreign enterprise. Between these two are a large number of countries.

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\(^1\) There is an exception in the case of the Central African Republic where an article in the Constitution states \textit{inter alia} that of property from the public to the private sector must be regulated by the authority of the law. Article 17, \textit{Constitution de la République}. January 1963.
where the attitude is more or less pragmatic: rely on private enterprise if possible, if it is not forthcoming, undertake the project in the public sector.

28. To the first group belong the United Arab Republic, Ghana, Algeria and Guinea. In these countries the construction of some form of socialist society has been accepted as a guiding principle of national policy. Emphasis on public enterprise stems from this, although private initiative offers a large and, in most cases, an expanded field of operation.

29. In Algeria, the State participates in all important activities, while in the United Arab Republic the right of establishing basic industries rests with the Government. Mining prospecting and research associated with it as well as ore utilization is reserved by the Government. The main reason given by the Government is that this kind of economic activity requires large investments which private enterprise cannot afford. Some of these important industries reserved by the Government of UAR are oil prospection, coal mining, etc. It has included in this category, fertilizers, caustic soda, paper, automobiles, tractors and other forms of transport. As far as iron and steel industries are concerned, co-ownership is practiced in cases where private capital hesitates to invest owing to the likelihood of losses during the first years of operation.

30. Ghana and Guinea have classified their economic structure in their Development Plans into three or four sectors. They are: the state-owned sector, the private sector and joint state-private sector (also called the mixed sector). To these, Ghana has added a 'co-operative sector', the significance of which is that the Government initiates an industry until it can stand on its own feet when private enterprise takes it over. Sierra Leone's policy is to encourage the establishment of various industries, and in some cases to participate financially in the "equity" which will eventually be handed over to nationals.
31. In some countries, like in Nigeria, Liberia, Libya, Morocco and Sudan, private enterprise is allocated the main role in promoting industrialization following the liberal tradition.

32. The Government of Liberia has stated that despite the fact that it pursues an 'open door investment policy' "it has found it convenient to carry out investment in power production and will operate the plant when necessary". Water supplies in Liberia are already being operated by the Government.

33. The policy of Libya aims, in the first instance, at making available 'an open range' where private capital can establish factories with 'technical and financial assistance' from the Government. After considering the national need, the Government embarks on an industrial project on the basis that 'private sector is abstaining from it for some economic, social, or other reasons'.

34. Morocco has stated in its investment code that private capital is welcome in economic sectors which have been given priority in the Development Plan. One of the proposals of the Plan is that the State will intervene to establish basic steel and chemical industries. Sudan has divided its economic structure by earmarking specific industries for public and private sectors. It has announced that private capital is welcome in investments on raw materials and light industries.

35. A sessional paper from Nigeria indicates that a "mixed economy" is envisaged for the region, but private enterprise is 'responsible for the preponderant part of economic activity'. However, there are a few industries where Government has a monopoly. These are connected with generation and distribution of electricity, water supply and telecommunications.

36. There are other countries, however, who have declared themselves to be mixed economies in the sense of having both public and private sector overlap in several areas. The emphasis on either public or private sector
in a given country, however, cannot be pushed too far. With the acceptance of some form of planning, it is obvious in all countries that the government has begun to play a role in guiding, directing, controlling and often directly undertaking various industrial projects. 1/

37. As discussed below, the State specified in some countries the industries and areas in which it will participate right from the beginning while in others the initiative is left with private enterprise even though later the government may decide to participate.

(b) "Approved" enterprises 2/

38. As indicated earlier, the government not only points out the main area of operation in the public, private and mixed sectors, but often enumerates industries or undertakings which are accorded "priority" in the process of industrialization. This is usually described in the investment codes and development plans. The beneficiary industries, because of the priority attached to them, are entitled to certain economic benefits. A scale of priority indicates the future pattern of industrial development of the given country and the range of choices available to the potential investor.

39. It is interesting to note that almost all the ex-French colonies who have integrated investment codes have enumerated "approved" industries in great detail. Primarily, these countries have defined their basic economic objectives in terms of agriculture, mining, transformation of local raw materials or manufacturing industries. The majority of African countries have given priority to mining in their investment laws.

1/ See A.H. Hansan, Public Enterprise and Economic Development, London, 1960, p. 203. The author takes several examples from under-developed areas and concludes that "the pattern of public enterprise cannot be drawn arbitrarily or solely in the light of ideological considerations".

2/ The expressions "priority" and "approved" have been used interchangeably in several laws. Strictly speaking "priority" is an arbitrary selection of industries while "approved" connotes that this "priority" has been processed by some form of administrative procedure.
40. Some countries do not give a list of priorities in either their development plan or investment code. It may be found in a government publication as in the case of Nigeria. A long list of 'pioneering' industries includes mining, smelting and refining, canned foodstuffs, rubber soled shoes, tyres, hotel keeping, etc.

41. Algeria, Cameroun, Dahoney, Ghana, Central African Republic have incorporated a general condition in their laws according to which all prospective industries in adhering to the plan, must channel investments in sectors defined by the plan. Liberia, Libya and Ethiopia have given priority to consumer goods industries, textiles and foodstuffs. Stock-farming and real estate industries are given priority in Chad, Guinea, Ivory Coast, Niger and Upper Volta. Those countries who intend to set up chemical industries are Ethiopia, Guinea, Morocco, United Arab Republic, Niger and Upper Volta. The building industry is specifically mentioned in the laws of Niger, Ethiopia and Liberia. Upper Volta, Chad and Guinea consider metallurgy as a "priority" industry while the United Arab Republic and Morocco have included armaments in this category.

42. In certain cases the criteria of priority is also stated in the code. For example, the Investment Code of Madagascar lays down the conditions of approval of industries. According to its provisions, new enterprises must adhere to these rules. They are "the contribution of the rectification of imports and the expansion of imports or the improvement of the balance of payments". The Tunisian law specifies that any industry which intends to be 'approved' must satisfy the requirement of minimum capital per worker, least competition, import substitution. In Senegal, an approved enterprise must satisfy the following conditions: an investment of a minimum of one hundred million CFA realizable in three months or the direct creation of employment for at least one hundred persons per year.

43. The Investment Law of Ghana states that "approval for capital investments under the Act may be granted" for the purposes of contributing to the attainment of four specific conditions. These concern the development
of the productive capacity, its utilization and expansion, saving on imports and creating a high level of employment.

44. The meaning of the word 'priority' must not be misunderstood. In most cases it reflects the natural resource endowment and the stage of economic development in a given country. But 'approved' industries signify that a certain administrative procedure is involved which takes the form of a certificate or decree. The nature and function of this administrative machinery which grants 'approval' needs to be briefly examined.

(c) Patterns of administrative control

45. Although the organization of public enterprise in the industrially developed countries has often been a subject of controversy, they have evolved administrative systems which are more or less adapted to the needs of a complex and diversified economy. In the developing countries, on the other hand, the existing administrative machinery is not suited to the new tasks. Therefore, newly independent countries have established agencies which are specifically vested with authority to guide investments in channels which correspond to national requirements.

46. In most of the new nations of Africa, a new pattern of government control is emerging. It is now only in a minority that the authority to examine, guide and supervise investments still rests with the ministries of finance, industry and commerce. Such is the case in Ivory Coast, Liberia, Nigeria and Tanganyika. In the old pattern, one can discern a great deal of inter-ministerial rivalry between the ministries of finance and commerce to retain control over investments.

47. The new "development" machinery, the 'investment commission', has been created by about half of the independent countries of Africa. Among them are Algeria, Cameroun, Ethiopia, Ghana, Madagascar, the United Arab Republic and Somaliland. Constitutionally these commissions are quasi-government agencies whose relations with the government via the ministries
is very close. Most of the investment commissions are created by the investment codes and, therefore, are statutory bodies established for special purposes.

48. In some cases this 'development' institution is established under a different title. In Guinea, for instance, it goes under the name of 'Commission of Economic Control' which is a member of 'Bureau politique national du FRG'. One of its functions is to initiate new enterprises. In Madagascar, there is a Technical Committee on private investment which is not created by the Code, but is an independent body. In addition it has an inter-ministerial Planning and Development Committee which assumes most of the functions of an investment commission in other countries.

49. This institution in Somalia is known as "Committee on Foreign Investments". It consists of ministers and directors of several governmental departments. Six experts who are technically competent to deal with questions of economic development are also appointed on this Committee. Tunisia has established an "Economic and Social Council" in 1961, which is vested with the general authority to deal with all economic and social matters. The Council acts as an advisory body to the Government in the field of planning and its implementation.

50. In Somalia, Libya, Tanganyika, the Investment Commission is created specifically for foreign investments. In general, the function of these investment commissions is to encourage investments and supervise the areas in which they should be channelled. In Cameroun, the Investment Commission is the sole authority which reviews applications to be treated under priority schedules. It may reject or approve an application according to the criteria specified in the Code. In Ghana, the Capital Investment Board\(^1\) initiates and organizes activities for the 'encouragement of investment of foreign capital'. The Board grants approval for capital investments, maintains liaison between investors, government departments

\(^1\) Created by the Capital Investment Act 1963.
and agencies. It is the responsibility of the Board to grant any exemp-
tions and reduction facility or license to assist an enterprise.

51. In Liberia, an institution called National Production Council, 
established in 1956, whose function is to co-ordinate policies, plans 
and programmes, is designed to strengthen the economy. The Commission 
established in Libya under the Foreign Capital Investment Law collects 
economic data on the possibilities of investing foreign capital in 
"fields important to the economic development of the country". In 
Morocco, the Investment Commission was specifically created to 'determine 
the industrial sector within the plan'.

52. In some countries, however, e.g. Ivory Coast, Nigeria, Senegal, the 
United Arab Republic and Tanganikika, the authority and control to examine, 
supervise and channel new investments still rests with the Ministry of 
Commerce, or Industry or Finance, and the traditional nucleus of economic 
control. In some of the new countries, the administrative structure is 
still based on the model of metropolitan powers. Interestingly enough, 
the developed countries are also finding the need to establish investment 
commissions and development corporations. The reason is that it is no 
longer possible for a department in a ministry to handle the multifarious 
activities of an expanding economy.

53. The composition of the investment commission follows a fairly uniform 
pattern. Usually, the Minister of Economy or Commerce is its President. 
The other members are a mixture of ministerial officials and representa-
tive members. In some cases, like in Dahomey, Cameroun, Chad and Congo 
(Brazzaville), two representatives from parliament are also included. In 
Gabon, the number of members of parliament is four. In addition, Gabon 
has included two representatives of the trade associations and federations 
in whose field of activity the enterprise concerned is engaged.

1/ See United Nations: 'Some Problems in the Organization and Administra-
tion of Public Enterprises in the Industrial Field.'
54. In most of the countries which have instituted investment commissions, members are not only drawn from the ministries but also from other fields. Directors of banks, commissioners of customs and taxation and presidents of chambers of commerce are also included.

55. The United Arab Republic has a "Special Committee" which deals and controls all aspects of national economic development. In the Upper Volta the power and authority to control investments rest with the Council of Ministers. In Ethiopia, the Investment Committee created by a government decree consists of the Minister of Commerce and Industry, the Governor of the National Bank and the General Secretary of the Planning Board.

56. Apart from the Investment Commission whose function is supervisory, few countries of Africa have created institutions which offer monetary assistance to "approved" industries. About ten new institutions in the form of Credit Development Bank or "Caisse" have been created in Africa in the last two or three years.

57. Industrial development and finance cannot be easily separated. Therefore, some countries have created institutions which combine both of these functions. Liberia has created a Bank for Industrial Development and Investment. It is a statutory body the purpose of which is not only 'to develop Liberian economy by providing incentives for flow of private investment capital' but also to finance investments in loan and equity.²

58. In Somalia, an institution called Credito Somalo, government owned, operates a medium and long-term lending section to finance private industrial activities of all types. In the United Arab Republic, recently, the National Bank was split up into two separate bodies: the Central Bank


2/ According to the rule it must not exceed an amount equivalent to ten per cent of the Liberian Bank's total resources.
and the National Bank, the former has the power to co-ordinate general
credit and banking policy, and the latter acts as a commercial bank to
finance industrial activities.

59. The Uganda Development Corporation established in 1952 is mainly
concerned with investigating and making recommendations on, new projects
that are submitted to it. A technical department is also available to
potential investors for assistance in technical matters. A project is
approved after exhaustive enquiries into all aspects of costing, marketing
and technical problems of production have been made.

60. There is a wide variety of procedures to determine specific benefits
granted to potential investors. In Africa, the typical procedure entails
application to the Investment Commission or any other authority designated
by the law. This application is very often accompanied by supporting
documents of the legal and economic nature of investments. In some cases
the financial source must also be specified.

61. The Commission then investigates the nature and quality of invest-
ment particularly with regard to general requirements set out in the
investment laws. After examining several aspects of investment, the
Commission may reject or approve an enterprise. The precise form of the
instrument varies in each country and is in the form of a decree or
decision of the Cabinet or a simple exemption certificate. As a rule
this is granted to domestic and foreign investors. The potential investor
on his part also undertakes certain obligations with regard to amount,
period and form of investments. Any failure to adhere to the conditions
is subject to 'withdrawal of approval'. This usually means that an enter-
prise is deprived of any economic benefits. In certain cases they are
obliged to pay back the benefits already derived.

(d) Foreign investments

62. The role of external assistance in terms of direct private investment
in Africa is essentially to release domestic resources. Provided a
development programme is being carried out that implies a higher rate of
investment, external financing will induce growth and capital formation. In this sense all developing countries are in need of foreign capital.

63. One single dominant fear of the foreign investor is nationalization. Others are low returns and inability to remit capital and profits. This is what is usually termed as 'investment climate'. However, there exist real fears of domination and exploitation on the part of capital importing countries. This 'climate' of fear has somehow seeped in the new investment codes and laws of Africa.

64. The need of capital, and fear of exploitation faces a newly independent country with a dilemma. The investment laws under discussion have made several attempts in the direction of minimizing obstacles and encouraging foreign private investments through special incentives and guarantees. It is an interesting fact that the majority of the countries of Africa have addressed their laws to both domestic and foreign investments. Only a few countries have specifically enacted laws to attract exclusively foreign capital. Among these are Sudan, Libya, Togo and Somalia.

65. The rules concerning foreign investments encompass a very wide range. To a foreign investor, regulations concerning administrative procedures, tax incentives, rules relating to employment of nationals are all important. In general, investment laws contain guarantees of fair compensation, remittance of profits, non-discrimination and fiscal stability. Here we shall briefly deal with nationalization, repatriation of capital and profits, employment of nationals and non-discrimination.

(i) Nationalization

66. The main factor responsible for the resistance of private capital

1/ Nationalization is an economic expression used here in the sense of "ownership and control by the State". Most Investment Codes use the term 'expropriation' which legally means 'the compulsory acquisition of private property by the State'. There is an abundant literature on the subject. For a good summary see Friedmann, W. "Some impacts of Social Organization on International Law". American Journal of International Law. 1956.
in developing countries has been the fear of nationalization. One of the most important uses of nationalization has been to stimulate economic development in poor countries. Where a private enterprise has proved unable or unwilling to provide goods or services essential to industrial progress, government have stepped in to supply them.

67. Most countries in Africa have indicated their policy regarding nationalization in the investment laws or policy statements or constitutions. Those countries which provide a nationalization clause have also given a legal guarantee of fair compensation. The majority of the countries who have integrated Codes have included a clause on nationalization.

68. The Investment Code of Dahomey provides a basic guarantee of equitable compensation in case of expropriation. The Foreign Investment Law of Somalia provides that "property of the enterprises registered in Somalia is free from expropriation measures except in case of public interest". This law further provides that the property of enterprises is not subject to any administrative measures of seizure or requisition except in case of war and then "only as long as it lasts in accordance with the relevant international convention in force".

69. The Approved Enterprises (Concessions) Act 1956 of Sudan stipulates that "if at any time any property belonging to an approved foreign enterprise is compulsorily acquired by the Sudan Government in furtherance of nationalization, ... the said compensation shall be remitted out of Sudan".

70. Constitutional guarantees to protect private enterprises have been provided in the constitutions of Ethiopia, Libya and the Central African Republic.

1/ Most laws use the words "just", "appropriate", "equitable" and "fair" interchangeably.

2/ There are virtually no restrictions in Sudan on the formation of foreign firms.

3/ Article 17, op. cit.
71. According to the constitution of Libya, "the property of any foreign investor cannot be expropriated except for 'public good' in the circumstances defined and specified in the Expropriation Law". The Ethiopian constitution provides that 'no one may be deprived of his property except upon a finding by ministerial order issued pursuant to the requirements of a special expropriation law... and except upon payment of just compensation determined, in the absence of agreement, by judicial procedures established by law'.

72. Liberia and Nigeria have made policy statements regarding nationalization. According to a government statement in Liberia, "no expropriation of existing industries is envisaged". The Government of Nigeria has indicated that there are "no plans for nationalizing industry beyond the extent to which public utilities are already nationalized... Should this occur then fair compensation assessed by independent arbitration will be paid".

73. "Our Government", said the President of Ghana, "has no plans whatever to take over industries in the private sector... Where Government has taken over private industry, it has done so either because - as in the case of the acquisition of the gold mines - the owners had indicated their intention of closing down, or - as in other cases - because the owners themselves had made proposition to the Government. The Government has in no case attempted to expropriate enterprise... Where it becomes necessary to take over private business at the request of private enterprise itself, the Government will ... ensure that adequate compensation is paid to the owner".1/

74. The policy statement from Guinea declares that "those who are ready to invest in the Republic of Guinea and who accept to participate in the economic development of our country, must be able to count on flawless social stability and benefits from guarantees protecting their capitals from all arbitrary acts and ensuring fair interests".2/

2/ Rapport de présentation du Code des investissements.
75. Laws of some countries state that certain industries will be nationalized for 'public interest'. But this does not exclude the payment of compensation. 1

76. The mode of compensation is not normally provided in the Code. However, there are certain exceptions in the investment code of the Central African Republic it is stipulated that the question of compensation is to be determined by the ordinary law. In Nigeria, the amount and adequacy of compensation is left to arbitration. A government statement from Tanganyika on nationalization gives a guarantee that in the event of nationalization, compensation will be paid in foreign currency.

77. It must be borne in mind that the intention of a government to nationalize is not always declared in a legal instrument. The basic difference between a policy statement and a legal provision on nationalization is that the latter is a formal declaration which is legally binding.

78. Briefly it must be added that the right of the State to nationalize in 'public interest' has been exercised by almost all States. 2 In some developed countries such as Italy, Norway, the United States, the right to seize private property for 'public use', subject to just compensation, is incorporated in the constitution, while in Iran, India and Mexico, the question of just compensation is under the jurisdiction of national courts.

79. The position in international law of the rights of the foreign investor who has entered an agreement with the government and whose property is seized is by no means clear. The only general statement one can make is that, in the event of nationalization in developing countries, equal treatment must be accorded to foreigners and nationals where a general confiscation of property occurs.

1/ Senegal has specified that "building" industries, may be nationalized without guarantee.

2/ The two most famous cases in the contemporary world were the Anglo-Iranian Company and the Suez Canal Company, both of which were taken to the International Court of Justice. For conflicting opinions of judges, see ICJ Reports 1953 and 1957.
(ii) Repatriation of capital and profits

80. The main reason why the developing countries discourage foreign investment and encourage official loans is because investors want profits which had eventually to be transferred in hard currencies. Despite policy statements to this effect, it is interesting to note that investment laws reflect quite a different position.

81. The provisions relating to repatriation of capital and profits in the investment laws of Africa reflect two main tendencies: a group of countries have placed no restrictions in remittance of profits and capital except the procedural requirement of permission for exchange. ¹/ Some countries of this group have free transferability of currency to the Franc Zone. The other group of countries have provided in their laws certain conditions before capital and profits can be transferred.

82. The Investment Code of Dahomey "allows the free transfer of all earnings". The Ethiopian Investment Decree states that capital, profits, interests as well as foreign loans can be remitted. The Codes of Ivory Coast and Madagascar stipulate that there are no restrictions of any kind on remitting to the Franc Zone.

83. The policy statement from Liberia indicates that "there are no legal restrictions on repatriation of capital and profits including shareholder's dividends. Tanganyika allows the remittance of profits, principal and interest irrespective of the monetary zone, but Nigeria gives this privilege of transfer only to sterling countries. However, prior permission for non-resident capital investment and 'approved status' must be obtained from the Federal Ministry of Finance.

84. Countries which have legally provided for free transferability include Gabon, Mauritania, Chad and Morocco.

85. In some countries, Algeria, Libya, Niger, Somalia and Tunisia, certain conditions have to be satisfied before any financial transfer can be made.

¹/ See annex III.
These conditions generally relate to authorization of the proportion of percentage which is allowed by law.

86. Both Guinea and Ghana as a rule place no restrictions on remittances. But there are some exceptions to the rule. In Guinea beneficiary enterprises are entitled to transfer annually all of the interest and at least 20 per cent of their share of the annual net operating profits. A portion of 30 per cent of wages payable to foreign personnel are also transferable. The Investment Act of Ghana provides that there shall be no restriction on the remittance of capital, profits, payments in respect of principal interest and other financial charges, and remittances to the families of foreign personnel. But all these facilities are subject to temporary restrictions to safeguard the external payment position.

87. The Algerian Code allows transfer of both capital and profits up to 50 per cent per annum. All others remittances are subject to exchange control regulations. In Somalia profits, income, revenue accruing from fixed assets on loan investments and the dividend and interest received on shares and bonds acquired can be freely transferred if the amount does not exceed 15 per cent of the capital invested. The big proviso is that these must accrue from 'investments which fall within the plans for economic development'.

88. Tunisia has classified the question of remittance in two classes: productive and non-productive enterprises. The former have to adhere to certain rules in obtaining permission, while the latter can only remit up to 8 per cent. In Libya, it is the Minister of Finance who has the authority and power to decide this question on the merits of the case, while in Senegal the right to transfer capital and its revenue by an enterprise depends upon its "participation in the economic development of a country".

(iii) Employment of nationals

89. That the need of skilled labour is a prerequisite of economic progress needs no emphasis. From the point of view of developing countries,
not only capital but the import of trained personnel is equally important. If a foreign technician, during his stay, trains local manpower in a particular job, he has made a most valuable contribution. African Governments have, therefore, paid official attention to introducing legal provisions for the training of national staff by foreign enterprises.

90. Half the investment laws under study have provisions relating to employment of nationals. These provisions fall mainly into two categories: the first relates to those countries where it is obligatory for foreign firms to employ nationals,\(^1\) and the second to those that restrict the participation of foreign personnel, thereby reserving places for nationals.\(^2\)

91. In the laws of the Central African Republic, Ghana, Nigeria, Madagascar and the Sudan, it is obligatory for an approved foreign enterprise to employ nationals.

92. The Code of the Central African Republic states that 'the proposed investment must train nationals in specialized jobs', while the Sudan policy states that foreign industrialists must undertake to provide 'reasonable facilities for training'.

93. According to the Madagascar Code "approved status" enterprises are required to "create new jobs". Both Ghana and Nigeria emphasize that nationals should be trained in technical and managerial skills. Nigeria has qualified this general statement by adding that this training should be accelerated, while Ghana has included administrative skills as a part of the legal obligations.

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\(^1\) 'Employment' is used in investment laws in the wider sense of training local labour in administrative, technical and managerial skills, sometimes defined in quantitative terms.

\(^2\) This sometimes includes trade activities. In Senegal, the law makes it obligatory that the direction of trade activities be in the hands of the nationals, although foreign nationals are allowed to participate in trade associations.
94. The Somalian Law on Foreign Investments provides that 'unskilled foreign personnel is not to exceed 5 per cent of the Somali personnel employed'. Furthermore, a foreign enterprise must, if requested, submit to the Committee on Investments a report on the results achieved in this field. The Libyan law makes all exemptions from taxes and duties conditional to the employment of a minimum of 90 per cent nationals of the total staff. The remaining 10 per cent must also be examined and approved by the Department of Industrial Organization. The United Arab Republic makes it obligatory to employ nationals for a minimum of 90 per cent of the workmen. This law further provides that the proportion of other employees, must be at least 75 per cent and their salaries must not be less than 65 per cent of the total salaries.

(iv) Non-discrimination clause

95. Certain codes have specific clauses on the rights of the foreign investor who is put on par with domestic investors. In Algeria, all foreign firms, by law are treated on a non-discriminatory basis with regard to legal rights and allocation of government contracts. The only general condition is that "they contribute to the economic development of the country".

96. The Code of Congo (Brazzaville) provides that foreign personnel can be represented on equal footing with nationals on "Assemblées consulaires". They are also accorded the same protection with respect to trade marks, patents, commercial labels and trade laws and other trade regulations under the ordinary law of the land. The Investment Code of Dahomoy, without indicating the areas of equality, provides that there will be generally no discrimination in law between foreigners and nationals.

97. The Investment Law of Gabon has stated that there will be no discrimination on representation between foreign and domestic companies on "Assemblées consulaires" (Commercial Council). The labour and social law will not discriminate between domestic and foreign employees vis-à-vis trade union activities. No discrimination is applied as far as the liabilities
to pay duties and taxes are concerned. A general provision of the Code protects new enterprises, foreign or domestic, against economic situations which might be prejudicial to them.

98. There are no restrictions upon the formation of new companies in Liberia by foreign firms, except that foreign nationals are not permitted to own real estate. A foreigner may lease real estate from a Liberian, but the lease may not exceed 21 years in the first place and two optional 21 year extensions.1/

(e) Economic inducements

99. The African Governments have introduced a vast range of economic inducements to encourage "new" and "established" enterprises. These incentives are usually applicable to both domestic and foreign investments. There are a few exceptions in the case of those countries who have enacted investment laws specifically for foreign investments. These include Libya, Somalia and Tanganyika.

100. The underlying economic reason for inducements is that they guide investments into "priority" or "approved" industries. Economic inducements are thus a selective instrument in the hands of the State to guide and control the flow of capital in certain predetermined areas.

101. Economic inducements range from complete tax exemptions to a certain degree of concessions in the payment of taxes on income, profits, imports and exports for a fixed period of time. There are also provisions for generous depreciation allowances, including reductions in turnover tax, standard tax, business tax.2/

1/ These restrictions, however, do not apply to concessions.

2/ It must be noted that the general concepts of taxation is different in common law and civil law countries. Two types of taxes mentioned in part II of this study are different in connotation from the Anglo-Saxon concepts. They are (a) Droit fiscal d'entrée or the Entry Tax, levied for revenue purposes on nearly all goods from foreign countries; (b) Taxe forfaitaire or the Standard Tax which is a type of transaction tax based on customs duties and fiscal entry tax.
102. The investment codes also include provisions guaranteeing unaltered continuation of many of these benefits for a contracted period.\(^1\) All these provisions are too numerous and varied to be described here in detail.\(^2\) Attention is therefore drawn to some of the most important features which are introduced with a view to inducing increased economic activity in developing sectors.

103. Foremost among economic inducements are tax benefits including the exoneration from payment of import duties on indispensation imports and of export duties on manufactured goods. Protection for the output of beneficiary is also provided in some countries. In general, all tax benefits are granted after an enterprise has acquired a certificate of exemption or approval from a recognized government agency.

104. In the majority of countries influenced by the French legal system, the investment codes have established more than two regimes. The first general classification is between ordinary law and beneficiary enterprises.

105. These regimes in several cases are further sub-divided according to the importance of industries or of markets. Regime A in the countries of ex-Equatorial Africa applies to markets within the country;\(^3\) regime B applies to countries within the Custom Union; and regime C is concerned with all markets.\(^4\)

(i) Exemption from taxes on income and profits

106. The most prevalent tax exemption applies to income and profits for a minimum period of five years, a period which is widely regarded as

\(^1\) See Establishment Conventions.
\(^2\) See Reports on national tax systems in World Tax Series, Harvard Law School, especially Brazil, Mexico and India, 1957 and 1960. Also see ECOSOC resolution, 1951, on the need of system information on taxation.
\(^3\) Cameroun has four regimes: A, B, C and D. All of these apply to enterprises according to the degree of their importance to economic development and the related type of economic benefits awarded.
\(^4\) Discussed under Establishment Conventions.
reasonable for installing an industry and for beginning operations.

107. Although five year exemption is a usual practice in most of the
countries of Africa, there are some exceptions.

108. In Ghana, this period is extended from five to ten years "beginning
from the date of production from the payment of Income Tax". 1/ Mauritania
awards complete or partial tax exemption for a maximum of ten years to
industries which are deemed particularly "useful" for economic and social
development.

109. In Senegal, the period of exemption on industrial and commercial
profits is extended to eight years (outside the Cap-Vert area). The main
condition for this exemption is that a new enterprise does not "exercise
harmful competitive pressure on the States which are signatory to a
customs convention". 2/ The maximum period of tax exemption on profits
granted to new industries is from five to sixteen and a half in Liberia.

110. Sudan tax legislation relates exemption on profits to a fixed
percentage and not to a fixed period. According to the Business Profit
Tax Ordinance, profits up to five per cent are exempt, but those in excess
are taxed at half rates.

111. In Togo and Ethiopia, the period of tax exemption is related to the
amount of investment. In Togo, if the amount of investment is from 20 to
500 million CFA the period of exemption is 15 years; from 500 to 1,500
million it is 20 years and above 1,500 million this duration goes up to
25 years. An investment of Eth.$ 200,000 is entitled to a normal period
of five years exemption in Ethiopia, but if the amount is doubled, the
tax exemption is reduced to three years.

1/ After this period of exemption the Investment Act of Ghana further pro-
vides that "Capital allowance" shall also be granted in respect of build-
ings, plant, machinery, structures, roads, furniture, fixtures for the
purpose of an approved project.

2/ Senegal is a member of the West African Customs Union which inter alia
co-ordinates the tariff rates and customs regulations of member countries.
Other members of the Union are Dahomey, Mali, Ivory Coast, Mauritania,
Niger and Upper Volta. The regulations for exemptions and tax relief can
become effective only upon decision rendered by the Customs Union Committee.
112. In countries which have adopted the French system of separate fiscal regimes, both Chad and Congo (Brazzaville) exempt new enterprises on commercial and industrial profits for a period ranging from 10 to 15 years. In Gabon, permanent and temporary exemptions from tax are granted under the General Tax Code. Tax reduction of 50 per cent is also given for "new" industrial, mining, agricultural or lumbering enterprises on profits from the second year of their establishment (may continue for the next three years). Niger grants under its Investment Code exemption from taxes on industrial and commercial income during ten years of the establishment of an industry.

113. Very few codes contain special provisions on reinvestments. Somalia's Law on Foreign Investments makes a special provision for reinvestment. Reinvested profits as capital are exempted from income tax up to five per cent. In Togo, failure to reinvest up to 10 per cent increases liability to pay taxes up to 50 per cent.

(ii) Customs exonerations

114. As a general policy, the governments have undertaken to establish nil or low rates of duty for indispensable imports of machinery, equipment, raw materials, containers and packaging materials required for national industries.

115. In Algeria approved industries can get total or partial refund for taxes on the imported machinery and equipment. Congo (Brazzaville) has special customs legislation according to which import duties are reduced on equipment and machinery. This legislation also exempts from import duties certain raw materials which enter into the composition of finished or processed goods.

116. In Morocco, exemption from customs duty is granted if the enterprise has contributed to "new exploitation of resources or expansion of an existing industrial activity". The imported material is entitled to customs benefits if it is a part of an investment programme.
117. In Tunisia and the United Arab Republic, customs exonerations apply only to certain products which are considered important for industrial development. There is a system entitled "Admission temporaire", which permits the entry of certain industrial equipment and raw materials for a limited period in Tunisia. The United Arab Republic, under its new tariff structure, allows machinery, equipment and raw materials for development, absolute exemption or a very reduced tariff of some two per cent.

118. Togo has retained its tax structure from Trusteeship status. Its customs legislation exempts mainly industrial goods from duties, ranging from five to ten per cent. In Libya, the criteria for customs exonation is that essential materials and spare parts used in the industry "are not to be found locally". If this requirement is satisfied, "new" enterprises are entitled to five years exemption from all import duties.

119. Guinea has not specified any fixed rate in its Code, but has inserted a general principle that the reduction in tariff will depend on the nature of the enterprise. In Ivory Coast, all "development material is exempted from custom duties up to ten years".

120. The four equatorial states: Central African Republic, Chad, Congo (Brazzaville) and Gabon grant reduced rates of import duty, under regime B, automatically on entry.

(iii) Export duties.

121. Very few investment laws have special provisions relating to export duties. The Investment Act of Ghana grants exemption from taxes on export up to one hundred per cent on goods manufactured by approved projects. In Niger, reduction up to fifty per cent is given for export duties and connected

1/ Established in January 1962. For details, see part II.
2/ In addition, a few selected goods are exempted from import duties up to 40 per cent.
3/ Cameroun is an associate member of the "Union douanière".
taxes. In countries of the Equatorial Customs Union "new" and "established" enterprises are guaranteed preferential export duties. In addition, the markets of the Government and the armed forces are also reserved for them on a priority basis.

(iv) Long-term fiscal regimes

122. Most of the investment codes of ex-French colonies, as indicated above, have created special fiscal regimes of ordinary law and beneficiary enterprises. Mali, Guinea and Upper Volta are exceptions to this rule.1 These three countries have enacted Investment Codes specially for priority enterprises.

123. The majority of the countries mentioned above including Cameroun, Dahomey, Gabon, Niger, Chad, Congo (Brazzaville) have established long-term fiscal regimes. In most of these cases the beneficiary enterprises are entitled to enter an establishment convention with the government. The main characteristic of the long-term fiscal regime is its importance to large industrial and mineral projects. In the main, the long-term regime grants stability of taxes to new enterprises for a stipulated period. This means that no new taxes can be levied during this period. Regime C is usually reserved for enterprises of 'economic importance' in the countries mentioned above. The period of stability varies from country to country, but the average ranged from 20 to 25 years. In Niger the minimum period of stability is ten years, while in Central African Republic it goes up to fifty.

(v) Establishment conventions

124. Companies involving large investments, which are entitled to long-term fiscal arrangements can sign a special contract with the governments according to the conditions provided in the investment laws. With slight

1 It may be noted that Upper Volta is a member of the West African Customs Union and Conseil de l'Entente. It also has a special agreement regarding free trade zone with Ghana. Upper Volta is also an associate member of the European Community.
variations, the same rules apply in Algeria, Cameroun, Dahomey, Gabon, Guinea, Ivory Coast, Madagascar and Niger. Already, certain large companies are operating under this system.

125. Some of the conditions of entering into an agreement defining the obligations of the State and the enterprise are specified below.

126. Certain guarantees on the period of stability are given by the State. These assume unaltered continuation of certain legal, economic and financial conditions, particularly as regards to transfer of funds and non-discrimination with respect to legislation. The stability of the marketing of products, entry and freedom of movement of workers and employment, freedom in selecting suppliers, preference in obtaining supplies of raw materials and allocation of foreign exchange are often among the terms of contract. There is usually a clause precluding the State from any responsibility for losses, expenses and failure to make profits due to development of new techniques or any other development beyond its control.

127. A typical example may be taken from the Central African Republic. The draft of this Convention is prepared by the mutual consent of the two parties and the Minister interested in the project. It is then submitted to the opinion of the Investment Commission. Finally the Council of Ministers issued a decree.

128. In English law, the procedure is slightly different. An example can be taken from the agreement of Volta Aluminium Company Ltd. The master agreement sets out the respective rights and obligations of the Company for a period ending thirty years following the commencement of the smelter operations. A special act entitled Volta River Development was passed to enable the Government to offer guarantees outside the

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1/ For example, MIFERMA in Mauritania, FRIA in Guinea, Uranium de Franceville in Gabon.

2/ There are several other examples in "les codes d'investissement" by J. Loyrette in *Penant*, April - May 1963.
ordinary law of contracts. As a result of the stabilized tax regime accorded to VALCO, a number of exemptive orders became necessary and these included a resolution by Parliament under the Customs Law, Minerals Duty Ordinance, Purchase Tax Act, Compulsory Saving Act, and Income Tax Ordinance.1/

129. The legal character of these agreements is not very clear. Because of the fact that they often involve the State, they are not, strictly speaking, contracts of private law. The question whether violation of any clause gives rise to legal responsibility on the part of the State is not settled by law. The main reason is that when case law on this subject evolved, legal, political and economic conditions were very different. At the turn of the century, the questions of national control over national resources or nationalization of foreign property were rare.

(f) **Arbitration**

130. Arbitration signifies a process for the settlement of disputes based on the consent of the parties.2/ Not all the investment laws have provided for arbitration. Out of a total of twenty six investment laws in Africa, twelve have specific provisions concerning arbitration. In Ivory Coast, Liberia, Libya, Sudan, Togo, Tunisia and the United Arab Republic, there are no special provisions on arbitration. In case of dispute, either of the parties resort to ordinary law or depend upon any remedies provided in the terms of contract.

131. Most of the codes, especially from ex-French colonies, contain procedures for the appointment of arbitrators. The general practice is that one arbitrator is appointed by each of the party to the dispute.


2/ Arbitration is to be contrasted with conciliation or mediation in which the role of the third party is to persuade the parties in a dispute to accept a settlement rather than impose upon them a binding decision.
The third, according to the majority of Codes, is appointed by the consent of the two parties.

132. In the event that this consent is not forthcoming, as it happens quite often, the code or law indicates the procedure of choosing the third arbitrator. It is in the choice of the third member of the team of arbitrators that the law of several countries show differences.

133. According to the Investment Code of Chad, the third arbitrator is appointed by the International Court of Justice. In Dahomey, this right is given to a highly qualified authority designated by the agreement or selected from the judiciary of the country of the investor. Niger recommends that the third arbitrator should be the Vice-President of the National Court, while Somalia designates the President of its Court of Justice. According to Upper Volta, the third arbitrator ought to be "highly qualified", and must be named in the contract of investment.

134. The Code of Mauritania states that the settlement of disputes resulting from implementation of a commercial agreement may become subject to an international tribunal "the terms of which will be set forth in the agreement". But failure to meet the obligation stipulated under government license can be submitted upon initial judgement by a Mauritanian tribunal to arbitration, which bars further proceedings.

135. In only two cases the law gives the parties the right to determine their own procedure in the contract. The Investment Code of Guinea stipulates that disputes arising over the validity, interpretation or application of the clauses of conventions of establishment of approved enterprises "shall in each particular case be the subject of arbitration proceedings, the details of which shall be determined by agreement between the parties". The Investment Code of the Central African Republic, while giving the right of settling the procedure to the parties, adds that the procedure must contain, inter alia, the method of appointment of the two arbitrators designated. The third arbitrator, in default of consent of the parties, is to be "a highly qualified" person who should also be named in the convention.
136. In all the cases mentioned above, except in Chad, the parties to the dispute choose the panel of arbitrators. In Chad, the third arbitrator is chosen by outside judicial agency such as the International Court of Justice. The new Investment Act in Ghana has introduced a new element. Rather than appoint national arbitrators or call in a judicial agency to appoint them, it stipulates that 'in case of dispute on the amount of compensation' in the event of nationalization, the matter shall be referred to an arbitrator appointed by the parties, and failing such appointment, to arbitration through the agency of the International Bank for Reconstruction and Development. In almost all cases the majority decision is binding.

137. The existence of an arbitration clause signifies that the commercial agreements between the government and the enterprise is respected and will produce impartial results in case of controversies. Furthermore, the effect of an arbitration clause is that it leads to the development of settled practice. There may emerge gradually certain customs and principles which lend certainty to transactions. In the case of a foreign investor, an arbitration clause will entitle him to seek the intervention of his Government on the ground of denial of justice.

D. Direction of legal change

138. At any given moment in the process of defining economic policy or formulating a development plan, existing legislation has to be taken into account. The existing legislation may represent, as it does in several cases in Africa, survival of outmoded ideas on law and economics: some constitutional provisions protecting private property, some tax laws giving exclusive rights to produce, import or transport anything, some legislation affecting foreign exchange usually reflecting past political content. Whatever the merit of these rules and laws, at the time, they can hardly be expected to form an adequate legal basis for economic development in the years to come.

1/ In some cases there is a right to appeal to the National Court.
139. To implement a clearly defined development policy, it is necessary to spell out the detailed legislative needs in correspondence with the economic objectives. Present investment laws in Africa suffer from the same general weaknesses as the current development plans. The general requirement for both is a coherent strategy of development. The actual formulation of an investment programme envisages equally an outline of a clear legal strategy.

140. Although some of the ex-French territories have attempted in their codes to define and clarify their policy, there is still considerable room for a better co-ordination between the development plan and investment law. These two are usually formulated by different ministries. It would not be untrue to state that the left hand often does not know what the right hand is doing. The countries under English influence suffer from nearly complete lack of cohesion on the legal level. Except in the case of Ghana, there is no country where it is easy to discover what the Investment Laws are. Even working through an assortment of regulations dealing with imports, customs, foreign exchange, taxation, etc., may not suffice to form a clear image. It may be suggested that in this age of the written word, investment laws need to be expressed in one easily accessible and understandable legal instrument. There is an urgent need, therefore, for African countries, acting at a continental or at a sub-regional level, to get together to co-ordinate their legal practices, procedures and provisions concerning the issue discussed below.

(a) One of the most important area of investment law concerns approved or priority industries. The need for defining concrete areas of investment is extremely important so that in the mind of a potential investor there is no room for vagueness or misunderstanding. Once the areas of investments are clear-cut, the exact mechanism through which they would be channelled acquires considerable significance.
(b) The already existing investment commissions, development corporations, and other government agencies could be strengthened, administratively and structurally, to achieve the desired result. These agencies can then help adequately, in the formulation and implementation of the development plans. Their composition is import from the point of view of policy-making. If it is assumed that development involves the entire society, then it necessarily follows that decision-making should involve technical experts from all related fields. Some of the codes under study have already a nucleus for this type of development agencies.

(c) There exist abundant literature and controversy on the question of creating adequate climate for foreign investments. Yet neither in capital-exporting nor in capital-importing countries, is there clarity on the precise needs of the investor and the recipient. Investment laws can perhaps incorporate special and separate provisions defining the rights and obligations of a foreign investor. Local participation, treatment of foreign exchange, transfer of profits, tax benefits and, in general, the security of investments could all be defined point by point. Here again the countries influenced by English legal system need considerable consolidation of their legal provisions. It is customary in English law to leave questions of nationalization to conventions rather than written legal provisions. This tendency is still reflected in the investment laws of many countries in Africa. Concerning the question of repatriation of capital and profits, there appears to be no concrete policy on the part of the African Governments. There is often a tendency to use this as an economic inducement without having full regard of its future impact on the balance of payments situation of the capital-importing countries. Strict provisions regarding reinvestment of accrued earnings are, as a result,
extremely rare in Africa. A positive tendency is visible in the African laws concerning a clause on employment of national labour. Several criteria have been used, regarding the amount of remuneration, type of jobs or number of employees. But there is great scope for incorporating in the laws a bolder programme of insisting on the training of nationals.

(d) The most complex and perhaps the most important subject relates to various types of economic incentives offered to the investors. It appears that tax laws, except for exemptions on import duties on certain products, so far have little relation to needs of future economic development. They have been generally drafted to obtain positive revenues without giving serious considerations to their economic effects. "Tax holiday" and other concessions often tend to create a spirit of deliberate competitiveness on the part of capital-importing countries in Africa. There is thus a need to harmonize tax policies with a view to channel investments in selected area and obtain revenues for defined public purposes. Fiscal policy in a developing country can be a much more effective tool in the hands of the State than it has been so far in Africa.1/

(e) There are today as many tax laws as countries in Africa.2/ Perhaps there is a basis for the suggestion that fiscal incentives for industrial development could be unified so as to avoid harmful efforts of a haphazard system of customs duties and taxation.3/


2/ With the exception of a few States who belong to the West African Customs Union and Equatorial Customs Union.

141. The procedure of settling disputes needs to be regulated in a manner which creates confidence in the mind of the investor and yet does not infringe the long-term national interest. There are already countries who have provided an arbitration clause. There is always a difficulty in choosing the third arbitrator, thus creating the need in case of failure, to turn to some judicial agency. An African court of arbitration, along the lines of the Permanent Court of Arbitration created by the Hague Convention of 1899, could be established to give impartial awards.\(^1\) It should also be possible for African countries to get together to draft an all-African convention on commercial arbitration, as has already been done in Europe.\(^2\)

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\(^1\) Later followed by various treaties on compulsory arbitration, e.g., LOCOME Treaty 1928, The General Treaty of Inter-American Arbitration 1929.

PART II

INVESTMENT LAWS AND REGULATIONS

1. ALGERIA

The National Assembly of Algeria adopted an Investment Code in July 1963.1/ It defines general and particular guarantees and the rights and obligations concerning investments. The Code is equally applicable to investments which bring in foreign capital.

I. Government policy, public and private sectors.

The Investment Code specifies the role of the State in these words: "The government shall intervene, by means of public investments, in establishing national or mixed economy companies with the participation of foreign or national capital, to secure the conditions necessary to the achievement of a socialist economy, particularly in those sectors of activity which are of vital importance to the national economy".

II. Approved enterprises (Des entreprises agréées)

According to the Code approved enterprises are those which "have a satisfactory financial plan, use modern or appropriate equipment and which, by reason of their location or sector of activity, contribute to the economic development of the country in accordance with government plans and programmes".

III. Executive agencies

1. The National Investment Commission

(a) Composition

The Commission is presided by the Director-General of Planning and Economic Research. It is composed of the Directors of Industrialization, Budget and Treasury. A representative from each of the Ministries of Foreign Affairs, Labour, Public Works and Transport, and the Ministers concerned with the project are also members. Two members of parliament

and a representative of UGTA\textsuperscript{1} attend the Commission. Among others who participate in the Commission's activities are the Director-General of the Caisse algérienne de développement and the Director of the Central Bank of Algeria.

(b) Procedure

The application for obtaining advantages under the code must state inter alia, the size of investment, the number of jobs the project is likely to create, the techniques likely to be utilized in the activity, the indirect effects of investment and the volume of production destined for export. The rate at which an enterprise is likely to train skilled persons must also be stated. In addition it must indicate the volume of new capital which an enterprise is likely to import.

The admission of an approved enterprise under the regime created by the code takes the form of a ministerial decree after the recommendation of the Investment Commission has been given.

2. La Caisse algérienne de développement

This new institution was created on 10 May, 1963\textsuperscript{2}. Its principal aim is to develop Algerian economy.\textsuperscript{3} The function of this "Fund" is to finance investments which envisage some contribution to national economic objectives. Its assistance, according to its charter, will take the form of medium and long-term credits. As far as short-term credits are concerned, the "Fund" will only act as a guarantor for the other banks unless "economic considerations certify" to the contrary.

IV. Foreign capital

The main guarantee introduced by the code provides that no expropriation can take place "before the amortization of the invested capital has

\textsuperscript{1} Union générale des travailleurs algériens.

\textsuperscript{2} Official Journal, 10 and 21 May, 1963.

\textsuperscript{3} Its formation implements the "Programme of Tripoli" which outlined national economic policy and plan.
been assured. The code stipulates three types of benefits for the foreign investor:

1. State protection against competition within the framework of the Government's policy on import duties.
2. Assistance of State financial bodies for the purpose of obtaining loans for equipment.
3. Government orders for supplies for public works and the State.

A foreign firm can only be expropriated according to the proper legal procedure and after adequate compensation has been arranged.

All foreign firms will be treated on a non-discriminatory basis with regard to legal rights and the allocation of Government contracts provided they contribute to the economic development of the country as defined in the Development Plan.

V. Economic benefits

(a) Approved enterprises (entreprises agréées)

The benefits under the code for all "approved enterprises" include total or partial exemption from the laws of transfer. A position of the real estate in establishing or extending an enterprise is also exempted from tax.\(^1\) Total or partial refund on taxes is also granted on all imports which will benefit industry and commerce. The duration of these exemptions must not exceed five years. In addition, State or public corporation loans can be given to enterprises at discretion.

\(^1\) Compare the earlier decrees:

(i) Art.3, Decree of 27 December, 1960, established the amortization of "biens d'équipement", which was calculated according to a system of "degressif d'amortissement". See. Bulletin des Chambres, No. 380 and 145.

(ii) According to art. 31-10 of Algerian Code of Taxes, a certain materials of construction enumerated therein benefit from the reduction of taxes by 6 per cent (The general rate being 12.80 per cent). The list of this article was completed by a note 462/463 F/LG/A/399, 23 August, 1960, and a new circular No.1.152 F/LG/A/399, 29 June, 1961.
(b) **Enterprises under a convention** (entreprises conventionées)

Any enterprise which presents a programme of more than five million NF on fixed capital, creates employment for more than a hundred people and invests in industries which have been given priority status by the Government can enter into a convention.

Enterprises under the convention are entitled to a stabilized tax regime for a period not exceeding fifteen years, return of interest on loans contracted and full or part exoneration from import taxes on raw materials.

A general guarantee against foreign competition in the customs domain is also given under the code.

(c) **Repatriation of capital**

Both (a) and (b) can benefit from the facilities of transferring funds under the Code. The general rule is that transfer of fifty per cent annually of the net profits would be allowed. The transfer back of the total capital invested (namely in ten annual instalments) is also guaranteed.

All other foreign firms which do not fall under either (a) or (b) are only guaranteed transfer of capital under the exchange control regulations currently in force.

VI. **Other Provisions**

(a) The guarantees and advantages extended by this Investment Code are without prejudice to any other guarantees which are contracted by Algeria with other States and international organizations.

(b) The code does not mention the procedure by which a dispute or a claim can be settled.
2. CAMEROUN

The basic legislation on investments in Cameroun was passed by the National Assembly on June 27, 1960. The aim of the law as stated in the introduction of the Code is "to contribute to the realization of the Development Plan". It adds that the criteria of acceptance of benefits under the Code require that the objectives of the Development Plan are fulfilled.

I. Priority enterprises

A priority enterprise, according to the Investment Law, is that which is regarded "as being of special importance to the economic development of Cameroun". Whether a new agricultural or industrial enterprise constituted in whatever legal form has priority or not is determined by an Investment Commission. Under the general articles of the code there does not exist any specific description of priority enterprises. However, four 'priority schedules' describe the types of industry which are exempted from import duties and taxes.

1. Schedule A

Under this schedule, equipment, machines and tools which are directly used for production and processing and raw materials used for manufacturing operations are exempted from import duties and taxes.

2. Schedule B

Firms which are approved under this schedule receive all the benefits

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1/ Law No. 60-64 was promulgated before the formation of the Federal Republic in October, 1961. (Republic of Cameroun and British Trust Territory of Southern Camerouns). This Law is applicable within the entire Republic.

2/ Title I; art. 1.

3/ In accordance with a system called 'usine exercée' or 'special plant' defined by Section V Art. 121, k-n, Decret No. 60-135, 11 July, 1960, reorganizing the general Code on direct imports. Journal Officiel, Yaoundé, 13 July, 1960.
of Schedule A with some additional benefits.¹/

3. Schedule C

Under this schedule, firms are accorded 'special status' by the Investment Code. They are considered "to be of particular importance in assisting the execution of the economic and social development plan". The 'special status' is granted on the ground that they are deemed to engage in "priority productive activity". The 'special status' enterprises must conclude with the Government "Convention d'établissement" (establishment agreement) for a fixed term of not less than twenty years.²/

The "Convention d'établissement" specifies inter alia the general conditions of operation, minimum equipment and production programme and the obligations of the firm as regards professional training. The Government on its part must give certain general guarantees which include economic and financial stability for transfer of funds and marketing of goods; freedom of movement and employment of the workers; free choice of suppliers of materials and services; and renewal of permits in forest and mining.

Facilities are also provided for the use of hydraulic, electric and other resources required for operations and conveying products to the place of shipment.

The convention provides the procedure to terminate the agreement and describes the circumstances of its cancellation. A clause by which the State is absolved from any responsibility to compensate for losses, debts or technical deficiencies is also included.

4. Schedule D

This schedule provides for long-term tax stabilization for a period

¹/ Normal amortization as shown in the accounts for the first five years may be set off against taxation for the three years following with the authorization of the Minister of Finance.

²/ The Government requires legislative authority to conclude such an agreement.
of not more than twenty-five years. To this are added normally five years for installation.  

During the period of stability, no other regulation in force is applied to the enterprises which are enjoying special benefits unless they choose to revert to the normal system.

II. **Executive Agencies**

1. **Investment Commission** (Commission des investissements)

The Commission is the sole authority which reviews applications by enterprises wishing to be treated under any of the above mentioned Schedules.

(a) **Composition**

The Commission is composed of ministers representing the following ministries: The Minister of Planning is the chairman. Other ministers are from National Economy, Finance, Labour and Social Legislation. Apart from these representatives, there are two members of the National Assembly, the directors of the Plan, Customs, Central Bank and Crédit du Cameroun; Two representatives each from GICAM (Inter Professional Group for the Study and Co-ordination of Economic Interests of Cameroun), and Economic Council; and one representative from the study group for the development of Cameroun.

(b) **Procedure**

An application must be made to the Minister of National Economy stating the reasons in support of the request. The approval of the application takes the form of a decree of the Council of Ministers which entitles the applicant to all the benefits under the investment code. If the application is rejected, the applicant has the right to a special appeal to the committee composed of the Prime Minister, Ministers of Finance, National Economy and Planning.

1/ This convention, like the one under schedule C, requires legislative authority.
2. Camerounian Development Bank

Another institution which provides a new channel of financial assistance to industry, is called Banque camerounaise da développement. It was established soon after the investment code came into force in 1961. The aim of the Bank, as stated in its statute, is to bring its technical and financial assistance in the implementation of any project capable of promoting economic and social development in Cameroun. The Bank gives financial assistance by way of direct loans and "consortium loans". But its main function is to act as a "caisse des investissements" to finance projects of economic and social interest to the country already approved by the Commission.

III. Foreign capital

The Code applies to all investments, domestic and foreign, and does not stipulate any special provisions for foreign capital.

IV. Economic benefits

1. Tax exemptions

The exemptions from taxation under the Investment Code are granted according to the schedule to which the enterprises belong.

Schedule A.

(a) A reduced rate of export duty is decreed by the Minister of Finance for those firms which prepare manufactured or processed articles exported by approved enterprises.

(b) Approved firms are exempted for five years from the consumption tax of five per cent levied on all articles sold in Cameroun.

Schedule B.

Enterprises under this schedule enjoy the following concessions.

(a) Exemption from tax on industrial and commercial profits for the first five years of operation. (Normal amortization shown in
the accounts for the first five years may be set off against
taxation for the years under authority from the Minister of
Finance).

(b) Exemption during the same five years from business license
fees (patents) and from land, mining and forestry taxes.

Schedule C and D

Enterprises accorded "special status" must sign a special conven-
teion with the government. The tax provisions applied to them are
mentioned under a long-term tax schedule instituted in 1962 which is the
sole system of taxation applicable to the whole country except Western
Cameroun.

During the period of tax stability the assessment, rate and method
of collection of all taxes and duties must remain the same as from the
beginning. Any firm under this system may also receive in addition
benefits under the ordinary taxation system on application. The regime
generally does not affect the tax rates of the Investment Code, but grants
additional advantages and benefits.

V. Arbitration

Each of the parties may nominate an arbitrator under the Code in
case of a dispute between the Government and the enterprise concerning
the interpretation and the application of the convention d'établissement.
A third party is nominated by agreement of the two parties, failing which
any other competent authority may be appointed. The majority determines
their own procedure and decides cases which are final and binding.

1/ The provision of the general tax code regarding tax exemption on re-
invested profits shall remain in effect until 31 December 1980.

2/ Decree No. 62-DF-293, Régime de la taxe unique à la production, Yaoundé
7 August, 1962.
3. CENTRAL AFRICAN REPUBLIC

The National Assembly of the Central African Republic adopted an Investment Code on 14 December, 1962. It stipulates that the establishment of all industrial, agricultural and mineral activities is free in the Republic. Exception is made, however, in the case of certain activities which cannot be started without authorisation for reasons of 'general interest' or 'public order'. These activities are not defined in the Code.

The Constitution states, inter alia, that the rate of taxes, financial regime, creation of public and mixed societies, nationalization and transfer of property from the public to the private sector - all these subjects must be regulated by the authority of law.

I. The Investment Code

The Investment Code establishes two regimes ordinary law (droit commun) and beneficiary (privilégiés).

A. Beneficiary regime

The regime entitled privilégiés or beneficiary applies to enterprises which were defined by the Equatorial Custom Union Convention on 11 November 1960. This convention classifies beneficiary enterprises in three separate parts:

Regime A: applies to enterprises the activities of which are limited within the national territory.

Regime B: applies to enterprises the markets of which extend to countries of one or more members of the Equatorial Custom Union.

1/ Law No. 62.355.

2/ Original constitution adopted on 5 February, 1959. Later amended on 17 November, 1960, 21 April, 1961, and 21 December, 1962. The significance of inserting this clause appears to be that these matters are taken out of the administrative sphere.
Regime C: applies to enterprise which can obtain a long-term fiscal stability.

Apart from the above, any enterprise can conclude an establishment convention with the Government.

II. Approved enterprises

New enterprises to qualify as "approved" under the Code must contribute to the economic and social development of the country by investing in important sectors. It is obligatory under the law that the proposed investment makes arrangements for training nationals in specialized jobs. "Approved status" is granted by a decree to the following enterprises:

- Industrial crop undertakings and processing installations.
- Industrial undertakings for the processing of vegetable and animal products.

Other enterprises entitled to approved status must engage in activities which include supplying equipment for tourists, mining industries engaged in extraction and exploitation of mineral substances; production of energy and petroleum, and mineral research.

III. Executive Control

The application to be qualified for approved status must be addressed to the Minister of National Economy. It must contain particulars of legal, economic, financial and technical position of the proposed enterprise. It must specify the stages in which the trained nationals will ultimately replace foreign personnel employed by the firm.

IV. Foreign capital

There are no special provisions in the Code relating to the entry of foreign capital and the rights of remittance of funds. But activities of all foreign firms in this area are subject to regime B.
V. Economic benefits

1. Beneficiary enterprises

Regime A

According to the customs legislation in force, installation of machinery and equipment benefits from reduced rates of entry and turnover taxes. The period of exemption is determined by the nature and importance of the activity. Raw materials which are an essential part of manufactured products or which destroy their original quality in the process of production are also exempted from customs duties.

The agreement under regime A can be withdrawn in case of any default when the Minister of National Economy has the authority to hear explanations. During the period of stabilization of fiscal regime all other rules and laws on taxation are not applicable.

Regime B

This regime is accorded by the Committee of the Customs Union. The method of assessment and the manner in which taxes are levied on regime B are determined by the terms of the agreement.

In general, regime B is entitled to benefit from reduced rates on entry on installation machinery and equipment and exemption from taxes on raw materials utilized for manufactured products.

During the period of stabilization all benefits accorded to regime A also apply to regime B mutatis mutandis. Conditions of withdrawal from benefits are also the same as in regime A.

Regime C

This is reserved for enterprises described as 'capital importance' to the economic development of the country investing exceptionally high

1/ The single tax system applicable to this regime was codified by Act 12/60, 17 May, 1961, by the Conference of the Heads of States of the Customs Union.
amounts of capital. The procedure of establishment is similar to that of regime A except that in the case of regime C, the long-term fiscal stability cannot be extended for more than fifty years. As far as the tax benefits are concerned, during the period of stability, enterprises are accorded exemption from all types of taxes, charges and duties.

In the case of regime C the withdrawal from benefits is first reported to the Minister of National Economy. Later the reasons of default are transmitted to a Consultative Committee consisting of the President of the Republic and three other experts one each nominated by the President and enterprise and the third by the agreement of the two experts. The Consultative Committee after consideration of the default presents a report stating the opinion of the majority of the arbitrators.

Establishment convention

All enterprises which are given priority under the Development Plan can enter an agreement with the Government. The convention is prepared by the mutual consent of the parties and the minister interested in the project after which it is submitted to the Investment Commission.\(^1\)

The Council of Ministers issues a decree formalizing the convention, the period of which must exceed ten years.

The general conditions of exploitation, programme of equipment, the rate of production, the number of skilled workers, the destination of products and other obligations are all stated in this Convention.

On the part of the State, the legal, economic and financial guarantees are extended. These guarantees include the freedom of choice of skilled workers and suppliers including distribution of quotas. Facilities of other resources necessary for exploitation during the processes of operation are also guaranteed.

\(^1\) Not established by the Code.
In case of any dispute about the validity or interpretation of the clauses, the Convention also fixes the procedure of arbitration.

2. Ordinary law

Under this regime the investment code grants customs and fiscal advantages to private investments.

Customs exemptions

(a) Certain type of equipment used for geological purpose and research in prospecting, laboratory equipment and products destined for 'bones des farrages' is exempted from entry tax.

(b) Chemical products indispensable for industrial and mineral activities, all lubricants and raw materials necessary for semi-finished products get certain benefits of reduced rates.

(c) Temporary exemption from entry and export tax is granted to all products transferred from local materials destined for export.
The Republic of Chad promulgated an Investment Code on August 26, 1963 creating two regimes of ordinary law and beneficiary enterprises, specifically for private investments.

I. Government policy

According to a policy statement, no particular industry or a set of industries is reserved by the Government. There is an indication that the Government would participate in diverse enterprises. The nature of the enterprises and the criteria on which the Government would participate are not mentioned.

The Development Plan published in November 1961 states generally that industries relating to the exploitation of mineral resources, development of energy, agricultural output and fisheries would be given priority.

II. Approved enterprises

The Investment Code describes 'approved' enterprises which benefit from régime privilégié in this way:

Industrial enterprises engaged in transforming processes and utilizing local raw materials, stockfarming and fishing, manufacturing consumer goods, real estate and all other engaged in mineral research and exploitation and petroleum products. Enterprises which are involved in the production of energy and investigation of touristic sights are also included in this category.

III. Executive agency

The Code establishes an Investment Commission of which the Minister of Economy is the President.

1/ Decree No. 156/PR.
2/ Economie et plan de développement, Republique du Chad, Republique francaise Ministère de la cooperation, p. 9
3/ The Commission has the right to consult anyone whom it considers to be a person of qualification and competence. Any meeting of the Commission to be valid must have seven members present including the President. In case of a division, the President's vote is decisive.
(a) **Composition**

It consists of the Ministers of Finance and the minister particularly interested in the proposed investment. The Director-General of Planning and two members from the National Assembly are members of the Commission. Others include Directors of Planning and Development, Economic Affairs, Customs and Indirect Taxes, Direct Taxes, Development Bank and a representative each from Chambers of Commerce and Industry, Agriculture and Mines.

(b) **Procedure**

After the Commission has taken into account all the aspects of the investment, it submits its opinion to the Council of Ministers. Regimes A and C are accorded approved status by a decree of the Council of Ministers, and regime B by an act of the Executive Committee of the ECU on the recommendation of the Council of Ministers.

(c) **Function**

The factors that are taken into consideration by the Commission before an enterprise is considered qualified under the Code are the importance of the investment and the amount of capital it brings in. Other elements related to participation in the National Development Plan, creation of jobs for the nationals and utilization of modern equipment.

IV. **Foreign capital**

1. **Nationalization**

There is no specific regulation in the Investment Code on nationalization. The ordinary law of Chad guarantees fair compensation except in cases where a particular property or an Industry is sequestered by the Government for 'special reasons'.

For each enterprise the agreement fixes the duration of benefits, enumerates the activities for which approved status is granted and defines the rights and obligations of the parties.
2. Repatriation of capital and income

There are no restrictions on transferring both capital and income to the Franc Zone. As regards investments from other areas, the prior authority and agreement of the government must be obtained.

3. Non-discrimination

A special provision of the Investment Code guarantees foreign personnel equal treatment of the law with nationals. The same social legislation is applied to them and they benefit equally from the labour laws and are granted the right to participate in trade union activities.

(V) Economic benefits

1. Regime A: is applicable to enterprises whose activities are concentrated in Chad and is accorded for a period of not more than fifteen years.

(a) Custom duties and indirect taxes: Reduced duties and taxes are applicable to the importation of certain equipment and raw materials listed in the custom legislation in force at the time.

Products manufactured by an enterprise inside the territory are wholly exempted from internal turnover tax (Taxe sur le chiffre d'affaires) but may be levied consumption tax which is variable and the duration of which is fixed by a Decree. However, this tax should in no case be higher than the one imposed under ordinary law.

(b) Direct taxes: The following exemptions are granted under the General Tax Code.

(i) All new constructions are exempted for a temporary period ranging from five to ten years from "contribution foncière des propriétés bâties".
(ii) All new land utilized for raising cattle and sowing is temporarily exempted for a period of three to six years from "contribution foncière des propriétés non bâties".

(iii) Temporary exemption from "contribution des patentes" for a period of three years is granted to new factories.

Deductions are also made from income tax on reinvested profits accruing from new constructions used for agricultural and industrial purposes.

2. **Regime B**: is accorded for a fixed period which must not exceed 15 years and applies only to enterprises whose market includes the territory of two or more states of the Equatorial Customs Union.

   (a) **Customs duties and indirect taxes**

   Enterprises under regime B are subject to a single tax system. The granting of preferential treatment under this regime automatically includes the following benefits:

   (i) Entry of plant equipment and other equipment at the reduced import duty rates and turnover tax rates for importation provided by custom legislation in force.

   (ii) Exemption from the import duties and taxes levied on the raw materials utilized for finished manufactured goods.

   (iii) Exemption from all internal taxes on manufactured goods and raw materials of local origin.

1/ Preferential treatment under this regime may be withdrawn in the event of a serious violation by a notice of the President within sixty days after which an investigation by the Investment Commission can be opened. The withdrawal of approval is recommended to the Executive Committee of the ECU. An enterprise may appeal to the Chief of States within sixty days.

(iv) Exemption from single tax on goods intended for export under the system of ECU with prior permission of its executive committee.

(v) The same clause as in regime A on government royalties applies to regime B.

(b) Direct taxes and governments royalties

The rates are fixed by the Council of Ministers as stipulated in the Act of approval.

All benefits granted under regime B which are more favourable must be authorized by the executive committee of ECU.

Regime C is granted to those enterprises which are of prime importance to the economic development of Chad and involves exceptionally large investments for a period not exceeding twenty years.

(a) Tax benefits and stabilization

Under regime C are guaranteed stability of basis of assessments, rates and methods of collection with respect to revenue, taxes and duties of all kinds.\(^1\)

All other benefits extended under regime A can also be applicable to C by the law of approval.\(^2\)

VI. Arbitration

The settlement of disputes arising over the application of the provisions of a contract of establishment and the determination of the compensation payable must be decided by arbitration. Each party must appoint an arbitrator. The third arbitrator may be appointed either by consent of both parties or by the International Court of Justice.

A final decision is rendered by majority vote of arbitrators.

\(^1\) All other regulations in conflict with the provisions of regime C are not applicable. Any change in the tax system beneficial to an enterprise may also be extended on request.

\(^2\) The same procedure with regard to withdrawal of approval applies to regime C with the difference that the President after ninety days can appoint an Advisory Committee in which an expert from the International Court of Justice may be appointed. The Committee then draws a report with the concurrence of the majority of arbitrators.
5. CONGO (BRAZZAVILLE)

The Congolese National Assembly adopted an Investment Code in June, 1961, in conformity with the recommendations agreed by the four equatorial States. The provisions on investments in the Republic of Congo comprise a system of ordinary law (droit commun) and preferential treatment (régime privilégié).

The preferential treatment consists of three regimes: regime A is applicable to enterprises whose activity and market are within the Republic; regime B relates to those enterprises whose activity and market include two or more States of the Equatorial Customs Union; and regime C permits them to obtain "long-term preferential tax treatment" (régime fiscal de longue durée).

I. Priority enterprises

The Code accords preferential treatment to the following enterprises:

- Enterprises producing agricultural products; processing vegetable and mineral products; manufacturing and assembling articles of general consumption; mining and transport industries; and those engaged in the production of power, real estate, and stockraising.

The Investment Code specifically excludes all commercial activity from preferential treatment.

II. Executive agencies

1. Investment Commission

(a) Composition

The Code creates an Investment Commission the Chairman of which is the Minister of Finance and Planning. The Commission is composed of the

1/ Law No. 39/61, 20 June, 1961, supplementing the general tax code and amending the Code on registration, stamps, and tax on income from securities.

2/ Central African Republic, Chad, Congo (Brazzaville) and Gabon.
Ministers of Industrial Production, Economic Affairs, Agriculture and Labour. Two members from the National Assembly and Economic and Social Council are designated to it. One representative each from the Chamber of Commerce, Agriculture and Industry are also members. A trade union representative participates in the activities of the Commission.

(b) Procedure

The application for preferential treatment must be accompanied by supporting documents for approval and is submitted to the Minister of Finance and Planning who later transmits it to the Investment Commission.

(c) Function

In examining whether a proposed project can be accorded preferential treatment, the Code lays down certain conditions which must be fulfilled. They relate to participation in the Development Plan, creating employment for nationals and providing technical guarantees for use of equipment. The main office of the proposed enterprise must be in the Republic of Congo.

2. Development Bank

The National Bank of Congo (BNDC) gives financial assistance to enterprises accorded preferential treatment. They are then entitled to priority in obtaining foreign exchange for the purchase of capital goods and raw materials.

III. Foreign Capital

According to the Investment Code, foreign enterprises have the right to obtain government concessions, authorizations and permits to conclude public transactions.

(a) Non-discrimination

Foreign personnel can be represented on equal footing with nationals on "assemblées consulaires. They are also accorded same protection with respect to trade marks, patents, commercial labels and other trade regulations provided under the ordinary law of the land.
(b) **Transfer of capital**

Under the Foreign Exchange Regulations, the Government guarantees the right to transfer capital. Profits duly entered into books and funds derived from the termination of an enterprise are also transferable.

**IV. Economic benefits**

(a) Preferential treatment under regime A cannot be accorded for more than ten years. The benefits granted under this system include reduced import duty of equipment and rates of turnover tax provided by the custom legislation in force. The period of exemption is determined according to the nature of activity. Exemption from import duties and taxes on raw materials is also granted to those products which are essential components of finished goods. These include those raw materials which lose their specific quality during manufacturing.

Permission to deduce one-half or all of the sums invested is also accorded under this regime. Exemption is given from real estate tax on improved property from five to twenty-five years on new buildings and new land utilized for stockraising and plants.

(b) Enterprises under regime B are subject to a "single tax" system, the benefits of which are similar to those granted under regime A concerning reduced import duties. In addition, under the single tax system there exists exemption from all internal taxes on manufactured goods, raw materials and products of local origin used in manufacturing. Goods intended for export outside the States of the Equatorial Customs Union (ECU), if exempted, must receive prior approval by its executive committee.

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1/ See Central African Republic and Chad.
(c) Enterprises whose establishment involves exceptionally large investments are given a long-term preferential treatment which should not exceed twenty years. (To this period may be added five years for installation.) The "long-term preferential treatment" also guarantees stability of basis of assessment, rates and methods of collection with respect to revenue, taxes and duties of all kinds.\footnote{Any regulation in conflict with benefits granted under regime C shall not be applicable. Any change under the ordinary law will apply to these enterprises on request.}

Enterprises under all the three regimes are guaranteed restrictions on the importation of competitive goods and preferential export duty. The markets of the Government and the armed forces are also reserved for them on a priority basis.

(d) Under the General Tax Code, new enterprises are exempted from taxes on industrial and commercial projects for five years and on profits derived from new plantations (their expansion and improvement) for ten years.

V. Contract of establishment

Any enterprise entitled to preference under the National Development Plan may conclude agreement with the Government. This agreement must state conditions which the proposed investment will fulfill and in turn state guarantees granted to it. This does not include any commitment by the Government to compensate the enterprise from losses, expenses and any other change in the economic situation.

The contract is issued by the Council of Ministers the period of which must not exceed ten years. The terms of the agreement include inter alia the general condition of exploitation, the commitment with respect to training nationals and other social and economic benefits. The Government on its part must guarantee stability of legal, economic and financial condition, particularly as regards transference of funds. The Government also provides for non-discrimination with respect to legislation.
6. CONGO (LEOPOLDVILLE)

There is as yet no integrated law on investments in the Congo. From the "Fundamental Law Concerning the Structure of the Congo" and the information sent to the secretariat by the Principal Legal and Political Adviser, the present position is summarized.

I. Fundamental law

The Economic and Social Council created by this law gives their opinions on any draft of bill prepared by the Government relating to economic and social development. The Councils also act in a consultative capacity on 'any programme of interest to the whole country'.

Foreign exchange policy, customs, the finances of the State, commercial code and immigration are all matters which are considered to be within the exclusive jurisdiction of the Centre.

Taxation generally is regulated by a Code which may vary from year to year. But no privilege in matters of taxation which grants exemptions or reduction can be established by an edict or a law. The head of State or the president of a provincial government is given the power to grant temporary tax exemptions. However, within three months, a bill or a draft must be submitted to the legislature for approval.

II. Foreign capital

(a) Nationalization: In an interview given by the Governor of the National Bank in Rome, the policy of the Government with respect to nationalization was stated to be 'firmly opposed'.

(b) Repatriation: The Government of the Congo appears to accept the principle of export of profits resulting from foreign investments adding that it "is able to give the most formal assurances to all persons who wish to invest".

1/ May 19, 1960.
2/ Arts. 204-206.
III. Other legislation

A new Housing and Rental Control Law signed on 25 June, 1963, exempts new buildings constructed from rent control to encourage investments in the building industry.
7. DAHOMEY

The Republic of Dahomey adopted an Investment Code in December 1961, for the purpose of 'coinciding private investments with the Development Plan'. The Code creates two regimes of ordinary law (droit commun) and preferential treatment (régimes privilégiés). There are three types of preferential regimes: A and B are applicable to small-scale and medium enterprises, while C is created for the benefit of those enterprises which require a long period to install themselves and involve very high amount of capital.

I. Government policy

In the Ten-Year Development Plan, the details of which were elaborated in March 1960, general priority was given to economic rather than social investment. The Plan states that maximum effort would be concentrated on those economic activities which influence production.

II. Priority enterprises

Under a general provision in the Investment Code preferential regimes may be granted to new undertakings in the field of industry, agriculture, mining and in some cases commerce if considered to involve priority projects.

III. Executive agencies

1. Investment Commission

(a) Composition

The Code created a Technical Commission of Investments (Commission technique des investissements) which consists of five ministers from the respective ministries of Development and Planning, Commerce, Economy and Tourism, Finance and Budget, Labour and Public Works, Agriculture and

1/ Law No. 61-53, which repeats the earlier Code of July 13, 1960.
2/ Economie et plan de développement, Ministère de la coopération, République du Dahomey, p. 11.
Co-operation. In addition, there are two members of National Assembly who are appointed to the Commission. A representative of the Chamber of Commerce and Industry, a director from the Central Bank, Exchange Office and the Development Bank of Dahomey are also members. The minister in charge of development and planning acts as the President.

(b) Procedure

One of the conditions of request for preferential treatment for an undertaking is to give a formal guarantee of its finances and technical competence to the Commission. The Investment Commission then gives its opinion on a project, the supporting evidence and recommendations are submitted to the Council of Ministers. Regime A and B are granted preferential status by a cabinet decree and regime C by law.

(c) Function

Several factors are taken into account before a particular undertaking is considered eligible. The main factor as laid down by the Code is whether a project adheres to the 'general Plan of National Development'. Additional factors are employment created, the amount of contribution made towards Dahomey's balance of trade, and the size of investment.

2. Development Bank

In 1960, the Dahomean Bank of Development was created. The Bank acts as a clearing house for all investments and grants loans and credits to new enterprises.

IV. Foreign investment

All investments, domestic and foreign, are given basic guarantees under the Code. They relate to equitable compensation in case of expropriation, non-discrimination in law between foreigners and nationals and free transferability of all earnings.¹

¹ Regularly entered in the books and of capital in case of closure or cessation of operations.
V. Economic benefits

Exemptions vary according to the regime specified in the Investment Code.

Regime A

This system is intended for small and medium size investments. The principal advantages are exemptions from import duties and taxes on materials necessary for the manufacture, processing or packaging of the proposed product, reduction of export duties on the product and in some cases, exemption from the consumption tax on locally purchased materials. The maximum duration for all exemptions is five years.

Regime B

This system encompasses larger projects, the benefits for which are intended for a maximum of eight years. In addition to the advantages of regime B, exemption from the tax on industrial and commercial earnings is given to enterprises during the first five years of operation. Further exemption is granted from land and forest taxes.

Regime C

This regime applies to very large enterprises which require a long period to install themselves before attaining full operational capacity. Under this regime, enterprises enter an agreement of establishment (convention d'établissement) with the Government, the duration of which may not exceed twenty five years.

The benefits accorded to regime C include those of A and B. In addition, the Code provides for other guarantees. These guarantees relate to marketing stabilization for products, free movement of labour and free choice of suppliers, and water resources, transport and shipment facilities necessary for operation.
VI. Import quotas and tariff protection

Apart from the benefits outlined above, the code provides that priority investments may be given preference in obtaining foreign exchange and import quotas. They may also receive tariff protection against competing imports.

VII. Arbitration

The procedure of deciding any dispute relating to the application and interpretation of the clauses of the agreement is also determined by the agreement.

Each party is entitled to designate an arbitrator and a third is appointed with their concurrence. In case of disagreement over the appointment of a third arbitrator, he may be named in the convention or "qui pourra être la plus haute instance judiciaire de la nation de l'investisseur". The decision is rendered in a majority. The decision can be reviewed by "l'ordonnance exequateur".
8. ETHIOPIA

An investment decree was promulgated on 16 September 1963 "to provide for the encouragement of capital investment in Ethiopia".1/

I. Government policy

The policy and objectives of the Ethiopian Government towards economic development are embodied in the Second Five Year Plan (1963-1967).2/ They are described as follows:

- to accelerate the rate of economic growth by better utilization of the available resources and to increase the productive capacity of the economy;
- to introduce modern equipment and technology and to raise the skill and productivity of labour;
- to raise the saving and investment3/ potentials of the country.

II. Priority industries

According to the Plan, industries which will receive the biggest share of the total investment are food and beverages, chemical, steel and metal industries, textiles, building and non-metallic minerals.

The recent investment decree stipulates that all newly established industries engaged in agricultural, industrial, mining, transport and touristic activities including existing enterprises in these fields are within its 'scope of coverage'.

III. Executive agencies

1. The Investment committee

A permanent Investment Committee is established by the decree. The

1/ It repealed an earlier enactment entitled Agricultural and Industrial Expansion Proclamation of 1954 and Notice No. 10 of 1950.

2/ The authors of the Plan have not limited themselves to a period of 5 years, but have projected planning into a 20-year period, in which the Second Five Year Plan forms the first series.

3/ The total investment for 1963-1967 is estimated at approximately US.$678,000. Priority is to be given to the productive sector by allocating major share to economic activities.
main purpose of this Committee "is to study and recommend measures to be taken with respect to facilities, tax exemptions and other benefits and privileges". All proposed projects for private investments are submitted to the Committee for investigation. It then recommends to the ministries concerned by specific action that need to be taken.

The chairman of the Investment Committee is the Minister of Commerce and Industry. Other members of the Committee are Ministers of Agriculture and Finance; the Governor of the National Bank of Ethiopia and the General Secretary of the Planning Board. In addition, the Chairman can coopt any other representative from the Ministries on an ad hoc basis.

2. Proposed institutions

(a) An industrial agency to organize the establishment of new industrial undertakings is envisaged according to the plan. The agency will provide services to public as well as private undertakings.

(b) An industrial promotion service is to be established which will provide information and other facilities to foreign and domestic investors.

(c) A development fund to finance new undertakings is also to be created. The Plan stresses the indispensability of these institutions for the proper execution of the Five Year Industrial Plan.

IV. Foreign Investments

1. Repatriation of capital and profit

The National Bank of Ethiopia is empowered by the decree to make available foreign exchange for:

(a) The remittance of profits and repatriation of net proceeds;
(b) The payment of the interest and repayment of foreign loans contracted by enterprises;

1/ These loans must have a prior approval by the Minister of Finance.
(c) The savings of foreign personnel; and
(d) The purchase of replacement and spare parts connected with the operations.

By a special provision in the decree, foreign investors are allowed to acquire land for establishing an enterprise.

2. Non-discrimination

The Administration of Justice Proclamation of 1942 states that "no court shall give effect to any existing law ... which makes harsh and inequitable difference between our subjects and foreigners".

3. Protection of private property

There is a constitutional guarantee with respect to private property. According to a provision, "Everyone has the right, within the limits of the law, to own and dispose of property. No one may be deprived of his property except upon a finding by ministerial order issued pursuant to the requirements of a special expropriation law enacted in accordance .... and except upon payment of just compensation determined in the absence of agreement, by judicial procedures established by law. Said ministerial order, to be effective, shall be approved by the Council of Ministers and published in the Negarit Gazetta".

V. Economic benefits

1. According to the decree exemption from income tax is granted for a period of five years to all new enterprises investing Eth. $200,000 and above on industrial, mining and transport activities. (The five year exemption privilege begins from the date on which the enterprise starts operation). Discretionary authority is given to the Director General of the Income Tax Department to grant exemptions to any other enterprises which he deems are eligible.

2. The existing industrial, transport and mining enterprises investing an additional capital of Eth. $400,000 and above for the purpose of the extension of the enterprises already operating, are also granted exemption for a period of three years. The condition of this exemption is that the new extension shall be operated as a separate technical unit with separate accounts from the original enterprise. Such exemption shall apply only to income derived from the operations of the new extension.1/

All enterprises must submit satisfactory proof of the amount of capital invested and the date of operations to the Income Tax Department.

VI. Other benefits

1. Import duty relief

All agricultural and industrial machines and implements are exempt from custom duties, transaction tax, municipa> tax and other duties levied on imports. The only condition of exemption is that similar goods must not be already manufactured in Ethiopia.

To obtain exemption from import duties and taxes on building and other materials a special request must be made to the Minister of Finance. To be eligible for exemption building and materials must be destined to house industrial enterprises.

2. Export duty relief

Manufactured finished goods destined for export may be exempted from duties and taxes if such exemption is found necessary to assure the 'competitive position of these goods on export markets'.

1/ Alcoholic beverages and liquor industries are excluded from this exemption under the Act.
9. **GABON**

The National Assembly of Gabon enacted an Investment Code on November 8, 1961, replacing a more general Code drawn up by four equatorial States co-ordinated with other territories of the former French Equatorial Africa.

I. **Government policy**

President Léon Mba in transmitting the text of the Investment Code to the National Assembly said that its main purpose was "to maintain between the State and private enterprises that climate of confidence which is indispensable to the economic and social progress of the Nation".

According to the Code, private investments in the Republic of Gabon would "enjoy both the benefits of the ordinary law and preferential treatment". Preferential treatment is of three types: regime A is applicable to enterprises within the national territory; regime B to those enterprises, the market of which includes the territory of two or more States of the Equatorial Customs Union;\(^2\) and regime C which permits long-term stabilization.

The ordinary laws\(^3\) exempt certain law materials and equipment from customs duties, indirect taxes and direct taxes if they meet the general requirements as outlined by the Equatorial Customs Union.\(^4\)

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1/ Law No. 55/61, December 4, 1961

2/ The 'Union douanière' between five ex-equatorial States (Gabon, Congo, Chad, Central African Republic and Cameroun) established a common external tariff since 1st July 1962. The French products have no quantitative restrictions on entry. There are also no restrictions of transferring funds to France and other countries of the Franc Zone.


labour and social laws are also applicable to both domestic and foreign employees vis-à-vis trade union activities.

(b) **Financial protection**

A general provision protects new enterprises foreign and domestic, against economic situations which might be prejudicial to them.

(c) **Nationalization**

The Investment Code does not contain provision with regard to nationalization. However, a government statement indicates that no expropriation is envisaged but that "special agreements with undertakings may provide for the purchase de gré à gré of the shares of the partners of an undertaking established in Gabon".

V. **Economic benefits**

Quantitative restrictions are established on the importation of similar competitive goods under the code. Preferential export duty or indirect tax rates are also established to favour enterprises accorded preferential treatment.1/

**Regime A.**

1. **Customs duties and indirect taxes**

These include entry of plant equipment at reduced import duty rates and turnover tax rates under the customs legislation in Force. Exemption for a certain period is granted on the basis of the nature and importance of the approved activity, e.g., from import duties and taxes on raw materials, on products that lose their specific quality during manufacturing, low or nil export duties on manufactured or processed goods.

All goods manufactured in the territory are exempt from domestic turnover tax and variable interval excise tax.2/ The general rule is

1/ The markets of the Government and armed forces are also reserved for these enterprises on a priority basis.

2/ Fixed by the decree of approval.
that under no condition the internal excise tax impose a heavier burden on the enterprise than under the ordinary law.

2. Direct taxes

These are governed by the General Tax Code. Its provisions grant certain permanent and temporary exemptions from tax on industrial and commercial profits. They are:

(a) Temporary exemption and tax reduction of 50 per cent for new industrial, mining, agricultural or lumbering enterprises on profits from second year of their establishment. (May continue for the next three years)

(b) Temporary exemption from three to ten years is granted on profits derived from the operation of new plantations and the expansion of existing plantations.

(c) Exemption from increased value obtained from merger of companies and from transfer of fixed assets during operations.

(d) The Code of Licenses grants permanent exemptions to farmers and stockraisers from License tax for three years.

Regime B.

1. Customs duties and indirect taxes

The rates and terms of taxation are fixed by a decree with the proviso that they will not impose a heavier burden than would result from the application of the ordinary law. Reduced rates of import duty and turnover tax rates for importation are automatically granted under the regime on entry of equipment, raw materials and essential products.

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1/ Art. 24, (3), (4), (5), (11).

2/ Art. 3 (8) and 3 bis.

2. Direct taxes and governmental Royalties

The same preferential treatment is accorded as under regime A.

Regime C.

1. General tax benefits

The benefits of this regime are given for a maximum of twenty years to those enterprises which are of 'prime importance to the economy'. (A normal period of five years is added for installation.) The general guarantees during the period of application of preferential treatment apply to assessment rates, methods of collection with respect to revenue, taxes and duties of all kinds.

2. Withdrawal of approval

For regimes A, B and C the code stipulates that on the recommendation of the Minister of Planning and the President approval can be withdrawn in case of serious violation of any of the provisions of the law. Notice of sixty days is given of such withdrawal and the enterprise has the right to appeal through the Council of Ministers to the Administrative Court. In case of foreign enterprises, a clause for international arbitration is inserted.

VI. Establishment convention

(a) Terms and conditions

The agreement is drafted by the Minister of Planning and Resources and after the opinion of the Investment Commission has been considered. The decision is issued as a decree if the duration is for ten years and by law if it is more than ten years by the Council of Ministers.

Under the contract, the Government has no responsibility for losses, expenses or technical deficiencies resulting from the economic situation of the enterprise itself.

1/ All tax benefits under Regimes A and B can be extended to C by a special decree.
(b) **General guarantees**

The general guarantees by the State with respect to stability of legal, economic and financial conditions are included in this contract. Other guarantees relate to stability of marketing of products, entry and freedom of workers and employment, freedom of selecting suppliers and furnishing services, preference in obtaining supplies of raw materials and allocation of foreign exchange. The use of hydraulic, electric and other resources for normal operations is also guaranteed.

**VII. Arbitration**

The arbitration clause common to the other States of the Equatorial Customs Union is also included in the Investment Code. The procedure to nominate arbitrators is the same as in the case of other members of the Union.
10. GHANA

I. Government policy

Since independence, in Ghana, several policy statements affecting the economy have been made. An excerpt from a basic policy statement in respect of the development of the economy of Ghana has been selected here.\(^1\) President Nkrumah outlining his Government's economic policy said that its main aim is to evolve a socialistic pattern of society. He said that "there are different paths to socialism that each country must find its own way"...

II. Public and private sector

In the same speech which outlined economic policy, public and private sector was defined in these words. "The aim of the Government was declared as creating a large public sector in the economy by intensifying its own productive investment rather than ... hinder the growth of private enterprise. Public sector is to be directed to the key sectors of production and distribution."

According to the Draft Development Plan published in Ghana recently, the economic structure of the country is divided in the following sectors:\(^2\)

(a) The State owned sector

The State owned sector embraces specific industries reserved by the State. Such industries include the manufacture of arms and ammunition, alcoholic beverages and the operation of facilities such as electricity, water supplies, and hydro-electric projects. It also includes industries of a pioneering nature which private enterprise is unwilling or unable to undertake.

(b) The joint State-private sector

This sector is intended to include those industries which by their nature, make it essential for the State to hold a substantial interest in them either because they confer monopoly rights on their owners, or demand substantial protective tariffs. The joint State-private sector will also include those industries which the private enterprise partners are unwilling or unable to undertake without Government participation.

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1/ In a broadcast to the nation on 9 October 1960.
2/ The Draft seven-Year Development Plan, to run from October 1963, envisages expenditure of £800 million of which £425 million by the public sector. It leaves £375 million as investment from private sources.
(c) The co-operative sector

The co-operative sector is intended to build up Ghanaian enterprise in all fields. The Government co-operates with private enterprise to initiate and develop industry. Its significance lies in the fact that private enterprise must stand on its own feet and not rely on the Government for its development and expansion.

(d) The purely private sector

The purely private enterprise sector mainly concerns investment from abroad, based on the fact that the Government needs capital investment irrespective of its source.

III. Pioneering projects

The New Capital Investment Act, passed in April, 1963, does not specify what type of industries are declared pioneer. Instead, a set of criteria is established under the law, the purpose of which is to approve capital investment. Thus importance is given to "projects" rather than "individual enterprises".

IV. Executive control

1. Capital investment board

The Act establishes a Capital Investment Board, the function of which is to initiate and organize activities for the encouragement of investment of foreign capital. The Board grants approval for capital investments, maintains liaison between investors, government departments and agencies, and recommends to the appropriate authority to grant any exemption, reduction facility or license to assist the enterprise.

(a) Composition

The Board consists of the Governor of the Bank of Ghana, Head of the Ministry for Industries, Managing Director of the National Investment Bank, Executive Secretary of the State Planning Commission and three other members, all of whom are appointed by the president.

1/ The following Acts are repealed:
(a) The Pioneer Industries and Companies Act, 1959 (No. 63)
(b) The Pioneer Industries and Companies (Amendment) Act, 1960 (Act 28)
(c) Pioneer Industries and Companies (Amendment) Act, 1962 (Act 98).
(b) Procedure

The first step in the procedure for approval to invest in any sector of the economy and enjoy its benefits is to make an application to the Board with particulars of a project. The approval is then granted in the form of an agreement entered into by the minister and the person concerned.

An industrial undertaking must obtain a certificate from the minister responsible for industries before it can be registered. (All previously registered enterprises will have to comply with the new requirements within six months of their coming into effect). The main purpose behind this is to stop "front" shareholding by Ghanaians in foreign-controlled companies. Another aim of this procedure is to induce foreign companies to keep out of small-scale enterprises. 2

2. The National Investment Bank

The Government has set up a National Investment Bank which is an "autonomous banking and financial institution". According to the Act creating the bank, its aim is to help bring about within the shortest possible time the diversification and mechanization of Ghana's agriculture and to build up both basic and light industries. The purpose of the bank is to promote and finance productive enterprises by providing medium-term and long-term loans. 1 It will also assist enterprises by purchasing or subscribing for shares.

V. Foreign capital

(a) Nationalization

The Capital Investment Act stipulates that "no investment under this Act shall be subject to expropriation by the Government. Where, however, in exceptional circumstances an 'approved project' is taken over in the public interest, the Government shall pay fair compensation for the takeover.

2/ President Nkrumah stated in Kumasi, in March 1963, that "the private small-scale personal enterprise sector will be exclusively reserved for Ghanaians".

1/ The Industrial Development Corporation (IDC). It is a government sponsored body, which by the end of 1960 last invested about £3.7 million in subsidiary and associated companies; its other interests included the development of industrial estates. In the second half of 1961 the IDC was abolished, its enterprises being placed under the direct supervision of the Minister of Light and Heavy Industries.
In case of dispute on the amount of compensation, the question will be settled by the arbitrators appointed by the parties, failing which, through the Agency of the International Bank for Reconstruction and Development.

(b) Transfer of capital and profits

There is no restriction on the remittance of capital, including appreciation, to the country of origin of investment in the event of sale or liquidation. Profits can also be remitted after the payment of tax. Where a loan has been granted to a project by a non-resident, there is no restriction on transferring payments in respect of principal, interest and other financial charges.

Technical personnel employed on an approved project are also granted facilities to remit funds for maintenance of their families and other contractual obligations. Under the Act, the Minister of Finance reserves the right to impose temporary restrictions on transfer abroad.

(c) Training facilities

Any person who has been granted 'approval' under this Act is under an obligation to make arrangement to train nationals in "administrative, technical, managerial and other capacities".

VI. Economic benefits

1. Income tax concessions

(a) Tax holiday:

An approved enterprise is entitled to exemption from income tax for a period of five years or more, not exceeding ten beginning from the date of production.1/

(b) Capital allowance:

It is granted in respect of buildings, plant, machinery, structures, roads, furniture, fixtures and fittings used for the purposes of an approved project after the "tax holiday" is over.

1/ Under an Income Tax Amendment Bill, which was given its first reading in Parliament in May, a company operating in Ghana is to be liable for taxation on payments it makes for services performed by a company outside Ghana. The Bill, following up last July's budget declaration, also laid down that the minimum income tax payable by any company in Ghana shall be two per cent of turnover, irrespective of net-profit. At the end of May, however, the Bill was withdrawn and the whole question is being reconsidered.
(c) **Deductions**

They are granted from income tax for scientific research of an approved project every year for five years.  

2. **Indirect taxes**

Those projects which are engaged in the production of goods for export and using domestic raw materials or producing goods to replace imports are given the following benefits under the Investment Act:

(a) Exemption from import and customs duties for material and equipment which the project requires.

(b) Exemption up to one hundred per cent from export or excise duties on goods produced by the approved project.

3. **Property taxes:**

In case of warehouse, factory or workshop constructed for the purpose of an approved project, exemption is granted for five years from the completion of construction.

4. **Double taxation:**

A mixed enterprise under the Act given benefits of income tax only in respect of the 'approved' part.

VII. **Non-approved projects**

In respect of non-approved projects, repatriation is allowed under the regulations of Exchange Control Act, 1961 in the following cases:

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2/ See also Income Tax Ordinance No. 27 of 1943.

3/ Customs Ordinance (Cap. 167).


5/ Exemption from payment of property tax under:

- The Municipal Rating Act, 1959 (No.4 of 1959).
- Part X and the Seventh Schedule to the Local Government Act, 1961 (Act 54).
11. REPUBLIC OF GUINEA

An investment Code in the Republic of Guinea was promulgated by a Government decree on April 6, 1962. The Code is divided into five main parts: parts I and II define the types of enterprises eligible for benefits and the conditions of eligibility. Part III enumerates the advantages which may be accorded to investment. Part IV outlines conditions governing amortization and transfer of capital. And part V provides for the negotiation of special conventions by which additional guarantees may be granted to certain enterprises.

I. Government policy

On the eve of enacting this Code, a government report discussed the political and economic policy of the Republic in these terms:

"The act now being submitted to the National Assembly finds all its significance in the will to harmonize the economic development in the people's best interest. Nothing has changed in the final objective but today the emphasis has to be laid on the requirements of the national economic development ... All those who are ready to invest in the Republic of Guinea and are therefore willing to participate in the economic development of our country must be able to count on a faultless social stability as well as to enjoy guarantees protecting their capital from arbitrary acts and ensuring mixed interests".

II. Public and private sectors

According to a report on economic policy, the economic structure of Guinea is divided into the State sector, the mixed private sector, and a sector for "guaranteed private investment".

1/ Law No. 50 AN/62, 5 April 1962, superseding the earlier Ordinance No. 24/PG, 2 May 1960. All previous provisions contrary to this law, particularly those of Ordinance No. 24 BRG, 11 May 1960, were repealed.

2/ Rapport de présentation du Code des Investissements.

3/ The Governor of the Bank of Guinea, Maissa Diakite, in a speech to the National Assembly stated that "the fact that the preference of the Government is for "mixed" societies which it intends to encourage and develop does not prevent the Government from offering its support to those private enterprises which express the desire to realize one or more goals of the (Three Year) Plan for Economic Development".
In response to a question the Government of Guinea indicated that it has not reserved any specific industries for development with the exception of mining, hydrocarbides and hydroelectricity. In each of these cases it is obligatory for an enterprise to enter into a special agreement with the Government.

III. "Approved" enterprises

The Investment Code gives a general definition of an 'approved enterprise'. It stipulates that "investments whose purpose is of special importance to the development of the economy of Guinea, except those of a purely commercial nature or character, shall be considered to have priority". The enterprises which enjoy special benefits under the code are:

- Real estate companies,
- Companies engaged in the preparation of mechanical or chemical processing of vegetable or animal products of local origin.
- Firms engaged in manufacture and assembly of articles and products of general consumption.
- Mining firms engaged in the extraction, enrichment or manufacture of mineral substances.
- Concerns engaged in the production of hydro-electric power.
- Public works, building and rural engineering.

In addition to those mentioned above, companies of joint private-government ownership as well as enterprises carrying out one or more specific activities foreseen in the three year plan may be accorded benefits through a special convention. As far as the existing enterprises are concerned, benefits are granted only in respect of their expansion.

IV. Executive control

The Investment Code of Guinea did not create any executive agency which approves or determines new enterprises. The legislation only describes certain formalities of submission of an investment programme. But the authority to which a particular investment programme must be submitted is not stated in the Code. It appears that the main function of the "Commission de contrôle économique",1/ is to initiate new enterprises.

1/ It is a member of the Bureau politique national du PRG, elected 30 December 1962.
A proposed investment programme, according to the provision of the Code, must contain:
- Information about its plan and financial sources in Guinean currency.
  It must also specify its production schedule showing quantity and value of goods produced.
- An import and export plan showing quantity and value, and an employment plan with vocational training and social benefits.

The special benefits under the code are granted in the form of a decree. In case of failure to meet its obligations, an enterprise may be deprived of benefits after a formal notice of ninety days. After this date, it becomes subject to the existing civil law.

V. Foreign capital
(a) Nationalization

The Investment Code gives a general guarantee to foreign capital invested in Guinea. According to its provisions, "foreign capital shall enjoy protection and the necessary security within the framework of and with due regard to the laws and regulations". The guarantee extends to the juridical persons who are responsible for the investment of foreign capital. They are protected against "dispossession under the ... civil law". And "entitled to "fair compensation, depreciation being taken into account".

(b) Transfer of capital

The general rule is that "transfers will be effected in principle in the currency in which the investment was made and the repatriation of profits in the worker's national currency for the portion of his salary which may be exported". The Central Bank of the Republic is authorized to effect these transfers.  

1/ Two banks one French and the other West African called Crédit national pour le commerce, l'industrie et l'habitat (BNDA) and la Banque de l'Afrique Occidentale (BAO) were formed under government order on 8 January 1962 and later nationalized in January 1963.

2/ These provisions apply notwithstanding the foreign exchange regulations in effect in the Republic of Guinea.
Other types of transfers that can be made under the code are the following:

(i) Beneficiary enterprises are entitled to transfer after amortization at the rate of ten to fifteen per cent counted from the last exempt fiscal period.

(ii) Investors or lenders may be authorized to transfer annually all of the interest and at least twenty per cent of their share of the annual net operating profits.

(iii) A portion (thirty per cent) of wages paid to foreign personnel are also transferable.

VI. Establishment convention

A convention of establishment fixing and guaranteeing the conditions concerning the creation and operation of the approved enterprise may include general guarantees. These guarantees relate to the recruitment and movement of the labour force, freedom of employment, the choice of suppliers and the renewal of certain authorizations such as permits. Mining firms, petroleum companies and hydro-electric plants also come under this rule.

VII. Economic benefits

1) Approved enterprises are entitled to certain exemptions from taxes. The favoured treatment is progressive according to the importance and size of the investment in relation to the development of the country. Materials, equipment and raw materials needed to establish such enterprises are totally or partially exempt from such duties during the five years following the date of first production.2/

2) The fiscal advantages established on behalf of approved enterprises are published each year in the official journal. The fiscal arrangement is determined according to the nature and purpose of the enterprise. Imported equipment which is exempt from indirect duties and is subject to special reduced tariff, is also included in a special list.

1/ The duration and extent of this exemption is specified in a special Agreement.

2/ Earlier there existed a tax called equalization tax which applied to all imports regardless of origin and ranged from 10 per cent to 25 per cent on various items.
(3) For imports other than equipment, materials and raw materials used by beneficiary enterprises, the code has instituted two systems:

(a) Small and medium-sized concerns: These require an investment of at least 150 million Guinean francs\(^1\) realized in three years to become eligible for fiscal advantages for a maximum of seven to ten years "depending upon the place where the approved concern is located". Total or partial exemption is also granted from the tax on industrial and commercial profits and the real estate portion of the investment. In addition they are entitled to complete or partial exemption from indirect taxes, registration and stamp taxes.

(b) Enterprises which are selected in view of the particular importance of investments: They are entitled to benefits of an establishment convention granting long-term fiscal treatment which should not exceed twenty-five years. (Also increased within a five-year limit by the normal period for installation.) The long-term fiscal treatment is intended to guarantee the stability of all or part of the taxes, duties and charges for which they are normally liable. During the period of application, no change under the law can be made in the rules governing the basis and collection of taxes.

VIII. Home-produced goods

Customs protection is given to all consumer products produced by Guinean approved enterprises.\(^2\)

\(^1\) About US $615,000.

\(^2\) Art. 11 of the Code and Régime Douanier which instituted a single system of entry and exit of products of all kinds, 31 December, 1960.
IX. Settlement of disputes

There is an arbitration clause under this code which provides for settlement of disputes arising over the validity, interpretation or application of the clauses of the convention. The terms of arbitration proceedings can be determined by the parties themselves.
The Investment Code in the Republic of Ivory Coast was enacted in September 1959 when it was an autonomous member of the French Community. After independence in 1960, the Code was retained.

The Code is divided into three parts: the first sets forth in broad terms the meaning of priority status and the type of business which may apply for it, the second contains decrees and laws implementing the provisions of the first, and the third is the annex explaining the operations of the Franc Zone with respect to foreign investment.

I. Government policy

In March 1962, the Government enacted a law with respect to its industrial policy. Its provisions empowered the Government to engage in business through formation of State companies - with or without private participation - in order to develop unexploited resources.

II. Priority Enterprises

The definition of "priority" in the Investment Code relates to those enterprises "which participate in the execution of plans for economic and social development and effect investments which are of particular importance to the country". (Organized after 11 April 1958). They are the following:

- Real estate enterprises.
- Enterprises concerned with industrial crops and related processing industries, e.g., oleaginous plants, rubber, sugar cane.


2/ Ivory Coast is a member of the Conseil de l'Entente formed in 1959 with Dahomey, Niger and Upper Volta. The Entente States have generally co-ordinated economic policies and have established a Customs Union as well as a Solidarity Fund to finance regional development programmes. The West African Customs Union includes these States plus Senegal, Mali and Mauritania.
Industrial enterprises for the preparation and mechanical or chemical transformation of local animal and vegetable products. (Coffee, cococa, oils, rubber, cotton, sugar-cane, etc.).

Industries for the manufacture and assembling of articles for mass consumption.

Industries for mining extraction, concentration or transformation of mineral substances and enterprises connected with handling and transport as well as enterprises for petroleum prospecting.

Enterprises for the production of electric power.

III. Executive control

1. Ministry of Finance, Economic Affairs and Planning

Application for eligibility of 'priority status' must be submitted to the Minister of Finance, Economic Affairs and Planning. The applications must include inter alia the nature and volume of investment since 11 April 1959. The supporting documents must contain information on the financial and constitutional statement of the nature and function of the enterprise, an economic study on the proposed activity, the manner the proposed enterprise will fit in the development plans, and an account of the investment proposed.

2. Fonds national d'investissement

Its main purpose is to find means to channel domestic capital and to furnish the State with adequate funds for its programme of investment. The Council of Administration of this organization consists of the Minister of Finance, Economic Affairs and Planning who acts as the President. The other members are from Ministries of Interior, Defence, Public Works, Transport, Agriculture, Labour and Social Affairs, Construction and Urbanisation. Five representatives are selected from 'Contributaires du fonds' and three from the Ministry of Finance, Economic Affairs and Planning.

The Council of Administration is assisted by the Secretary General whose special function is to examine proposed enterprises.

1/ Law No. 62-54, 12 February, 1962. It established a central organization where detailed information on benefits and privileges can be obtained.
IV. Establishment conventions

The conditions of request and the authority to whom it is made are the same as in priority enterprises. In addition, the application must contain a "commitment by the enterprise to assume responsibility for losses, expenditures or failure to earn a profit due to an evolution of the economic situation".

The executive agencies which are responsible for checking compliance to this procedure on technical and tax level are the Secretary of State for Industry and Planning and Finance; on the economic and social level and co-ordination of enterprises, the Minister of Finance, Economic Affairs and Planning.

V. Foreign investment (Franc Zone)

The Code makes special provisions for foreign transactions in the Franc Zone. These relate to only those transactions which are exempted from prior authorization from the Exchange Control under certain conditions:

1. The authorization for making foreign investments is valid only to the extent that persons who undertake the transactions are residents of the Dollar Zone, or of a country of the bilateral group.

2. All other financial transactions must be submitted to the Exchange Control for prior approval.

3. There are no restrictions on transfer of capital. The Code makes special provisions for liquidation of investment, whose balance can be transferred to foreign countries.

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1/ Or of zones which have transferable exchange either by Canadian or US dollars or by Mexican pesos or by foreign currencies listed in annex D of notice No. 305(1) bought on the exchange market, whether by debiting an account in "free franc" or a foreign account of "transferable francs".

2/ Either under conditions outlined in the preceding footnote, or by means of exchange listed in annex F of notice No. 305(2) belonging to the nationality of the investor or quoting in exchange markets or by debiting a foreign account in "bilateral francs" of the nationality of the investor's country of residence.

3/ Sale within the Franc Zone of French securities, foreign securities, equities in French francs or foreign companies and business establishments.
VI. Economic benefits

Long-term tax arrangements

1. All "priority" enterprises benefit from fiscal exemption or relief. Those that are deemed of "particular importance to the economy" receive benefits of long-term tax arrangements.1/

The maximum period stipulated is twenty-five years which may be extended to a maximum of five years should the need arise by the normal delays of installation. During this period rules of assessment and tax collection are not modified.

Tax revisions and alleviations2/

2. (a) Duties and taxes on imports

(i) Customs duties (Droits de douane) 3/

All "priority" enterprises are granted exemption from duties for a period of ten years applicable to foreign goods indispensable for establishment and raw materials which are part of the finished product.

(ii) Entry tax (Droits fiscaux d'entrée)

They are exempted from entry tax for the same period. Refunds and reimbursement is also allowed to them from the increase of the fiscal entry tax collected on diesel oil engaged in the production of industrial crops.

1/ The authorization is granted by a special law which may fix the period of application and other general provisions determined by a decree of the Council of Ministers.

2/ See Annexe à la loi, Tableau des mesures d'exonération et d'allègement fiscal. Law No.59/134 of 3 September 1959 entitled Les investissements privés dans la République de Côte-d'Ivoire.

3/ The customs duty is protective in nature and is levied on certain products entering the Ivory Coast from countries not in the Customs Union composed of countries in former French West Africa and France.
(iii) **Standard tax (Taxe forfaitaire)**

For the same period as in (ii). Refund is made on the increase of standard tax replacing the transaction tax collected on diesel-oil and of local taxes incident to this increase.

(b) **Industrial and commercial profits**

(i) Permanent exemptions are given to associations constructing buildings for sale by apartments on increments of value brought about by exclusive assignment and 'fee simple' by and under the Charter.

(ii) Temporary exemptions are granted to real estate "priority" enterprises on dwellings constructed and rented out and other enterprises for five years.¹/

(c) **Double Taxation**

Deduction is made by computing taxes in net revenue from holding and land which are parts of the real estate and securities and are already taxable under the income tax. It is calculated on investments effected by taxpayers in the form of constructions (improvements or extension of buildings); creation or development of industrial establishments or installations; and acquisitions of land intended for the constructions.

Investments effected by enterprises in the form of construction of buildings for use as dwellings intended exclusively for the lodging of their personnel, on condition that the cost price of each dwelling does not exceed 1.5 million francs (CFA) are subject to a reduction of taxable income, the rate of which is equal to the total of the sums paid.

¹/ A decree fixes for each enterprise the date when the exemption begins. For new factories the period begins from actual operations while in the case of exploitation of mineral deposits it ends with the fifth operating year.
(d) **Mainmorte taxes**

Permanent exemption is granted to private companies and limited partnerships for twenty-five years for buildings used for habitation which they have built and which they let, and priority enterprises for buildings constructed for their own operations for five years.

(e) **Patent tax**

(i) Permanent exemption is granted to holders of concessions for mines and quarries for extraction and sale of materials extracted and partners of general or limited partnerships or corporations.

(ii) Temporary exemption is given to priority enterprises excluding real estate from the tax for a period of five years.

Priority enterprises are also exempt from stamps and registration fees and tax on extraction of materials. Special reduction is granted to maximum of fifty per cent on exit tax for ten years.

**VII. Other legislation**

1. **Decree No. 20, 14 January 1960**, relating to tax remissions - Measures of exemption and relief with respect to indirect duties and taxes.

2. **Decree No. 21, 14 January 1960**, concerning customs exonerations - Measures of exortion from duties and taxes upon entering and exiting. This decree also defines the procedure for request for reimbursement of duties and taxes collected.

3. **Decree No. 22, 14 January 1960**, referring to verifications and inspections - Measures for verifying compliance with the engagements contracted by priority enterprises.
13. LIBERIA

There is no specific Code or Statute regulating investments in Liberia. The basic rules and provisions relating to investments are stated in policy proclamations and the Liberian Code of Laws 1956.

I. Government policy

Under the Five Year Development Plan inaugurated in 1945 and the Nine Year Development Plan just completed, the effort of the Government has been directed towards improvement of utilities, the expansion of highways and increases in electric power. Development of natural resources such as rubber and iron ore has been given priority in the Plans. 1/

The President of the Republic defined his government's "open door policy" in relation to investments as "avoiding confiscatory taxes, allowing an exemption period, maintaining the unrestricted flow of money either in the form of capital, dividend or profits, and as an act of good faith participating in the earnings of companies exploiting some of our natural resources". 2/

II. Priority industries

Industries which were declared to have priority in the economic policy statement in 1960, include manufacture from local lumber of prefabricated houses suitable for tropical living, rubber boots, low-priced cotton clothing, high-grade soap, ceramics, parquet flooring and wood treatment under pressure of telephone poles, railway sleepers, lumber, etc. 3/

1/ From a Draft on a Liberian Bank for Industrial Development and Investment, November 1960, Washington, D.C.


3/ From a draft on a Liberian Bank for Industrial Development and Investment, November 1960.
III. Public or private sector

The Government of Liberia has not reserved for itself any specific industries. "It has found convenient to carry out an investment in electric power production and it will operate the plant when convenient. It is also operating the water supply.

The Liberian Bank for Industrial Development and Investment in its Charter has stated that the Bank "shall invest only in enterprises that are privately managed and operated." The existence of a government or other public interest in an enterprise will, however, not necessarily preclude an investment or loan by the Bank providing the Government's participation is twenty-five per cent or less of the capital structure of the enterprise.

IV. Executive agencies

1. Liberian Bank for Industrial Development and Investment

A Liberian Bank for Industrial Development and Investment was created in 1960. The main aim of the Bank is to develop Liberian economy through a free enterprise system, provide incentives for a flow of private investment capital and international trade, and generate internal investment assets to sustain and provide her economic growth.

2. National Production Council

The Council was established in 1956.1/ Its main function is to devise and co-ordinate policies, plans and programmes designed to strengthen the national economy in accordance with the aims of this Act. The Council also promotes and reports on the execution of the programmes. Its activities are further co-ordinated with projects of the Joint Liberia-United States Commission for Economic Development and the departments concerned with the production of rice, calabar beans, piaassava, timber and tree crops such as rubber, cocoa, coffee, oil palms, coconuts, kolanuts, citrus, etc. and directly related or auxiliary activities.

1/ See Legislature of the Republic of Liberia, 43rd sitting, 1st session, passed and approved on 23 February 1956, entitled An Act to establish the National Production Council of Liberia.
V. **Foreign capital**

There are virtually no restrictions upon the formation of new companies in Liberia by foreign firms, except that foreign nationals are not permitted to own real estate. A foreigner may lease real estate from a Liberian, but the lease may not exceed twenty-five years in the first place and two optional twenty-one year extensions. These restrictions, however, do not apply to concessions.

1. **Expropriation**

The constitution of Liberia provides that private property shall not be taken for public use without just compensation.

2. **Repatriation of capital**

There are no legal restrictions on repatriation of capital and profits including shareholders' dividends.

VI. **Economic benefits**

1. **Tax holiday**

Tax exemption is granted to all new industries for a period of 5-16½ years. Exemption from duty is granted on all items of plant including those directly related to operations of company. Municipal tax exemption is granted for a period of 5-16½ years.

There is no time limit on exemption from duty granted on all raw materials.

2. **Protective tariffs**

Certain home-produced goods are favoured by protective tariffs. An example is the protective tariff on beer to favour the development of the local brewery.

Protective tariffs are listed in the Customs Tariff Handbook each year and comprise twenty per cent ad valorem on bricks, fire and building tiles, terra cotta and other ceramic products for building purposes. Other building materials are imported free of duty.
Indirect incentives to favour home-produced goods are found in several different laws and involve exemption from customs taxes, accelerated depreciation of fixed capital assets and repatriation of capital and profits.

VII. Other legislation

Laws relating to mining concessions are in the form of agreements between the Government of Liberia and the Liberia Mining Company Ltd.\(^1\)

The rights of exploitation greater in proportion than to any other company are granted to the Liberian Mining Company Ltd. In this company the Government has fifty per cent equity interest, private investors have a thirty-five per cent equity interest and the Liberian Mining Company has a fifteen per cent equity interest.

1. No foreigner or a foreign group is permitted to engage in the exploration, exploitation, purchase, sale or exportation of diamonds, directly or indirectly, except upon concession granted by the Legislature. Exclusive claims are granted only to concessionaires who certify to the Director of Natural Resources and Surveys of their ability to inaugurate and maintain such an operation. Concessionaires holding exclusive mining claims must pay one dollar per annum per acre as rental and the acre covered by the claim shall be duly described at the time of the application for such claim.

2. As far as other commercial and industrial concerns in the Republic are concerned, an act to regulate their establishment and operation was passed on 26 February 1957.\(^2\)

\(^1\) Liberia Mining Concession, 22 August 1945; Collateral agreement 12 March 1953; both approved by Legislature Acts of the Republic of Liberia on 22 January 1946 and 30 March 1953.

The Investment Laws of Libya which affect industrialisation are:

1. Law of developing national industries, 1956
2. Foreign capital investment law of Libya, 30 January 1956

I. Government policy, public and private sector

In an economic policy statement, the Government said that it would not embark on any "industrial projects unless it is quite ascertained that the country is in a pressing need of it, such as the availability of raw materials which must be exploited." The Government aims in the first instance at making available an open range, where private capital may be able to establish and own factories by means of according technical and financial assistance. The only condition on which the Government reserves an industrial project for its own participation is that "the private sector abstains from it for any economical, social or other reasons".

The Government of Libya own certain small factories which were set up either for training purposes or for the purpose of their being pilot plants to induce further expansion. They are the carpet factory at Benghazi, a tannery, a combination of date packing and date syrup making fruit juice plants, and carpet and weaving industry.

1. Law of developing national industries

In the main this law specifies the formalities that a potential investor must go through before he can be granted an exemption certificate from local duties and taxes.

(a) Procedure for exemptions

The application for exemption must be submitted to the Minister of Finance and Economy of the province where the industrial concern is located and is then transmitted to the Department of Industrial Organization in the Ministry of Industry.

1/ See decision of the Minister of Industry concerning the executive legislation No.54, 1956.
(b) Employment of nationals

The most significant part of this law relates to the condition of enjoyment of "all exemptions" (taxes and duties). It is stipulated that a minimum of ninety per cent of the total staff in any given enterprise must be nationals of Libya. The remaining ten per cent must also be approved by the Department of Industrial Organization before an industry can be established.

2. Foreign capital investment law

(a) Foreign capital

Any project in which a minimum of fifty-one per cent of capital is foreign, is defined as "foreign capital" in this law. The expression 'foreign capital' signifies the whole value of the capital which is brought into Libya and is earmarked for one of the projects. The aim of any proposed project must be to contribute to national economic development.

(b) The Commission

This law has established a Commission specifically to supervise foreign capital.

(i) Composition

The Chairman of the Commission is the representative of the Ministry of National Economy. The other members of the Commission include a representative each from the Ministry of Finance, National Bank, Agricultural Bank, Development Board and the province in which the proposed enterprise would be located.

(ii) Procedure

The Minister of National Economy examines the Commission's recommendations on a given project and after consultation with other members issues a decree. This decree states that the main condition of its implementation is that proposed foreign investment must be for the economic development of Libya.

1/ This includes capital in the form of foreign currency or checks, machinery, equipment and spare parts, primary products and other imports, rights in patents, trade marks and licences and profits accruing from the capital and reinvested.

2/ The Commission has the right to invite UN Representatives in Libya, Libyan-American Reconstruction Commission (LARC), the Libyan Public Development and Stabilisation Agency and the Libyan Finance Corporation to attend its meetings without the right to vote.
(iii) Functions

The main function of the Commission is to collect economic data on the possibilities of investing foreign capital in "fields important to the economic development of the country". The Commission also acts as an information centre for the Ministry of National Economy and foreign investors.

The Minister of Finance then informs the appropriate local authorities of projects which are exempted from income tax, customs duties and other fees for a period "specified by him".

The procedure is not dissimilar to that which the domestic investor must fulfill, except for the fact that the conditions of foreign investment are examined by a specially created Commission.

(o) Repatriation of capital

It is the duty of the Minister of Finance "to take all necessary steps" to repatriate foreign capital together with profits as well as salaries of foreign staff employed on "approved" projects.1/

Exchange control is administered by the National Bank of Libya after the Consultative Import and Export Council and the Minister of National Economy have determined the project.

(d) Employment of nationals

Apart from the provisions contained in the Law of developing national industries, foreign investors entitled to exemptions and privileges have another obligation. In addition to "employment of a certain proportion of Libyans", a foreign enterprise must institute a separate programme to train Libyans and permit Libyan investors to participate in the proposed project. The nationals must be represented on the Board of Directors. In addition, it is obligatory for a foreign enterprise to submit periodical reports on the progress of the operation of the activity to the Commission.

1/ The immigration authorities must give all facilities of visas and in general facilitate the movements of foreign personnel on the recommendation of the Commission.
(e) **Expropriation**

The Constitution of Libya states that "the property of a foreign investor cannot be expropriated except for the 'public good' in the circumstances defined and specified in the Expropriation Law. In case of expropriation the investor is entitled to fair compensation. The Constitution further provides that "property is inviolable, the possessor may not be impeded from dispensing of his property except within the law, and none may be expropriated of his property unless for a public utility in cases specified in the law and in the manner provided for therein, provided that he be paid a justified indemnity".

(f) **Exemption from customs duties**

All new enterprises, foreign or domestic, are exempted from duties on essential materials and spare parts used by the industry which are "not to be found locally". The period of exemption from customs is five years and from property tax ten years.

(g) **Import quota**

There is no legislation specifying the quotas system; however, the authority issuing import licence is directed to limit quantity of imports in relation to certain products, e.g. vegetable oil and cereals during the harvesting season.

Under the new Libyan customs tariff duties or imports of industrial machinery and raw material are generally reduced while duties on products competing with local industry or agriculture are generally increased. There are supplementary regulations imposing excise duty on some products such as spirits, alcoholic beverages, beer, gaseous waters and fuels.

1/ Any violation of these conditions is subject to deprivation of all exemptions and privileges.

2/ The procedures for compensation in case of expropriation were defined in a Royal Decree issued on 3 July 1961.

(h) Preference for home products

No specific legislation exists on the subject. However, government policy aims at encouraging local products through legislation relating to development of national industries, import and customs laws. For certain locally produced agricultural commodities, the Government also grants subsidies to stabilize the prices.
15. MADAGASCAR

An Investment Code was promulgated in the Republic in September 1962.\(^1\)

I. "Approved" enterprises

The Investment Code classifies these industries in the following way:

1. Enterprises undertaking new industrial, agricultural or mining projects or expanding existing operations are granted "approved status". Advantages accorded to these enterprises vary on proportion to the 'importance of the proposed investment'.

2. There is a special provision for existing enterprises which need "temporary protection" because of competition or reconversion. They receive some of the advantages of "approved status" and are temporarily "classified and encouraged".

3. Long-term tax stability is granted to certain approved enterprises which are of "market interest to the economy and require a long period of installation".

Enterprises of "major interest for the economic development of the country" are defined in an "establishment convention" between the firm and the Government.

Enterprises which specifically contribute to the national economy are considered to be those which engage in activities to further the objectives of the economic and social development plan, which contribute to the economic growth by the volume of their investment, create jobs, produce goods favouring the development of existing activities, creating new ones and improve trade balance.

All commercial activities are excluded from the benefits of preferential status.

\(^1\) Ordinance No.62-024, essentially a redrafting of Law No.61-027, 9 October 1961. The new law gives additional authority to the government to grant subsidies or loans at reduced rates to approved enterprises.
II. Executive agencies

"Approved status" cannot be granted to any prospective enterprise without consulting the Technical Committee on Private Investments (Commission technique des investissements particuliers). This is given in the form of an administrative order of the responsible Minister, countersigned by the Minister of Finance. The order of approval defines the advantages, special measures and facilities, duration and validity of the programme. The same procedure applies to enterprises temporarily "classified and encouraged".

For signing a convention of establishment, the advice of the Inter-Ministerial Planning and Development Committee (Comité inter-ministériel du plan et du développement) and Supreme Council of Institutions (Conseil supérieur des institutions) must be obtained. Such conventions are negotiated and initiated by the Government and are ratified by the Parliament.

III. Repatriation of funds

Since the Republic is a member of the Franc Zone, "funds can be freely transferred between Madagascar and all members of that monetary zone". Investments from outside the Franc Zone are subject to exchange control regulations. Entry of foreign investment capital must be authorized. Remittance of earnings and repatriation of capital outside the Franc Zone are not issued automatically and 'each case is decided on its merits'.

IV. Economic benefits

The Code makes no distinction between foreign and domestic investment except with regard to fiscal and social matters. To be eligible for benefits, an enterprise planning to create a new activity must "anticipate investment at least equal to a minimum sum fixed". An already existing enterprise must anticipate supplementary investment which is at least equal, on the one hand to the minimum sum fixed and on the other, to a minimum percentage of the investment showing as assets in the balance sheet.
1. **Fiscal measures**

   (a) **Import duties** (*droits fiscaux d'importation*): Total or partial exemption on equipment, raw materials, manufactured or semi-manufactured products.  

   (b) **Export duties** (*droits fiscaux de sortie*): Reduction or exemption on locally manufactured products.

   (c) **License fees** (*contribution des patentes*): Reduction or exemption.

   (d) **Income taxes** (*impôt sur les bénéfices*): Exemption up to five years.

2. **Financial measures**

   Additional foreign currency can be made available for imports over the sums available in the regular import quotas and subsidies can be paid to help firms to establish themselves in special industrial zones and re-convert in accordance with objectives of the development plan. In certain cases subsidies are provided to encounter temporarily dumping or discriminatory measures taken against enterprises in a foreign country. Still other enterprises can obtain loans at reduced rates if they require large assets relative to the volume of business.

3. **Economic measures**

   Provision is made in this code for appropriate protection of local industry for both tariff and import quotas and priority in sales of goods or services to the Malagasy Government.

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1/ According to conditions provided in articles 175 and 177 of the Customs Code.

2/ Excluding art. 7, ter of the Deliberation of 24 November 1945, as modified by subsequent texts.

4. **Social measures**

The Government undertakes to help approved enterprises to study local labour conditions and recruit local labour. It gives necessary authorization to bring and employ foreign technical and specially skilled persons. No specific regulation exists concerning recruitment of nationals other than the general rule that "approved status" enterprises must "create new jobs".

5. **Classification and encouragement**

For some of their operations they granted full or partial benefits described above.

6. **Long-term fiscal status**

The benefit of this exceptional fiscal status is granted to enterprises "whose invested capital is more than a minimum fixed by decree:1/ According to the rule maximum term of application must be twenty-five years but this may be extended for as long as five years to accommodate projects which require an unusually long installation period.

7. **Arbitration and conciliation**

In addition to the usual arbitration procedure defined in some investment codes of French speaking countries in Africa a system of conciliation is inserted in this Code. To determine the indemnities, the parties can designate two delegates each to study the question and its solution. Two months after, they must submit their recommendations to the parties.

Disputes "not submitted to conciliation" are submitted to arbitration. In the absence of the designation of an arbitrator by one of the parties within a period of a month, the arbitrator is selected from drawing of lots. The list includes the first president of the supreme court, court of appeals and the presidents of the two high chambers. The question is then settled by an award.

1/ See Ordinance No. 60-123 under Fiscal Stability with regard to taxes, duties and other direct and indirect charges and fees.
16. MALI

The Development Plan1/ of Mali drafted in October 1960 sets out the following economic objectives:

Development of food crops: "Priority will be given to the hydraulic development of lands which it is possible to irrigate and whose potentiality exceeds one million hectares".

Diversification of production: "Development of export crops, particularly cotton".

Development of mineral prospection and industrialization: "At a first stage, according to present possibilities, the emphasis will be laid on the valorization of agricultural production through the development of a small processing industry and the prospection of energy and raw material sources".

I. Investment laws

There is no integrated investment code in the Republic of Mali. Existing legislation affecting investments go back to the early fifties. In 1954, 1955 and then later in 1962, several amendments and modifications were made on 'Fiscalité et régime des investissement'.

II. Taxation

(a) Tax on industrial and commercial enterprises2/

The new enterprises are exempted for the first five years.

The actual rate is 20 per cent for individual firms and 25 per cent for companies.


2/ Law No.62 - 5/AN-RM, 15 January, 1962, established a statute for enterprises operating under agreements. The text is not available. Earlier there was a uniform reduction of one per cent on all articles produced.
(b) **Patents**

New enterprises are exempted for the first five years. Pour les activités minières jusqu'au stade de la transformation exclue, l'exemption de la patente est totale.

(c) **Standard tax (Taxe forfaitaire)**

This tax applies to all transactions.1/ The rates of 15.57 per cent on entry and 5.40 per cent on exit are brought back to 2.22 per cent for equipment for entry and are abolished for local transformed products except peanuts.

(d) **Local turnover tax (Taxe locale sur le chiffre d'affaires)**

The rate varies from 4 to 7.50 per cent but the products of local industries are exempted.

(e) **General tax on business (Taxe générale sur les affaires)**

This tax, normally of 2.56 per cent, is not payable for products manufactured by local industry.

III. **Long-term stabilization**

This regime is applicable to certain industries which are under an establishment convention. The convention usually includes the stability of legal, economic and financial conditions.2/

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1/ In 1954, it was abolished for certain industrial products transformed on the spot. For others, for internal market, the tax on transaction was reduced from 6 to 5 per cent and local tax from 1.5 to 1.25 per cent.

2/ The duration of the regime is not stated.
17. MAURITANIA

The Investment Code was enacted by the Mauritanian National Assembly on 26 June 1961. It established two regimes: "priority" companies (régime d'entreprise prioritaire agréée) and "long-term fiscal stability regime" (régime fiscal de longue durée). In both cases prior agreement between the Government and the enterprise is essential.

I. Government policy, public and private sector

The Constitution of Mauritania stipulates that the law of the State determines the economic aims and programmes. A Three Year Development Plan (1960-1962) proposed four types of projects which were generally classified as general studies, production, infrastructure and special programmes.

II. Priority status

Under the Investment Code, the following industries are eligible for benefits:

- Mining industries which extract, refine or convert solid, liquid or gaseous mineral substances, and their affiliated companies serving the purpose of maintenance, construction or transportation; and companies engaged in oil research.
- Enterprises engaged in the preparation and processing of local plant and animal products.
- Industries engaged in production and servicing of primary consumer goods.
- Fishing industries and shipowners engaged in commercial fishing when they themselves market the products in Mauritania.


2/ General studies involve various surveys in the fields of agriculture, animal husbandry, geology and the improvement of artisan activities.
Other industries given "priority status" include those producing energy, naval construction companies engaged in realty and private or joint companies able to guarantee the financing of capital equipment.

All enterprises to qualify for special benefits under the regime must contribute to the execution of development plans. They must undertake work in the public interest in the economic and social sector. One of the main conditions they must fulfill relates to the amount of investment which must be of 75 million CFA francs ($300,000) over a period of two years.¹

Other requirements are that the proposed enterprise must maintain a head office in Mauritania and furnish regular information about its finances and operation to the company.

III. Executive control

Under this legislation, any company desiring to obtain priority status must apply to the Committee on Economic Co-ordination and Analysis or eventually any other public office assuming the functions of this Committee.²

IV. Foreign capital

The Investment Code does not provide for repatriation of capital and profits. It appears that this question is left to the Government and the foreign investor to settle at the time of entering an agreement.

Foreign companies already operating in Mauritania are subject to usual French commercial law unless they are organized under the two regimes mentioned by the Code.³

¹/ Those enterprises which began their investment programme after January 1, 1960, and which by June 26, 1961, have invested a minimum of 50 million CFA Francs ($200,000) can also be granted priority status if they undertake to attain the investment minimum fixed under the law.

²/ Though provided for in the Code, details of any such public office are not known.

³/ An agreement between France and Mauritania signed 14 February 1962, provides inter alia for the free movement of products between the two countries and for continuation of the preferential system under which French imports enter free of custom cuts.
V. Economic benefits

1. Certain priority enterprises, deemed particularly useful for the economic and social development of Mauritania, which render a service in the public interest, and whose investment programme will justify exemptions because of technological depreciation normally extended over several years, are awarded complete or partial tax exemptions for a maximum of ten years beginning with the date of the commencement of operations.

2. Companies of "exceptional importance to Mauritania" investing a minimum of 1,000 million CFA francs (approx. $4 million) in less than five years and accorded the long run financial stability regime, benefits from stabilization of some or all taxes and other State imposed costs for periods up to twenty-five years.

3. All companies which have priority status benefit from:

   (a) Complete or partial exemption from duties and import taxes (droits de douane); fiscal duty (droit fiscal); standard tax (taxe forfaitaire); turnover tax (taxe sur le chiffre d'affaires) on goods and equipment, and on equipment indispensable to the construction of the company for a maximum period of three years.

   (b) Complete or partial exemption from duties and import taxes for a period not exceeding five years from the date of operation.

VI. Long-term fiscal programme

Priority enterprises that are deemed to be of "vital importance to the development of the country" must take a minimum investment of 1,000 million CFA francs (about $4 million) over a maximum period of five years. They are then granted a license under the long-term fiscal programme.

Companies licensed under this programme can conclude a commercial agreement (convention with a duration not to exceed that of the long-term fiscal programme). This convention must stipulate and guarantee the conditions of establishment and operation of the licensed company. The convention must be concluded subject to approval and ratification by the National Assembly.
VII. Arbitration

Settlement of disputes resulting from implementation of a commercial agreement may become subject to international arbitration, the term of which are stated in the agreement.

Any failure to meet the obligations stipulated in a government license can be submitted upon initial judgement by the national tribunal to arbitration.

VIII. Other regulations

The regulations for exemption and tax relief can become effective only upon decision rendered by the Customs Union Committee. Other changes in the present law must be in conformity with measures unanimously adopted by OAUCS for the purpose of co-ordinating regulations and codes governing private investments.

18. MOROCCO

The Investment Code of Morocco was instituted in December 1960, specifically to encourage private investments.

I. Government policy

According to the Ten-Year (1962-1971) Plan of Morocco, the main aim of development is to raise the gross domestic product by an average of 6 per cent a year, achieving a self-sustaining rate of growth by 1974.

II. Public and private sector

The main objective of this law is described as follows: "In order to stimulate production and encourage new investments of private capital in such economic sectors considered as having a high priority in the implementation of the five-year plan, special advantages are provided for certain..."
enterprises... The special measures provided in the Investment Code aim at encouraging the establishment of capital societies and promoting the importation of goods necessary to launch or expand enterprises, contributing financially to the purchase of equipment goods and encouraging the investment of foreign capital."

III. Special enterprises

(a) There are several types of industries in Morocco; certain industries and commercial enterprises are governed by special provisions for "reasons of public interest". They are enterprises carrying on activities in mines, tobacco, beverages, pharmaceutical products, arms, explosives, banks, transport and insurance.

(b) There are others which are considered to be "fundamental," national enterprises. Their expansion is given special protection by ministerial decrees. These enterprises are engaged in treatment of oils,\(^1\) assembly of motor-vehicles and manufacture of tyres,\(^2\)

(c) The conditions and terms under which commercial firms can be formed are defined under a separate code of commerce.\(^3\)

(d) There is a special "regime juridique"\(^4\) which provides rules and regulations for limited companies and unlimited companies.

IV. Basic industries

1. According to the Investment Code, only the following industries can benefit from "all encouragement measures"\(^5\)

They are mainly metallurgic and ferrous-alloys, mineral chemical

\(^1\) Dahir of 2 rabia I, 1373 - 10 November 1953.
\(^3\) Dahir of 9 ramadan 1331, 12 August 1913.
\(^4\) Art.52 and 53, Commercial Code, 22 Safar 1345, 1 September 1926, and art.982 to 1091 of Dahir which formed the Code of Obligations and of Contract.
\(^5\) The decree of Ministries of National Economy and Finance, Commerce, Industry, Mines, of Workers and Merchant Marines, No.254-61, 4 May 1961, supplements art.2 in considering the basic industries.
industry and the production of raw materials destined for industries
synthetic products, refinement and treatment of normal oil products and
shipyards.

2. Other enterprises which are encouraged relate to transforming
minerals creating concrete demand of the market, incorporating in its manufactured products sufficient value of Moroccan labour and those which utilize the possibilities of furnishing raw materials for finished products. 1/

V. Executive control

1. Investment Commission

Under the Investment Code, a Commission was created to determine the industrial sector within the framework of the Plan (1962-1964). According to the Code the advantages of this law will be granted to those "approved" enterprises which are listed in the national investment programme. 2/

(a) Composition

It is composed only of members of the government; the Minister of National Economy and Finance, President, the ministers of deputies who are concerned with the particular industrial sector. A sub-commission composed of officers representing the ministries is charged with studying proposals for enterprises. There is a permanent secretariat of this Commission which prepares "dossiers" and submits them to the relevant departments.

The conditions on which the enterprise is granted benefits under the legislation, are that it must be duly formed and that it is embarking on a new industrial activity or expanding an old activity.

1/ According to the joint decree of several Ministries

2/ Initially created by a decree of the Vice-President of the Council and Minister of National Economy on 13 September, 1958, modified by a decree on 10 June, 1960 and Article 34 of Dahir of 31 December, 1960.
(b) Procedure

Any prospective enterprise wishing to obtain benefits of the law must submit as complete as possible a dossier of the project, its nature and its aims, particularly its financial position. This dossier must be addressed to the Ministry of National Economy and Finance, Permanent Secretariat of the Investment Commission at Rabat.

(c) Function

After examining the relevant conditions specified under the law, the decision of the Commission is notified to the prospective enterprise stating the nature and importance of the advantages stated.

2. Promotion nationale

This institution was created to co-ordinate work of projects which are in line with the Plan. The Promotion nationale takes on specific projects such as reforestation and roadwork.

3. Development Bank

The Development Bank of Morocco was created in 1959. Under its terms of reference the Bank acts as a special institution mainly for medium-term credits. Its other operations include credits and loans for the maximum duration of five years. Direct loans on short and long-term basis are also granted to the enterprises which have a minimum sum of 50,000 dirhams.

VI. Foreign investments

The Investment Code stipulates special rules concerning the guarantee of retransfer of the proceeds of the total or partial liquidation of certain investments. These apply to investments made in Morocco by non-residents since February 1961. In all cases, the application must have been submitted to the exchange office through a bank acting as an approved agent in Morocco and obtained permission of the Investment Commission.

1/ The recent draft constitution creates a superior court for the National Promotion of the Plan. The Council will be presided by the King. Its function will be to examine the expenses of different economic projects.


Repatriation of foreign capital

The transfer from the countries of the zone of convertibility is negotiated by the Bank after certain conditions provided by the exchange office are fulfilled from the country of residence of the investor. The exchange office authorizes the total or partial liquidation of invested funds in the same currency that was used at the time the investment was constituted.

The benefit of guarantee can also be extended to other enterprises outside the jurisdiction of the Code by special decision of the exchange office.

VII. Economic benefits

From September 1958, foreign or national firms creating or enlarging industries in Morocco have had certain fiscal incentives. 1/ The most noteworthy of the advantages accorded by these laws are exemption from customs duties on materials and equipment necessary to the creation or extension of a factory or industry, especially favourable are depreciation allowances and exemption from tax on profits reinvested.

1. Fiscal

The reduction to 0.5 per cent of the duty on assets transferred free of charge to a company in case of the constitution of a company or of increases in the capital of existing companies and in the exemption from surtax payable in the case of transfers of house property, property rights and goodwill.

2. Customs

Exemption or reimbursement is granted on custom duties on raw materials, equipment and machine tools, the purpose of which is to contribute to a new exploitation or expansion of existing industrial activity. For these advantages the main condition is that the equipment, raw materials and machine tools must be a part of the investment programme agreed by the Commission. The other requirement is that the enterprise should be new and ought to contribute to existing industrial activity.

1/ Important tax reforms soon to be announced officially aiming at simplification of tax structure and more equitable distribution of tax burden. Reform will affect agricultural personal and professional income and profits, products and services taxes.
The increase or reduction of exemption is fixed by the Commission. The exemption can be partial or total... it applies only to customs duties; in every case, therefore, the other import duties and taxes are collected particularly the special tax of 2.5 per cent and the 8 per cent tax on products.

3. Equipment premium (Prime d'équipement)

The main benefit derived under the code consists of a budgetary loan. For this as well as other benefits, the Investment Commission must give prior authorization. The main purpose of this incentive is to decentralize industries and establish them in under-developed regions.

The premium must not exceed a certain percentage of expenditure of the investment. It is about 20 per cent if the investment is in Tangier and 15 per cent in the rest of Morocco.

There are tax grants in addition to the above, during the operation of investment. These benefits relate to licenses, tax on professional profits and accelerated amortization.

4. Regime disallowing transfer of capital

This system applies to investments financed by debiting "capital" accounts, "provisional accounts" or non-resident's internal account.

As far as the question of transfer of "investment yield or income" is concerned, these amounts are always transferable as normal and current payments.

VIII. Special legislation

1. Tangier

In the province of Tangier, special laws apply with regard to investments:

A free trade zone has been established in Tangier, effective January 1, 1962. A certain area of the dock is to be set aside as a free zone and

1/ Earlier laws which apply to the area are:
(i) Fiscal and economic regime: Royal Charter of 26 August 1957. This created a liberal economic regime in the province;
(ii) Monetary and financial measures: 17 October 1959. This stipulates the rules of transfer between Morocco and other countries of the Franc zone.
(iii) Dahir No.1-60-059 of 26 February 1960. All industries created before 31 December 1961 are considered basic industries under this law;
(iv) Le discours du 27 juillet 1961, created a free commercial zone in the province.
duties on goods entering the zone will be assessed at five per cent ad valorem. Transactions within the zone will not be subject to other Moroccan customs and taxes. Special "free transit" accounts will be set up in authorized banks into which convertible currencies may be deposited. Credit may be extended abroad to finance purchases of merchandise.

2. Research and exploitation of hydrocarbides

Special laws apply to enterprises in this field: ¹/

(a) Total or partial exemption from customs duties and taxes is granted for equipment necessary for exploitation purposes.

(b) The enterprise which has the concessions is granted 50 per cent of the quotas.

(c) Research institutions are granted the minimum of 34 per cent from the tax "superficiale de recherche".

19. NIGER

The Investment Code of Niger was enacted in 1961, and modified with respect to repatriation of capital, profits and salaries in February 1963. ²/

The Code created three preferential regimes: A, B and C.

I. Government policy


II. Priority enterprises

The Investment Code defines "priority enterprises" as those which include all industrial, agricultural and commercial activities. The law applies to new lines of industry in the production of energy, prospection, production, extraction, and transformation of mineral and quarry products; cement, brick, lime, and metallurgical factories; production of fertilizers and

¹/ Dahir No. 1-58-227 du 4 Moharram 1378 (21 July 1958)
²/ Law No. 61-21, July 1961, modified by Law No. 63-6, February 1, 1963.
general products necessary for agriculture; production of goods of mass consumption; animal husbandry; enterprises which transform the original animal and vegetable products; fish industry; and real estate.

The conditions which the enterprises must fulfill before they are entitled to benefits include the submission of price of goods and services to "homologation" (probate). They must have begun their expansion after the Code became effective and must make an "investment particularly valuable to the economy".

III. Executive control

Investment Commission

All industries which are eligible to benefits under this code, must obtain the permission of the Investment Commission. This is issued in the form of a decree by the President of the Republic after consultations with the Council of Ministers.

(a) Composition

The Chairman of the Commission is the Minister of Industry and Commerce, four Ministers from the respective Ministries of Finance, Public Works, Mines and Town Planning, Rural Economy, Labour and Health are members of the Commission. In addition the Commissioner General of the Plan, the Directors of Economic Affairs, Customs, Public Works are also represented. The Head of the Mines, Revenue and Domaines et enregistrement also participate. The President of the Development Bank, Chamber of Commerce, Agriculture and Industry are represented on the Commission. 1/

(b) Function

The main function of the Commission is to indicate the nature and type of obligation a beneficiary enterprise incurs under the Code. These benefits are in addition to those already granted by the ordinary law.

1/ One representative each from the following organizations also sits on the Commission: Syndicat patronal des entrepreneurs du Niger (SPEN); Syndicat des importateurs et exportateurs du Niger (SCIMPEXNI) and two from l'Union des travailleurs du Niger (UTN).
The Commission also decides the minimum wages a proposed enterprise must give to nationals or what the minimum per cent should be after considering similar practices in other countries.

IV. Repatriation of capital

Remittance of capital, profits and salaries of the foreign personnel is subject to the exchange regulations of the Franc Zone. The purpose of the modification introduced in the law in 1963 was to create a more equitable situation for investors by applying uniform standards to repatriate funds. 1/

V. Economic benefits

Regime A

Under this system, the enterprises are exempted for ten years from customs and fiscal duties on equipment, raw materials, machinery, indispensable tools for the installation of the enterprise. For products which are finished or semi-finished, there is a reduction of twenty-five per cent on indirect business tax and fiscal duty on existing enterprises. The decree of approval determines the benefits of reinvestment in the priority zones. If the approved enterprise agrees not to repatriate foreign capital for three years, remittance of profits, salaries and invested capital will be made subject to exchange regulations in the Franc Zone.

Regime B

(a) Exemption from taxes is granted under this system on industrial and commercial income during ten years of establishment of an industry including from license tax, land rental, and mining.

(b) Exemption for ten years on customs and fiscal duties on raw materials, machines and tools indispensable for creating an industry including raw material which are components of finished products.

(c) Reduction up to fifty per cent is given for export duties and connected taxes.

1/ Under the law of 1961, the conditions and terms of repatriation were specified individually for each enterprise financed by foreign capital.
Regime C

Enterprises which are "of particular importance for the execution of the economic and social development plan" come under this system. They can enter an establishment convention with the Government under certain conditions. The convention is like a contract between the State, the Ministry of Industry and Commerce and the enterprise. It can be concluded for ten or twenty years.

The convention must specify inter alia the general programme of investment, the aims of manufacture, the conditions of exploitation, the obligations contracted by the enterprise, the professional staff and other obligations stipulated by the two parties.

In addition to the advantages under regimes A and B, an enterprise is entitled to transfer profits, salaries of foreign personnel and invested capital after three years.

Other guarantees include, besides juridical, economical and financial stability, the freedom to choose suppliers within the limitations of the quotas, loans of service from the countries outside the Franc Zone and external clients. It also includes facilities of transport and services for renovation and exploitation of quarries and mines.

VI. Arbitration

The Code provides for arbitration by nomination of arbitrators, one from the Ministry of Industry and Commerce and the other from the enterprise. The third arbitrator is appointed by the parties in case of default by the Vice President of the Court. Final decision is rendered by a majority vote of the arbitrators.

VII. Petroleum enterprises

Two laws specifically designed for these industries are applied to petroleum enterprises.

1/ Loi No. 61-4, relative à la recherche, à l'exploitation, au transport, par canalisations des hydrocarbures et au régime fiscal de ces activités sur le territoire de la République du Niger et Décret No. 61-100 - MTP approuvent la convention type d'arbitrage prévue à l'article 80 de la loi No. 61-4 du 19 mai 1961, Journal Officiel, 26 juin, 1961.
The raw materials and equipment for production and directly utilized for research, and exploitation are exempted from all customs duties. All products used for exploitation are also exempted from all duties of entry and exit. In addition the equipment which is listed under a decree for petroleum industries is exempted from all customs duties and business taxes.
Nigeria has no integrated law on investments. A few selected enterprises are referred to below which are deemed to affect investments in general.1/

I. Government policy

The main objective of economic policy as stated in Nigeria's Development Plan is to maintain and, if possible, surpass the average rate of four percent per year in the growth of the gross domestic product. As a matter of policy, the Federal Government considers it desirable to spend the available finance on the provision and improvement of those facilities which will assist commerce and industry as a whole (such as transport, communications, higher education and research) than to make specific subventions to individual industrial projects.

II. Public and private sector

According to a sessional paper published in Nigeria, in the mixed economy envisaged for the region, private enterprise will be responsible for "the preponderant part of economic activities." It is pointed out in this paper that "planning" for the private sector is not at present possible, particularly as so many of those concerned have no records or long-term plans. The public capital expenditure is expected to generate private economic activity2/

However, there are a few specific industries, mostly public utilities, where the Government has a monopoly.

These activities relate to the generation and distribution of electricity, water supplies and telecommunications. For the present

1/ The biggest single item in Western Nigeria's ninety million pounds development programme is £5,582,000 for co-operative farm settlements.
2/ It is estimated that over £30m. has been invested in private industry in the region from 1945 to 1961.
"coal mining is exclusively handled by a quasi-government body". All other industries are open to private enterprise.

III. Pioneer industries

The following industries were declared "pioneer" under the Aid of Pioneer Industries Act ¹/ and the Industrial Development (Income Tax Relief) Act ²/.

They include: mining of iron ore; smelting and refining of tin; rubber-soled shoes; canned foodstuffs; tyres and tubes; assembly of lead-acid accumulators; hotel-keeping; blending and packing of tea; dairying, and leather goods.

IV. Executive control

There is no special institution which directs industrial activity in Nigeria. It appears that the Industries Division, Ministry of Commerce and Industry supervises various enterprises and examines the nature of their activities.

V. Foreign enterprises

The regional governments, northern, eastern and western, offer to foreign companies an important source of indigenous capital both by direct investment and development corporations.

(a) Repatriation of profits and capital

Profits and dividends arising from sterling or non-sterling capital investment in approved projects may be freely transferred to the country of origin and such capital may be repatriated at will.

Prior permission for non-resident capital investment and "approved status" must, however, be obtained from the Federal Ministry of Finance, Lagos.

¹/ No. 10 of 1952
²/ No. 8 of 1953
(b) Entry for foreign personnel

An application for the employment of non-Nigerians must be submitted to the Ministry of Internal Affairs for an immigrant quota. An important element in obtaining the quota is to indicate whether proper "emphasis is given to accelerated training of Nigerians for technical and managerial positions."

(c) Nationalization

The Government has "no plans for nationalizing industry beyond the extent to which public utilities are already nationalized. ... should this occur, then fair compensation, assessed by independent arbitration, would be paid."

VI. Economic benefits

There is more than one statute which regulates benefits granted to both domestic and foreign investments.

1. The Industrial Development (Income Tax Relief) Ordinance 1958

This statute defines pioneer industry "as one which is either not being carried on in Nigeria or is not being carried on on a scale suitable to the economic requirements of Nigeria."

A "pioneer certificate" is given only in cases where it is considered "expedient in the public interest". In order to qualify for a pioneer certificate a company must be incorporated in Nigeria as a public company.

This Ordinance affords a tax-holiday to pioneer companies for an original period of up to five years according to the amount of capital invested in fixed assets, with provision for an extension of the period for each year of the original period in which a loss is sustained. Losses may also be carried forward to be offset against tax liability after the expiry of the tax holiday.

2. The Income Tax (Amendment) Ordinance, 1958

Its main objective is to grant companies a much quicker write-down of their capital assets in the early years of trading. This enables
the company to amortize its capital assets during its formative years, and to build up liquid reserves at an early date. The initial capital percentages for the write-down of capital assets in the case of machinery have been increased from nil to forty per cent. In addition an ordinary annual write-down of five per cent to fifteen per cent is also granted these companies. Thus in the first taxable income of a company it does not absorb fully the capital allowances claimed, the unabsorbed balance may be carried forward indefinitely against future taxable profits. Unabsorbed losses may be similarly carried forward against future taxable profits but for a limited period of ten years.

The Income Tax (Amendment) Ordinance does not merely apply to pioneer companies. Its scope is much wider. Benefits accrue to all companies both public and private which operate in Nigeria. Where a company receives a pioneer certificate the write-down of capital assets described in this ordinance can be claimed in toto at the end of the tax-free holiday. Complete income tax relief is granted an approved company for two years if the company has a minimum capital investment of at least £5,000, a third year if the investment is of at least £15,000; fourth £50,000 and fifth £100,000.

3. The Industrial Development (Import Duties Relief) Ordinance 1951

This ordinance provides for the repayment, wholly or in part, of amounts paid in customs duty on materials or capital equipment imported for the use of Nigerian industries, where such repayment would be to the country's overall economic advantage. The ordinance also makes provision for the repayment, wholly or in part, of duty paid on components imported for assembly into finished articles. The responsible Minister has the right to enter into agreement with the recipients of any repayment, guaranteeing the continuance of repayments for periods up to ten years.

Grants can also be given by the Government after it has taken into consideration the general cost, the importance of the industry to the country and the relief to prevent adverse financial results.

1The Governor-General in Council by resolution authorises this payment.
Import duty collected on goods that are exported in the same state as they were imported; on materials that are consumed on the manufacture of goods; and on paper imported for use in the manufacture of education materials is returned to an enterprise under this ordinance.

4. Tariff protection

The tariff schedule provides protection for local manufacturing of many products. The normal rate of duty is twenty per cent but on many items taxes are of substantially higher rates. The duty on raw materials and semi-finished products is generally below the normal rate to encourage local processing of imports.

(a) Import quotas

Under the Customs and Excise Management Act 1958, goods can be imported from various countries specified therein without any quota restrictions. The exceptions are in respect of cement, gold and gold products, on which annual import quotas have been imposed.

(b) Production tariffs

Excise duty is levied on certain categories of locally manufactured goods, e.g., cigarettes, beer, mineral waters, soap and matches.

5. Protection against dumping

All industry is offered protection from material injury by dumped goods or by goods sold locally on the basis of foreign government subsidies.

6. Home-produced goods

A scheme known as the "Approved manufactures scheme" was launched by the Government whereby all government departments are obliged to buy locally manufactured goods. The proviso is that these goods should be comparable in price and quality with imported products.¹/

¹/ Circular letter No.13/1959 issued by the Federal Ministry of Finance.
The National Assembly of Senegal passed an Investment Code in 1962, the main purpose of which was "to encourage both domestic and foreign private enterprises."\(^1\)

A separate fiscal regime regulates customs and import duties, standard and turnover taxes. Some of the regulations applying in these areas originated in the pre-1960 period.\(^2\) These have been specially confirmed by the legislature in 1960 and 1961. In addition, there exists in Senegal a Régime juridique des hydrocarbures (code pétrolier) as distinct from the Investment Code.

I. Government policy, public and private sector

In a policy speech the Minister of Co-operation and Technical Assistance, speaking on governmental efforts and the Development Plan (1961-1964) observed that the Senegalese policy will be directed primarily towards social and economic infrastructure programmes. He suggested that industrial projects will be left to the initiative of the private sector.\(^3\)

II. Priority enterprises

The Investment Code of Senegal does not enumerate priority enterprises, but offers instead criteria of investment. The amount of capital invested, the period of its realization and the number of jobs created will determine whether an enterprise is eligible for priority status or not.

According to a provision of the Code, enterprises submitting a programme of "investment of at least 100 million CFA Francs\(^4\) to be carried out in three years or creating at least 100 permanent jobs for Senegalese supervisors and workers may be approved as priority enterprises".

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4/ About $400,000.
Existing enterprises have to prove that their expansion programme will permit an increase in production equal to the production that could normally be expected from a new enterprise of the same kind.

III. Executive control

(a) Procedure

Whether or not a particular enterprise is eligible for special treatment under the Code is determined by the joint recommendation of the Minister of Finance and "one or more other competent ministers". This recommendation must be approved by the General Commissioner of Planning.

The approval to admit an enterprise for special benefits is accorded by a decree issued by the Council of Ministers which regulates the conditions of entry, length of stay and establishment of an enterprise and its personnel.1/

(b) Conditions

A beneficiary enterprise is under a legal obligation to provide regularly statistical service to the Government. These statistics must relate to production, labour, consumption of raw materials and semi-manufactured goods. In addition, its balance sheet and operating account must be certified annually by a public accountant. The system of bookkeeping must be approved by the Minister of Finance.

(c) Credit agencies

There is no reference to a particular credit agency in the Investment Code. But "the State and governmental or semi-autonomous credit agencies" may, within their by-laws and usual procedures participate in the capital of an approved enterprise. The credit agencies are allowed to accord an enterprise a guarantee or reduction of the interest or loans for the purpose of carrying out their equipment programme.

1/ This rule applies notwithstanding any legislative or regulatory provision concerning ordinary treatment of aliens and takes diplomatic agreements into consideration.
IV. Foreign enterprises

The Investment Code does not discriminate between domestic and foreign enterprises as far as special tax benefits are concerned. However, a foreign enterprise has to adhere to the requirements of Senegalese laws equally with domestic enterprises. The administrative requirements relating to residence permits and licence must be satisfied as the law requires.

(a) Foreign capital

The Code defines foreign capital and foreign nationals in the following terms: The participation of foreign capital consists "in a contribution of capital, goods or services of any enterprise established in Senegal in exchange for the issuance of stocks or shares in that enterprise". This participation entitles the holder to a share in the profits and proceeds of liquidation.

The above-mentioned rights can be exercised by the shareholder with the exception of loans accorded by States or by foreign public credit institutions under special agreements. Loans to anyone other than the State is considered by the Code as being equal to participation if at least 50 per cent of such loans are payable within more than five years.

(b) Foreign nationals

A foreign national within the terms of the Code means "any agency or any national or juridical person not having Senegalese nationality under the law". An enterprise controlled by foreign nationals is the one in which one or more foreign nationals have controlling power by virtue of the capital investment they have made. Although foreign nationals are allowed to participate in trade association activities, the direction of these activities must be in the hands of the nationals.

(c) Repatriation of capital

The Code guarantees the right to transfer capital and its revenue by an enterprise "participating in the financing of an investment whose contribution to the economic development of the country has been recognized". (This clause apparently refers to investments made before the Code became effective.)
Aliens are also allowed to remit dividends, proceeds and liquidated assets of capital invested in the original currency to the country of residence.

(d) Expropriation

The Code mentions "expropriation procedure" without defining it. According to its provisions for purposes of installation, "an approved enterprise may request permission to apply expropriation procedure for reasons of public utility". This article applies to land or buildings belonging to the state which can be sold or rented to enterprises or transferred to them as assets. The government or semi-autonomous agencies have the right to provide improvements and facilities on industrial areas and land and may carry out public works outside the Cap-Vert area.

V. Economic benefits.

Any enterprise which initiates or expands activity is entitled to benefits under the Code if such an activity "contributes to the economic and social development of the country". Apart from this general rule, another condition must also be satisfied. A beneficiary enterprise must not "exercise harmful competitive pressure on the enterprises established in the States which are signatory to a Customs Convention of 9 June 1959.\(^1\)

Priority enterprises as defined above enjoy the following tax benefits:

(a) Exemption from the tax on industrial and commercial profits until the end of the current fiscal year (of the fifth year following the first commercial sale in the Cap-Vert area and of the eighth year outside the Cap-Vert area). The profits computed by taking into account all charges, particularly amortization are exempt only if the amount of taxable profits accumulated is less than the amount of the investment made.

(b) Deduction from the tax base on industrial and commercial profits is made on amounts equal to those actually reinvested

\(^1\) Members of the Organization for African and Malagasy Economic Co-operation.
The contract of establishment is approved by a decree and, on behalf of the State, guarantees legal, economic and financial conditions of operating the enterprise. Sale of goods, transfer of funds, entry and movement of foreign labour, choice of suppliers for services, hydraulic, electrical and other resources are among the guarantees provided by the State. The contract may not contain a commitment by the State to release the enterprise from losses, charges, or lost opportunities resulting from any deterioration of the economic situation.

The stabilized tax treatment accorded to contract enterprises is determined on the term of amortization of capital invested for a maximum period of twenty-five years, (including a five year installation period). During the period the economic activity contracted continues, taxes, duties, charges and royalties are all stabilized. These taxes and duties include dividends, interest or any other proceeds and quasi-fiscal charges.1/

VII. Arbitration

The contract of establishment may provide its own procedure to settle disputes by arbitration.

VIII. Other legislation

(1) The provisions of this Investment Code may be set aside in certain exceptional cases where contracts relate to enterprises engaged in research on and extraction or processing of mineral substances.

(2) Those enterprises which are engaged in research on and exploitation and transportation of hydrocarbons are governed by ordinance No. 6-24 of 10 October 1960.2/

Certain geological equipment and other laboratory material plus normal equipment for these processes is exempted from customs duties. This exemption applies only if such material is not available within the country members of the Franc Zone.

1/ Any amendment under ordinary law which alters tax treatment can by application be inserted in the contract.

(3) Long-term convention with "Compagnie sénégalaise des phosphates de Taiba".
This is a special convention governed by deliberation No. 58-032/CP of 7 May 1958. The company benefits from several tax exemptions and customs duties as defined in the annex to this convention.
22. SIERRA LEONE

I. Government policy

Sierra Leone has no integrated law on investments. The Ten-Year Development Plan stresses the need for an infrastructure for the economy. In economic policy statement the Government indicated its desire to keep an "open door" avoiding a monopoly for any one country.\(^1\)

II. Public and private sector

According to the Development Plan\(^2\) there is a scope for government, private enterprise (corporate and individual) as well as for a combination of both government and private enterprise. Three sectors are elaborated in the Plan: the public sector which is to be dominated by activities of the State and its agencies; the semi-public sector in which the State joins with private enterprise as partner or sponsor, and the private sector for private corporate and individual activity.

(a) Public sector

This is monopolized by the State in which the provision is made for education and health, roads and communication, power, public housing and recreation, the provision of currency and central banking, technical, scientific and research services, country-wide surveys and planned utilization of natural resources, including minerals of "strategic value", or of "basic importance to the security of the State", manufacture of arms and ammunition including those currently under government control.

(b) Semi-public sector

In this sector the State seeks to encourage private enterprise through sponsorship. The government enters into partnership with private enterprise in areas which it has reserved for itself. The following economic activities are included: (i) Provision of land on lease or rental basis for development as industrial estate or of housing projects subject to rent control; (ii) The construction and lease of factories; (iii) Setting up of industries utilizing local materials, like glassworks, distilleries,

\(^1\) The Social Affairs Minister and Acting Information Minister stated in a speech reported on 3 June 1963.

\(^2\) Ten-Year Plan of Economic and Social Development for Sierra Leone (1962/63-1971/72).
chemical industries, iron and steel industries, canneries, etc. In these areas, foreign capital and enterprise are expected to play a significant role.

(c) Private sector

In view of the Government's policy to encourage domestic enterprise, foreign enterprise will not be encouraged in the following industries: retailing and merchandizing, fishing, the purchase and exportation of domestic agricultural produce whether monopolized by the marketing board or not, motor transportation. The aim as stated in the Plan is to gradually reduce foreign participation in these activities.

III. Executive control

To obtain special benefits under the laws of taxation and customs duties a company has to satisfy the Minister of Trade and Industry that it is entitled to a "development certificate". It must prove that it is going to manufacture a product which is not being manufactured locally in sufficient quantity, and that it is going to carry on some other industrial activity which is not being carried on adequately for economic development.

IV. Income tax and customs concessions

The Development Ordinance 1960 provides for the granting of income tax and customs concessions to companies undertaking industrial or agricultural enterprises which are needed for the "development of the country".

(a) The concessions are intended to help such companies during the early days of the enterprise and they provide for a five year tax holiday during which the company's earnings from the enterprise are free from income tax. The five years date from the day on which the undertaking starts to produce in marketable quantities.

(b) The freedom from income tax does not extend to dividends in the hands of individual shareholders, except in the case where profits are put by the company into a special reserve and are not distributed until five years after the end of the tax holiday. A company entitled to a tax holiday, may during the tax holiday import free of duty articles required for the construction of factories and ancillary buildings.

These concessions are obtainable by companies only and are not granted to individuals. In addition to the normal concessions there is a provision under the Ordinance for projects which may receive special concessions on account of "their special importance to the economy". This rule in effect would apply to very large scale enterprises such as plantations, mines, etc.
23. SOMALIA

Law on Foreign Investments in Somalia was published on 18 February 1960. Some provisions of this law are also applicable to domestic investors.

I. "Productive" enterprises

The Investment Law of Somalia does not establish any system of priority enterprises. The act defines "productive enterprises" and "producing services".

According to the law, a productive enterprise is "that which produces goods and services for the carrying on of its activities": Productive enterprises are enumerated as those engaged in land reclamation, irrigation and land improvement works; the installation of factories, workyards, power, power generators and transmission lines; the excavation of wells; construction of aqueducts, reservoirs and tunnels; construction of roads, bridges and buildings, including hotels; the construction and use of boars, floating equipment and aircrafts.

Enterprises engaged in prospecting, testing, analysing, research and drilling activities in connexion with oil and minerals are considered as "producing services".

II. Executive agencies

1. Committee on foreign investments

The Planning Office of the Presidency of the Council of Ministers is the agency which determines whether formalities specified by the law have been fulfilled or not. This office submits the request to the Committee on Foreign Investments, a special body created by the Law on Foreign Investment to execute and supervise foreign investments.

(a) Composition

The Committee on Foreign Investments consists of the Prime Minister as the chairman, the Ministers of Finance, of Industry and Commerce, Public Works and Communication and of Agriculture and Zootechnics. The Chief of the Planning Office of the Presidency of the Council of Ministers,

1/ Law No. 10 of 19 February 1960.
the President and the Managing Director of the Banca Nazionale Somalia and six other experts appointed by the Council of Ministers are members of this Committee. Three representatives of the Chamber of Commerce, Industry and Agriculture of Somalia are also appointed to this Committee.

(b) **Registration formalities**

Under the law, foreign enterprises wishing to transfer foreign currencies to Somalia must give advance notice of their intention by registered letter, accompanied by a delivery receipt, addressed to the Presidency of the Council of Ministers for the attention of the Planning Office. This provision applies to both foreigners and Somali nationals residing abroad who have invested capital in Somalia.

(c) **Functions**

The Committee on Foreign Investments decides whether a request for investment meets the productivity requisites specified under the law. The Committee also authorizes the Banca Nazionale Somalia to accept the transfer of currency when it is not one of the freely negotiable currencies in accordance with the provisions in force. The Committee registers foreign capital in its original currency when imported in cash, or in other cases in the original currency in which the documents submitted are drawn up. It authorizes and evaluates for registration the patents and other rights transferred from abroad, taking into account the documents submitted, the international prices and the opinion of experts.

(d) **Registration certificate**

The Planning Office, after having ascertained that the investment has actually led to the establishment of an enterprise or its enlargement, issues a statement to this effect within ninety days from the date on which the application has been submitted.

2. **Credit bank**

A banking institution called Credito Somalo is owned by the Somali Government. The Bank operates a Medium and Long Term Lending Section, the aim of which is to finance private industrial activities of all types.
3. **Banca Nazionale Somala**

According to the Foreign Investment Law, transfer abroad of capital and income from Somalia is effected through the Banca Nazionale Somala or the Banks authorized by the latter to act as its agents.\(^{1/}\)

Banks, notaries public and public officials in general are under a duty to give particulars of foreign capital investments to the Banca Nazionale Somala within thirty days from the completion of the transaction, indicating the currency transferred and the amount thereof.

**III. Foreign capital**

The law on Foreign Investment provides that foreigners and Somali nationals residing abroad, who are carrying on economic activities in Somalia, are entitled to the same privileges as Somali citizens. These privileges also extend to enterprises created, enlarged, restored, reactivated or transformed with foreign capital.

(a) **Nationalization**

Property of the enterprises registered in Somalia in accordance with the provisions of this law is free from expropriation measures or any other administrative forms of compulsory transfer of property except in cases of public interest.

(b) **Administrative measures**

Property of the enterprises referred to above is not subject to administrative measures of seizure or to requisition except in case of war and then only as long as it lasts in accordance with the relevant international conventions in force.

(c) **Repatriation of capital and dividends**

The Investment Law states that profits, income, interest and revenue accruing from fixed assets or loan investments and the dividends and interest received on share and bonds acquired or subscribed on investments which fall within the plans for the economic development of Somalia can be freely transferred abroad. The amount must not be more than fifteen per cent of the capital invested.

\(^{1/}\) Art. 10 of Law No. 18, 8 December 1956.
If the profits earned in one year are less than fifteen per cent, the investor is allowed to accumulate the unused portion of this percentage and transfer it to the three succeeding years.

Any subsequent disinvestments can also be freely transferable abroad for five years after the date of registration, unless the Committee on Foreign Investments reduces this term to a period of not less than three years. The transfer can be made in the original currency of the investment.

(d) Non-productive foreign investments

If foreign capital introduced into Somalia is deemed non-productive under provisions of the law because of the fact that investment does not fall within the Economic Development Plans for the country, the profits, income, interest and revenue accruing from such investments in shares, may be transferred abroad up to ten per cent of the capital invested.

(e) Personnel employed

According to the law it is the duty of the Committee on Foreign Investment to facilitate the granting of the permits and visas necessary for the entry and residence in Somalia of foreign personnel employed by the enterprises. Foreign personnel are authorized to transfer to their country of origin up to 50 per cent of the salaries, wages, gratuities and allowances.

As far as possible enterprises shall employ Somali personnel and provide for their qualification and specialization within the enterprise itself. The general rule is that unskilled foreign personnel must not exceed five per cent of the Somali personnel employed by the enterprise. At the request of the Committee on Foreign Investment, the enterprise is under an obligation to submit a report on the results achieved in this field.

IV. Customs and fiscal exemptions

1. Income tax

All new industries are free from income tax on profits for the first ten years. Re-invested profits as capital are free up to 25 per cent.

2. Customs exemption

Customs exemption is granted on all machinery and plant used for expediting industry, farm or mineral exploration. Exemption is also given
on all machinery and plant used for expanding industry, farm or mineral
exploration which is valued at 20 per cent at least of the total capital
already invested.

3. **Municipal tax**

    The Municipal tax which is normally collected as a percentage
(20 per cent) of the income tax due, is free for ten years.

4. **Registration fee**

    The government concession fee for the registration in the company's
register is reduced to one-quarter. Such facilities are also granted in
the case of new contributions in cash, property or credits or of new
companies planning to take over existing industrial, agricultural,
building or transportation enterprises in order to enlarge, renew,
transform or reactivate them.

    When the increase in the capital of an enterprise occurs by use
of credit balances resulting from revaluation of assets, the relevant tax
will be three per cent of the balance used and transferred to capital
under the law.

V. **Arbitration**

    Any dispute between the owner of an enterprise and the Government
of Somalia concerning the interpretation of enforcement should be settled
as far as possible through discussions and agreements between the party
concerned and the Committee on Foreign Investments. Failing this within
ninety days from the date on which one of the parties notified the other
of the subject of the dispute, the matter can then be submitted to an
arbitration procedure. The Board of Arbitrators, according to the law,
shall be composed of one arbitrator appointed by each party and a third
one by the first two arbitrators selected. The President of the Court of
Justice of Somalia is authorized to appoint an arbitrator if there is no
agreement.

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1/ **Article** 51 of the decree of the Governor General No. 1454 of
22 December 1938, and the notarial fees provided for by the tariffs
annexed to decree No. 64, 9 June 1951, with the increase mentioned
in decree No. 159, 4 August 1955.
There is no integral law on investments in Sudan. The Approved Enterprises (Concessions) Act, 1956, is the basic law which covers several aspects of investments.

I. Government policy

On economic development the main policy statement is outlined in a pamphlet published by the Ministry of Commerce, Industry and Supply. According to the statement high priority will be given to the development of hydro-electric power by the Government. Apart from railways, ordinance works and public utilities, it may embark upon industrial schemes as State enterprises.

II. Public and private sector

The policy statement further indicates that the development of industry in the Sudan can best be promoted by private initiative and private capital investment. It can be directed primarily to the improvement of the use of domestic raw materials, food products and others, and to the gradual substitution of a series of light consumer goods, to be produced in the Sudan.

Railways, ordinance works, public utilities, construction of dams and generation of hydro-electric power are State-owned and State-operated. All industries are left to the private sector. The Government may, without the intention of creating a monopoly or nationalize any particular industries, initiate or participate in industrial schemes.

III. "Approved" enterprises

The approved enterprises (Concessions) Act, 1956, describes conditions of approval for enterprises. The conditions are that the promotion of

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1/ The pamphlet is entitled Government policy towards the encouragement of local and foreign capital in the field of industry and its attitude towards foreign capital in general (undated).


3/ The Government tannery at Khartoum South, the Guneid and Khashm El Girba sugar factories, and Aroma cardboard factory are examples of those State-owned enterprises.
enterprises is in the interest of the general public; that it has reasonable prospects of successful development; that the field of economic activity is not already sufficiently covered; and that it has sufficient capital and managerial resources for entering upon its proposed activities.

IV. Executive agencies

1. Advisory Committee

The Act further provides that any person desiring to obtain concessions must apply to the Minister of Commerce. The Minister submits the applications to the Advisory Committee for its consideration. The Committee then makes recommendations as to the eligibility of the applicants to the status of "approved enterprises".

Upon receipt of the recommendation of the Advisory Committee an order is made concerning profits tax, import, export and excise duties, railway tariff rates, entry into Sudan of foreign technicians, and other regulations.

2. Industrial Bank of Sudan

The Industrial Bank of Sudan was established in 1961. Its main purpose is to assist in the establishment of privately owned new industrial enterprises and their expansion. The Bank co-operates with the appropriate government institutions in conducting systematic research in sectors of industrial production suitable for operation by private enterprises.

The terms of reference of the Bank provide that priority enterprises will be appraised in their financial and managerial merits, and their importance from the point of view of a balanced economic development and of contribution to the national economy. It further provides that priority and special consideration will be given to projects which have already obtained, from the Ministry of Commerce, Industry and Supply, the qualification of "approved enterprises".

The question of association of local capital, whether government or private, with foreign capital is a matter that is negotiated at the commencement of the project. The Industrial Bank provides financial

1/ The new Central Bank of the Sudan was established towards the end of February 1960. Previously, the new dissolved Currency Board had been responsible for the issue of Sudanese currency while the National Bank of Egypt had performed most other central banking functions.

assistance in the form of loans, gives technical assistance in preparing projects, organizes production, labour and sales, and gives general guidance in the management of an enterprise.

V. Foreign capital

1. Repatriation of capital

The basic principle which defines the Government's attitude is that foreign industrialists should have the right to remit profits to the country of origin of the capital.

2. Expropriation and compensation

According to the Approved Enterprises (Concessions) Act, 1956, "if at any time any property belonging to an approved foreign enterprise is compulsorily acquired by the Sudan Government in furtherance of nationalization, compensation shall be paid for the same and the said compensation shall be remitted out of the Sudan".

3. Training of personnel

A clause of the Act provides that foreign industrialists must undertake to provide "reasonable facilities" for the training of Sudanese personnel.

VI. Tax exemptions and benefits

These are governed by the Business Profit Tax Ordinance, which lays down that

1. Profits up to five per cent are exempt from taxation.
   Those in excess are taxed at half rate.

2. Depreciation is allowed at a rate double of that which would have been but for the provisions of this Ordinance.

3. Any net loss incurred over the period of relief shall be deemed to be a loss incurred during the last year of such period.

   The period of relief for the above is computed as follows:

   (a) For two years, if the capital employed is less than £20,000 at the end of two years.
   (b) For three years, if the capital employed is more than £20,000 but less than £100,000 at the end of two years.
   (c) For five years, if the capital employed is more than £100,000 at the end of three years.
VII. Quotas and production tariffs

(a) Quotas
The general policy of the Government as regards import is that of decentralization, i.e. that most of the commodities are put under open general licence and can enter the country without any restrictions; however, the few items which are restricted are goods which are produced locally at reasonable prices, of good quality and in sufficient quantities to satisfy the country's demand.

(b) Production tariffs
As a general rule excise duty is applied to articles which when imported pay consumption duty in addition to import duty. As far as export duty on home products is concerned, the general rate is three per cent ad valorem. In case of articles which are made from imported raw materials, the duties levied upon them when imported will be refunded when an equal quantity is exported.
25. TANGANYIKA

A bill entitled Foreign Investments Protection 1963 is in the process of going to Parliament. Some provisions of this bill are summarized here. As far as existing legislation affecting investments is concerned, the Local Industries (Refund of Customs Duty) Ordinance gives relief to new industries.

I. Government policy

A statement published by the Ministry of Commerce and Industry points out that direct investment of private capital is welcome "within limits of financial resources to create conditions which will lead to productive development".

II. Executive agency

The Ministry of Commerce and Industry carries out surveys of investment possibilities and acts as the co-ordinating body for all the available services. According to the bill, the protection of foreign investments on application for the proposed investment must be made to the Minister of Finance for a certificate of approval.

The Minister considers the application on the basis of whether or not an enterprise furthers the economic development of the nation. He then issues a certificate which inter alia includes information about the proportion of foreign assets to the total of a proposed enterprise.

III. Foreign capital

(a) Compulsory acquisition

According to a provision of the bill, if any approved enterprise is compulsorily acquired by the Government "in furtherance of the nationalization or expropriation... the full value ... will be ascertained" and an approved proportion will be paid. Compensation would be paid in approved foreign currency. In case of any dispute or claim the question is to be referred to arbitration. The procedure is that parties appoint an arbitrator each and the third is to be selected jointly.

1/ The encouragement of industrialisation in Tanganyika, June 1962.
(b) **Repatriation of capital and profits**

A foreign investor is entitled to transfer profits (after taxation), net proceeds, the principal and interest of any loan in the approved foreign foreign currency at the prevailing rate of exchange.2/

IV. **Economic benefits**

All investments, domestic and foreign, are entitled to the advantages under the existing legislation.

1. **Industrial buildings and structures**

There are investment allowances of ten per cent of the cost in the year and an annual allowance of four per cent **per annum** of the initial cost (Applies only to factories). In respect of industrial buildings, the annual deduction may be increased on request.

2. **Plant and machinery**

There is an investment allowance of ten per cent of the cost. Annual wear and tear allowances are at the rate of 12.5 per cent for plant and machinery, 25 per cent for vehicles and 37.5 per cent for heavy vehicles. (These rates are calculated on written down values year by year and the price realized on sale will be deducted.)

3. **Mining**

There is an initial deduction of 40 per cent on expenditure incurred in mining and an annual deduction of 10 per cent in each of the following six years of income.

4. **Farm works**

Capital expenditure on the construction of farm work incurred in the year of income receives a deduction of 20 per cent of such expenditure and 20 per cent for each of the following four years.

5. **Shipping**

There is a 40 per cent initial deduction for certain classes of shipping. An annual deduction for wear and tear of five per cent is granted.

V. **The Local Industries (Refund of Customs Duty) Ordinance**

The current list of approved industries under this Ordinance includes tin can manufacture, paint, varnishes, manufacture of metal
drums and tanks, canvas, rubber products, shipbuilding, printing of books, insecticides, rubber tyres, half tanned and finishing leather, canning of fruits and vegetables, etc.

VI. The customs tariff

It provides protection to a wide number of industries by the relationship between the duty status of raw materials or semi-manufactures and the finished article. Recent amendment widened the range of goods admitted free including industrial equipment, chemicals, raw materials, implement and tools.
There is no integrated investment law in Togo. The law concerning private investments was passed in 1957. The existing legislation in the Republic can be divided into two parts: one relating to general taxation and the other granting special privileges to "qualified enterprises". In addition to these two the Government and the enterprise can negotiate a convention.

I. "Qualified" enterprises

Under the law, to qualify for special benefits, an enterprise must engage in the following activities: extractive industries and transformation of raw materials, manufacturing including agricultural and food processing, and production of energy.

II. Executive control

The basic qualified requirement is that companies must sign a convention agreed upon by the Council of Ministers. The amount of investment is related to a fixed time period for which the law guarantees maintenance of "all taxes and tariffs at levels and rates existing as of agreed date".

(a) Investment between 20 - 500 million CFA for 15 years
(b) Investment between 500 - 1500 million CFA for 20 years
(c) Investment over 1,500 million CFA for 25 years.

The law protects investments against adverse effect in tax status after the agreed date in the convention, but in the case of a favourable effect an enterprise may obtain its benefits.

III. Direct taxation

1. Exemptions

The corporate profits of a newly installed factory, a company involved in the extraction of mineral ore or petroleum, a coffee, cocoa, palm oil or coconut plantation are exempt from income tax for five years.  

1/ Law No.57-36, 11 September 1957.

2/ The basic legislation on Direct Taxation is contained in decree No.576, modified by Deliberation No.36, 22 October 1953, and Law No.61-41, 16 October 1941.
2. **Amortization**

   Accelerated amortization is allowed on new material and equipment for five or more years used by an enterprise for industrial purposes, maintenance, shipping, transport or agricultural production.

3. **Deduction of capital costs earned income**

   Capital investment expenditure made from returned earnings may be deducted from current net income before taxes. The conditions are that it does not exceed 50 per cent of both the new investment and the net income.

   This rule applies equally to investments in new plant, mining, agricultural, forest enterprises and investments in land upon which construction will take three years and in securities of certain companies located in Togo. Capital expenditure qualifying for this treatment not deducted in the first year may be carried forward three years against current income.

4. **Failure to reinvest**

   There is a special rule concerning enterprises which have realised more than one million CFA over a four year period and are subject to tax under the law. If they fail to reinvest a minimum of 10 per cent of these profits, an increased tax liability of 50 per cent is levied on them.

5. **Licensing fee**

   There is a small licensing fee which industrial enterprises, trading firms and liberal professions have to pay. The amount depends upon location, amount of investment and gross sales.

6. **Land Municipal taxes**

   Exemptions are not accorded by any specific law, but may be negotiated on an individual basis depending upon the enterprise concerned.

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**IV. Indirect taxes:**

1. **Import Duties**

   The tax structure has been retained by the Republic from Trusteeship status and includes no bilateral or regional trade preference. Some products, mainly industrial goods are exempted from duties ranging from 5 to 10 per cent. A few selected luxury goods are exempted up to 40 per cent.
2. Export Duties
On almost all exports, duties are levied. The average export duty is 5 to 7 per cent.

3. Transaction Tax
An additional tax similar to a sales tax is levied on imports, exports and domestic production. The rates are: 5.5 per cent on exports; 12.5 per cent on imports; and 4.5 per cent on items produced and sold locally.

A Togolese Society of Import-Export (La Société togolaise d'import export, Sotexim) facilitates the buying, selling and distribution of imported products and the rate of national production.
27. TUNISIA

The decree relating to investments was issued by the Government on 6 June 1957. The characteristic feature of this decree is the establishment in the Tunisian Treasury of a "special fund" to which foreign exchange acquired from private foreign investments can be credited. This fund guarantees future transfers abroad of current earnings from investments, as well as the repatriation of the original investment capital.

I. Priority enterprises

The Government has recommended certain conditions before an industry is established:

- Investments must involve minimum amount of capital per worker;
- The industry which is exposed to the least competition from better organized foreign industries and which will have better markets should be selected; and
- Industries in which the import of finished consumer goods is replaced by semi-finished goods and employing local labour, should be established.

II. Economic and Social Council

It was created in 1961, and held its first session in February 1962. The Council has general authority to deal with all economic and social matters. In the field of the plan and its implementation, it has a regular function. The Council also gives advice on draft laws submitted by the Government or the National Assembly.

III. Foreign investments

The Investment Decree of Tunisia is specifically directed towards foreign investment, although some of its provisions equally apply to domestic investors. The execution of the decree is under the control of the President of the Council and appropriate ministers.

1/ Effective 1 January 1963.
1. The Fund for the Guarantee of Foreign Investments was created by the government to acquire foreign exchange. But the Fund was later transferred to the Institut national d'émission (National Institution of Issue).

2. Transfer abroad of capital invested in imported equipment may be made only under the conditions mentioned under 1.

3. Foreigners or Tunisian residents abroad are allowed under the conditions specified in the Fund to invest the exchange value of dividends, interest, profits and capital in the creation of new enterprises and expansion of already existing enterprises. There is no limitation on the amount for productive investments. Fiscal and financial advantages are also accorded.

4. In non-productive investments, the transfer abroad of dividends, interest and profits may not exceed eight per cent of capital invested or the amount of foreign exchange imported originally and may not take place in less than two years from the date of the investment.

5. Tunisians and foreigners can contract loans in foreign currency and this foreign exchange is then transferred to the Fund. Permission has to be obtained for the necessary exchange to pay the interest and repay the loans.

IV. Customs duties

A system entitled Admission temporaire permits the entry of certain industrial equipment and raw materials free of tax for a limited period. This system also applies to motor cars imported in the country for a "specific purpose".

V. New legislation on taxation

Income reinvested for certain purposes is made deductible from taxable income under this law. Its provisions apply to income reinvested for construction or extension of industrial, commercial or agricultural buildings and installations including heavy equipment and agricultural equipment. Also included is income for purchase and development of fallow land for industrial, food, or truck-garden crops.

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1/ Exchange control is administered by the Central Bank of Tunisia, but some authority is delegated to the authorized banks. Import quotas are determined by the Office of the Secretary of State for the Plan and for Finance, which issues import licences and export licences after they have been approved by the Central Bank.

2/ Effective 1 January 1963.
2. Income invested in newly issued stocks, shares or bonds, a list of which is to be set up by official order of the Secretary of State for the Plan and Finance, will also be deductible from taxable income. In the case of reinvested personal income, the deductible amount must not exceed 30 per cent of the total net income declared for the personal income tax. No limit is fixed on the amount of deductible business income.
28. UGANDA

An integrated code on investments is in the process of being drafted in Uganda. Certain economic benefits are accorded to both domestic and foreign investors under the existing legislation.

I. Government policy

Industries relating to public utilities, such as electricity supplies, rail transport, post and telegraphs are reserved by the Government.

III. Uganda Development Corporation

The Corporation was established in 1952 to encourage diversification of the economy. Its Development Division is concerned with investigating and making recommendations on new projects that are submitted to it.

A project is approved after exhaustive enquiries into all aspects of casting, marketing and technical problems of production have shown that it has a reasonable chance of proving commercially profitable.

IV. Taxation

1. Fixed plant and machinery for factory installation and for manufacturing and industrial purposes are exempted from duty. Duty liability on raw material is governed by the Customs Tariff Ordinance but provision has been made to admit a large range of chemicals free of duty which are used for industrial or agricultural purposes. Articles imported free of duty for specified purposes within the tariff remain exempt from duty so long as they are eventually utilized for the purpose for which they were imported.

2. An investment deduction\(^1\) equal to ten per cent of capital expenditure is allowed on the construction of an industrial building (including installation) to be used for the manufacture of goods or materials.

3. Specific vehicles are exempt from duty. Exemptions apply to aircraft, ambulances, mobile clinics, tractors, etc.

\(^1\) Income Tax Rates and Allowances Ordinance, 5 June 1962.
There are a series of laws and regulations affecting economic activity and investments in Egypt. They are mostly in the form of decrees issued from 1953 on all aspects of the Egyptian economy. Here, we are selecting only those laws which influence or affect the economy in a characteristic way. Salient features of these laws are described below.

I. Government policy

According to the constitution of Egypt "the national economy is directed according to plans designed to take into consideration the principles of social justice and aimed at developing the national production and raising the standard of living". Another article adds that "the law assures the co-ordination of national and private economic activities in the pursuit of social objectives and national prosperity". On the question of economic private initiative the constitution states that it is free "provided it does not prejudice the public interest, jeopardize public security or infringe on other persons' dignity or freedom".

President Nasser in an address on national economy said that the purpose of all legal and administrative measures was to establish "a co-operative socialist State". In pursuance of this policy, profit-sharing and seven hour days were introduced by a decree in October 1961. According to this, twentyfive per cent of the profits of a company must be distributed to the employees; two-fifths of this to be paid in cash and the rest in "social benefits".

The Government has reserved for itself the main sectors of the economy.

II. Public and private sector

The Government reserves the right of establishing the following industries:

1/ Art.4 The Constitution of Egypt, Official Journal No.5 bis, January 16, 1956.
- Mining prospecting and research associated with it as well as utilization, since this kind of activity requires large investments. Import industries in this field are oil prospecting, coal mining, and copper, fertilisers, caustic soda, paper, automobiles, tractors and other means of transport.

- Basic industries in which private capital hesitates to invest owing to the losses incurred during the first years of operation. The most important of these are iron and steel industries.

- Military factories which require the entire supervision of the State for security reasons.

Medium and small-sized companies and most of the distributive trades are outside the control of the Government.

III. Basic industries

High priority is given to the importation of capital goods, machinery, raw materials necessary for industry, spare parts, insecticides and some food supplies essential either for production or consumption and necessary to implement the Development Plan and to realize a balanced economic growth.

17. Economic control

1. Special Committee

There is a Special Committee of the Ministry of Commerce and Industry charged with the function of examining and approving projects of economic development. It is this Committee that handles all formalities concerning registration of foreign capital, as a liaison between Exchange Control Office, and the tax administration authority.

2. Central Banks

In 1961, new regulations on the reorganization of the National Bank of Egypt came into effect. The National Bank was broken up into two

1/ An earlier law established an "Economic Authority" attached to the Presidency of the Republic. This Authority directed and controlled the management and policy of other enterprises of public interest designated by the President as well as the participation of the Government in their activities. The chairman of the Board of Directors and the chief executive of each Egyptian corporation in which the Economic Authority owns more than 25 per cent of common shares was appointed by the President from a list of three. The delegate from the Economic Authority had the right to sit on the board of directors of any company "declared to be a national interest".
separate bodies — the Central Egyptian Bank and the National Egyptian Bank. Both have powers to establish branches in Egypt and abroad. The Central Bank took over the functions of co-ordinating the general credit and banking policy, issuing banknotes and currency notes, extending loans to the Government, etc. The function of the National Egyptian Bank would be to conduct normal banking operations within the laws governing commercial banks.

V. Foreign capital

In January 1961, it was decreed that no foreign capital may be invested in the UAR without authorization by presidential decree. A proposed investment must fulfil certain formalities.1/

1. Conditions and formalities

There are two procedures: either to establish a branch or an office in Egypt and to form a local company in association with Egyptian interests. A foreign firm must be entered in the commercial register and must submit in its application, inter alia, the commercial name, the nature of business, the nationality of managers and representatives.2/

2. National employment

According to company law,3/ the minimum of 90 per cent of the workmen, a proportion of at least 80 per cent of the firm's payroll must be of Egyptian nationality. The proportion of other employees must be at 75 per cent and their salaries must not be less than 65 per cent of the total salaries paid by the branch. However, the Ministry of Commerce and Industry may authorize the employment of foreign technicians or specialists outside these proportions if local help is not available.

1/ The earlier laws No. 156 of April 2, 1953 and Law No. 475 of September 2, 1954 concerned foreign capital in Egyptian economic development plans, guaranteed the transfer of profits and dividends in the currency in which the original capital contribution was made.

2/ Law No. 219, May 7, 1953. The administration has the right to examine the balance sheet of the parent company.

3. Repatriation of capital and profits

The Investment Law specifically enacted for foreign capital provides for the following:

"Foreign capitals will benefit from the dispositions of the present law if they are invested in projects of economic development, either in industry, agriculture, mineral exploitation, motive power, transport or tourism.

Profits accruing from the exploitation of foreign capital may be transferred abroad up to ten per cent of the value of the registered capital in the original currency of this capital. If during a given year profits exceed this rate, the excess shall be carried forward to the account of those years when profits will be below the rate.

The transfer of profits will be carried out at the rate in force at the time of transfer.

(It will be likewise possible to transfer profits in excess of ten per cent within the limits of the amount of foreign currencies resulting from the exploitation.

Five years after the date of exploitation of the foreign capital, it will be possible to transfer the latter abroad, at the rate of one annual transfer representing one-fifth of the registered value. The repatriation of the registered value of the foreign capital shall be carried out -- in the original currency of this capital -- at the rate in force at the time of transfer.)"

In October 1961, a series of decrees on nationalization were issued. They were divided into four main parts.

Decree No. 1: Its aim was to take over all privately owned banks and all insurance companies.

Decree No. 2: Under this decree industries including timber and cement, trading, shipping and transport companies, metal industry, the whole of building, trading, cotton spinning and electrical industries were nationalized.

Decree No. 3: All contracting work for the Government or general organizations in which the Government has 25 per cent interest were after
this Decree to be undertaken by companies in which the State's interest is 50 per cent or more, (only contracts for less than £30,000 are exempt).

Decree No. 4: According to this the Government would control at least 50 per cent of the shares in the existing or newly formed joint stock companies dealing with cotton export. The capital of these companies according to the decree must not be less than £200,000.

Compensation

All individuals and companies were compensated in the form of government bonds carrying interest of four per cent and redeemable in fifteen years, the Government reserving the right to redeem them after ten years. The amount of compensation was determined according to the last price quoted for the shares in Cairo and Alexandria stock exchanges immediately prior to the issue of decrees. 1/

VI. Economic benefits

1. Income Tax

On 5 July 1960, a number of amendments were made to an earlier law, the main purpose of which was to aim at better distribution of national income by reducing taxes paid by lower income groups and a proportional increase for those in upper bracket.

2. Customs duties

(a) The ad valorem rate is applied, with the exception of tobacco, tea and coffee so that the Government may guarantee the revenue received from these items.

(b) Supply goods necessary for the consumption requirements of the people, such as animals, meat, wheat and maize are exempted.

1/ In January 1963, a presidential decree announced that the Government is to take over a 50 per cent share in shipping companies operating in Alexandria and the Suez Canal Zone. Shipping would be controlled by the General Organization of Egyptian Shipping.

2/ Law No. 277, 3 July and 4 July 1956. The earlier tax laws of Egypt made no distinction between foreign and national investors. They applied equally to all companies irrespective of whether the foreign investors were in the majority or minority. The rate of tax on profits derived from commerce, mining and concessions on public utility was 17 per cent. The same rate applied to personal income derived from dividends, interest or profits of any kind accruing from the ownership of bonds and shares. A small surtax was added to this for the purpose...
(c) Equipment, machinery and raw materials necessary for development are either exempted or subject to a very reduced tariff (about two per cent.)

(d) Unassembled parts and semi-manufactured goods are subject to a relatively reduced tariff (from 5 per cent to 20 per cent).

(e) A relatively higher tariff is imposed on goods substituted with locally produced goods (from 25 per cent to 35 per cent).

(f) A high tariff is levied on goods considered unimportant or luxurious.

3. Import quotas
All imports are subject to licences issued by the Import Department of the Ministry of Economy. If a certain item is locally produced in sufficient amounts to meet local consumption, the importation of this item is prohibited. But licences are granted up to the amount necessary to meet wholly or partly the local requirements. Luxury goods are either prohibited or granted very limited foreign exchange.

VII. Other legislation
1. Mining enterprises
Law No. 86 of March 1956 relates to prospecting for and extracting mineral wealth. This law treats Egyptian and foreign mining enterprises on equal basis. Article 6 of this law gives the Council of Ministers the right to refuse licences for prospecting and extracting in the case of rare minerals or mineral resources considered "important to the national economy".

2. Land legislation
In a decree of July 1961, the maximum amount of land an individual could own was reduced from 200 to 100 feddans. Owners of larger holdings, whether used for agricultural or pasture were under an obligation to sell additional land. An interest free loan was made available to farmers so that they are indebted if they purchase land.

A decree published on 2 February 1963 has banned foreigners from owning agricultural land. Those already holding land must register with the General Organization for Agrarian Reform.
30. UPPER VOLTA

There are two basic laws affecting investments in the Republic. One provides a preferential tax system for newly established enterprises and the other sets up an assistance fund for new industries.

The new law regarding investments passed in 1962, provides for two systems of preferential treatments. This law is drafted in general terms and is intended to serve as a guide.

I. "Approved" enterprises

To obtain benefits under the Code, the new enterprises must fall within the following categories:

- Mining industries, industries engaged in physical, chemical, metallurgical refining, hydrocarbons, processing local products and assembling articles, objects or products of general consumption.

- Real estate enterprises and those producing power, stock-raising enterprises and those producing agricultural products.

II. Executive control

A new enterprise to become entitled to the benefits of the stabilized preferential tax treatment must obtain approval by a decree of the Council of Ministers.

The only condition is that it must co-operate in attaining the objectives of the Plan and make investments of particular importance to the economy.

III. Economic benefits

Regime A

Under this system an enterprise is accorded stabilized preferential

\[\text{Law No. 14/62/AN and 25/61/AN}\]
treatment for a certain period reckoned from the date of commencement of rates, basis of assessment and rules of collection of taxes fixed by the law currently in force.

Regime B

Regime B is entitled to additional benefits specified in the contract.

The benefits of both systems must not exceed 25 years plus five years for installation.

IV. Arbitration

The settlement of disputes resulting from application of the contract is subject to arbitration. Each party must appoint an arbitrator plus a third with approval failing which a highly qualified authority specified in the contract must be appointed. Final decision is by majority.

V. Other legislation

An Assistance Fund for new industries was established in 1961.\(^1\)

It is administered by a committee, the composition of which is fixed by a separate decree.

The Fund can conclude an agreement with a new enterprise permitting repayable advances to be made for a maximum period of five years.

\(^1\) Law No. 25/61/AN, 1961
## ANNEX I

### DATES OF INDEPENDENCE, DEVELOPMENT PLANS AND INVESTMENT LAWS

<table>
<thead>
<tr>
<th>Country</th>
<th>Dates of independence</th>
<th>Development plan</th>
<th>Investment codes or laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALGERIA</td>
<td>1962</td>
<td>No plan yet</td>
<td>1963</td>
</tr>
<tr>
<td>BURUNDI</td>
<td>1962</td>
<td>No plan yet</td>
<td>-</td>
</tr>
<tr>
<td>CHAD</td>
<td>1960</td>
<td>Economie et plan de développement, 1961</td>
<td>Undated</td>
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<tr>
<td>CONGO (LEO.)</td>
<td>1960</td>
<td>Plan décennal pour le développement économique et social du Congo Belge, 1949</td>
<td>-</td>
</tr>
<tr>
<td>DAHOMEY</td>
<td>1960</td>
<td>Economie et plan de développement, 1960</td>
<td>1961</td>
</tr>
<tr>
<td>GUINEA</td>
<td>1958</td>
<td>Plan triennal de développement économique et social de la République de Guinée, 1960</td>
<td>1962</td>
</tr>
<tr>
<td>Country</td>
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<td>Development plan</td>
<td>Investment codes or laws</td>
</tr>
<tr>
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<td>----------------------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>NIGER</td>
<td>1960</td>
<td>Economie et plan de développement, 1962</td>
<td>1961</td>
</tr>
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<td></td>
<td>(2) Eastern Development Plan, 1962-1968</td>
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<td></td>
<td>(3) Northern Development Plan, 1962-1968</td>
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<td></td>
<td></td>
<td>(4) Western Development Plan, 1962-1968</td>
<td></td>
</tr>
<tr>
<td>RWANDA</td>
<td>1962</td>
<td>No plan yet</td>
<td></td>
</tr>
<tr>
<td>SOMALIA</td>
<td>1960</td>
<td>Plan de développement économique de la Somalie, 1954-1960</td>
<td></td>
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<tr>
<td>Country</td>
<td>Dates of independence</td>
<td>Development plan</td>
<td>Investment codes or laws</td>
</tr>
<tr>
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<td>------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>UPPER VOLTA</td>
<td>1960</td>
<td>Economie et plan de développement, 1961</td>
<td></td>
</tr>
</tbody>
</table>
ANNEX II

QUESTIONNAIRE REGARDING LEGISLATION

FOR THE ENCOURAGEMENT OF INDUSTRIAL DEVELOPMENT

(10 September, 1962)

1. Do you have an investment code? If so, please forward a copy.

2. Do you have legislation appertaining to the treatment of private investment capital for industrial enterprises? If so, please forward a copy.

3. Do you have administrative provisions for above? If so, please forward copies.

4. Do you grant exemption from income tax (tax holiday) to:
   a) all new industries;
   b) specifically approved ones;
   c) what is the period of exemption?

5. Do you grant exemption from duty on:
   a) all plant;
   b) specified items of plant;
   c) all motor vehicles;
   d) specified vehicles only;
   e) all raw materials;
   f) specified materials;
   g) for what period of time?

6. Do you grant exemption from:
   a) land taxes; for what period?
   b) municipal taxes; "
   c) land rates; "
   d) 
   e) 
   f)
7. Please indicate any measures not incorporated above which are designed to assist industry.

8. If your answers to 1 - 7 are negative, please indicate whether
   a) you are contemplating legislation;
   b) you are opposed to special encouragement measures.
QUESTIONNAIRE ON INVESTMENT LAWS AND
REGULATIONS IN AFRICA
(8 May 1963)

1. What are the specific industries which the Government has
   reserved for itself?

2. Is there a provision to grant compensation in case of
   expropriating an existing industry?

3. Is there any legislation which favours home-produced goods?

4. What are the regulations concerning quotas and production tariffs?

5. What are the rules governing repatriation of capital and profits?
ANNEX III

IMPORT AND EXCHANGE PERMIT REGULATIONS IN AFRICA

1. ALGERIA:
Import license necessary, but only for a limited number of products specifically enumerated which are subject to quantitative import restrictions. All other products may enter under a simplified procedure. Customs authorities will allow imports of such products upon presentation by the importer of a customs declaration, supported by an invoice or commercial contract. Exchange permit not required.

2. CAMEROUN:
Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

3. CENTRAL AFRICAN REPUBLIC:
Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

4. CHAD:
Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

5. CONGO (BRAZZAVILLE):
Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

6. CONGO (LEOPOLDVILLE):
Import license necessary. Normally import licenses also are authorizations for payment in foreign exchange. Exceptions are sans paiement licenses which are issued to importers with access to foreign exchange outside the Congo.

7. DAHOMEY:
Import license necessary. Exchange permit required, but import license carries right to foreign exchange.
<table>
<thead>
<tr>
<th>Country</th>
<th>Import License Required</th>
<th>Exchange Permit Required</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethiopia</td>
<td>No</td>
<td>Exchange permit required</td>
<td></td>
</tr>
<tr>
<td>Gabon</td>
<td>Import license necessary</td>
<td>Exchange permit required, but import license carries right to foreign exchange</td>
<td></td>
</tr>
<tr>
<td>Ghana</td>
<td>Import license required, except for single copies of books and periodicals, samples, personal or household effects, certain gifts and articles for reimportation. Special permit not required, but application for foreign exchange must have the approval of the Bank of Ghana or an authorized dealer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guinea</td>
<td>Import license necessary</td>
<td>Exchange permit required, but import license carries right to foreign exchange</td>
<td></td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>Import license necessary</td>
<td>Exchange permit required, but import license carries right to foreign exchange</td>
<td></td>
</tr>
<tr>
<td>Liberia</td>
<td>Import license not necessary except for arms, ammunition, used clothing, pharmaceuticals, and rice. Exchange permit not required.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Libya</td>
<td>Import license necessary for a limited list including processed foodstuffs, motion picture films, ice cream, transport vehicles, and locally manufactured items. However, all other imports may be imported under open general license. Exchange permits required for authorized imports are readily granted by the authorized banks, provided there is a firm contract and any necessary import license has been obtained.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
15. MADAGASCAR: Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

16. MALI: Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

17. MAURITANIA: Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

18. MOROCCO: Import license necessary; a deposit of 25% of the invoice value of imports must be made in advance by importer. Validity of import licenses: 6 months. Exchange permit required, but import license carries right to foreign exchange.

19. NIGER: Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

20. NIGERIA: Import license necessary, but about 95% of all goods are permitted under open general license. Exchange permit required, but import license generally assures release of foreign exchange.

21. SENEGAL: Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

22. SIERRA LEONE: Import license necessary, but only commodities such as cattle, firearms, and explosives are not imported under an open general license. Exchange permit required, but import license assures release of necessary foreign exchange.
23. SOMALIA:
Import license necessary. Exchange permit required.

24. SUDAN:
Import license necessary except for an extensive list of commodities that may be imported under open general license from any source. All imports must be registered with the Ministry of Commerce, which may deny registration because of commercial policy or excessively high prices. Exchange permit not required; exchange is granted automatically for all permitted imports.

25. TANGANYIKA:
Import license not necessary except for certain primary products and munitions items. Exchange permit not required.

26. TOGO:
Import license necessary. Exchange permit required, but import license carries right to foreign exchange.

27. TUNISIA:
Import license required for all imports. However, for liberalized items licenses and exchange are automatically granted. A deposit of 25, 50 or 100% of invoice value is required prior to application for import license covering certain listed products. Validity of import licenses is usually 6 months. Exchange permit required, but import license carries right to foreign exchange.

28. UGANDA:
Import license not necessary except for certain primary products and munitions items. Exchange permit not required.

29. UPPER VOLTA:
Import license necessary. Exchange permit required, but import license carries right to foreign exchange.
ANNEX IV

INVESTMENT GUARANTEE AGREEMENTS BETWEEN THE
UNITED STATES OF AMERICA
AND
THE AFRICAN COUNTRIES

Under section 413(b)(4) of its Mutual Security Act 1954, the United States signed agreements with fifteen African countries guaranteeing private investments. The guarantee covers risks against inconvertibility, expropriation, losses due to war and revolution. The programme offers for an eligible investment in the form of stock purchase, loans, or royalties for which a fee of half of one per cent is charged of the amount of each coverage in force in any given contract year.

1. Ghana 30 September, 1958
2. Sudan 17 March, 1959
3. Tunisia 17 and 18 March, 1959
4. Liberia 6 and 12 September, 1960
5. Morocco 31 March, 1961
6. Sierra Leone 16 and 19 May, 1961
7. Ivory Coast 1 December, 1961
8. Togo 20 March, 1962
11. Ethiopia 3 August, 1962
12. Congo (Brazzaville) 1 September, 1962
13. Congo (Leopoldville) 17 November, 1962
15. Gabon* 10 April, 1963

* A latest example of the investment guarantee agreement is attached.
AGREEMENT EFFECTED BY EXCHANGE OF NOTES
SIGNED AT LIBREVILLE APRIL 10, 1963;
ENTERED INTO FORCE APRIL 10, 1963.

The American Ambassador to the Gabonese Minister of State for
Foreign Affairs

Libreville, April 10, 1963.

"Excellency:

I have the honor to refer to conversations which have recently
taken place between representatives of our two Governments relating
to investments in the Republic of Gabon which further the develop-
ment of the economic resources and productive capacities of the
Republic of Gabon and to guaranties of such investments by the
Government of the United States of America. I also have the honor
to confirm the following understandings reached as a result of those
conversations:

1. The Government of the United States of America and the Govern-
ment of the Republic of Gabon shall, upon the request of either Govern-
ment, consult concerning investments in the Republic of Gabon which the
Government of the United States of America may guaranty.

2. The Government of the United States of America shall not guaranty
an investment in the Republic of Gabon unless the Government of the
Republic of Gabon approves the activity to which the investment relates
and recognizes that the Government of the United States of America may
guaranty such investment.

3. If an investor transfers to the Government of the United States
of America pursuant to an investment guaranty, (a) lawful currency,
including credits thereof, of the Republic of Gabon, (b) any claims
or rights which the investor has or may have arising from the business
activities of the investor in the Republic of Gabon or from the events
entitling the investor to payment under the investment guaranty, or
(c) all or part of the interest of the investor in any property (real or personal, tangible or intangible) within the Republic of Gabon, the Government of the Republic of Gabon shall recognize such transfer as valid and effective.

4. Lawful currency of the Republic of Gabon, including credits thereof, which is acquired by the Government of the United States of America pursuant to a transfer of currency or from the sale of property transferred under an investment guaranty shall be accorded treatment by the Government of the Republic of Gabon with respect to exchange, repatriation or use thereof, not less favorable than that accorded to funds of nationals of the United States of America derived from activities similar to those in which the investor had been engaged, and such currency may in any event be used by the Government of the United States of America for any of its expenditures in the Republic of Gabon.

Any dispute regarding the interpretation or application of the provisions of this Agreement or any claim against the Government of the Republic of Gabon to which the Government of the United States of America may succeed as transferee or which may arise from the events causing payment under an investment guaranty shall, upon the request of either Government, be the subject of negotiations between the two Governments and shall be settled, insofar as possible, in such negotiations. If, within a period of three months after a request for negotiation, the two Governments are unable to settle any such dispute or claim by agreement, the dispute or claim shall be referred upon the initiative of either Government, to a sole arbitrator, selected by mutual agreement, for final and binding determination in light of the applicable principles of international law. If the two Governments are unable to select an arbitrator within a period of three months after indication by either Government of its desire to arbitrate, the President of the International Court of Justice shall, at the request of either Government, designate the arbitrator.
Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of the Republic of Gabon, the Government of the United States of America will consider that this note and your reply thereto constitute an Agreement between our two Governments on this subject, the Agreement to enter into force on the date of your note in reply.

Accept, Excellency, the renewed assurances of my highest consideration."

Charles F. Darlington

His Excellency
Jean-François Ondo
Minister of State for Foreign Affairs
Libreville
### ANNEX V

**LIST OF LAWS AND OTHER OFFICIAL TEXTS CONCERNING INVESTMENTS IN AFRICA**

#### ALGERIA


#### BURUNDI

- Constitution of the Kingdom of Burundi, 1 January 1963.
- Law No. 60-64, promulgated October 1961.

#### CAMEROON

- Law No. 60-64, promulgated October 1961.
- Decree No. 60-135, 11 July 1960, reorganizing the general Code on direct imports, 13 July 1960.

#### CENTRAL AFRICAN REPUBLIC


#### CHAD

- Decree No. 156/PR, establishing a Code of Investment.

#### CONGO (Brazzaville)

- Law No. 39-61, 20 June 1961 providing by an Investment Code supplementing the general tax code and amending the code on registration, stamps, and tax on income from securities.

#### CONGO (Leopoldville)

- Fundamental law concerning the structure of the Congo, May 19, 1960.

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1/ The following laws are incorporated in this Decree:

   - (c) Decision No. 4/62, 30 June 1962, of the Mixed Commission of the Equatorial Customs Union.
   - (e) Proclamation of 26 December 1949, modified by Proclamation of 18 February 1948.

2/ Republic of Cameroun and British Trust Territory of Southern Cameroun. The law is applicable within the entire Republic.
DAHOMEY


ETHIOPIA


Government Proclamation, 30 November 1954, effective in February 1955, exempting from import duties all agricultural and industrial machines and parts therefor.


GABON

Law No. 55-61, 4 December 1961, providing for an Investment Code.


GHANA


Pioneer Industries and Companies (Amendment) Act, 1962, No. 98.


1/ This replaces a more general code which was drawn up by the four Equatorial States: Central African Republic, Chad, Congo (Brazzaville), and Gabon.


Act 36-60-177, 10 November 1960.

Acts 2-60 and 8-60, 13 May 1960.


Act 3-59-6, 29 September 1955.

Law No. 54-59, 18 December 1959.

Decision 89-59, 8 November 1956.

Decision No. 4120, 28 November 1956.


Decision 64-49, 5 September 1949.

Decision 66-49, 7 September 1949.
GHANA (Cont.) Pioneer Industries and Companies (Amendment) Act, 1961.

The Local Industries (Customs Duties Relief) Act, 1959.

Income Tax Amendment Act, 1958 (Supplement to Ghana Gazette No. 84, 1958).

Income Tax Ordinance No. 27, 1943.

Custom Ordinance (Cap. 167).


GUINEA

Decree No. 136/PRG, promulgated Law No. 50 AN/62, 5 April, 1962, instituting an Investment Code.

IVORY COAST

Law No. 59-134, 3 September 1959, determining rules regarding private investment in the Republic.

Decree No. 60-09, 6 January 1960.

Decree No. 20, January 14, 1960: relating to tax remissions, measures of exemption and relief with respect to indirect duties and taxes.

Decree No. 21, 14 January 1960: concerning customs exonerations - measures of exonerations from duties and taxes upon entering and exiting.

Decree No. 22, 14 January 1960: refers to verifications and inspections - measures for verifying compliance with the engagements contracted by priority enterprises.

KENYA


LIBERIA

Liberia Bank for Industrial Development and Investment (Corporate Agreements) 31 January 1961.

Liberia


The Legislature of the Republic of Liberia, 43rd Sitting, 1st session, passed and approved on February 23, 1956, entitled "An Act to Establish the National Production Council of Liberia".

Proclamation by the President of the Republic of Liberia, 27 August, 1956.


Libya


Customs Law, 1 January, 1957.

Law No. 51, 23 September, 1956, on the development of national industries.

Libya Petroleum Law No. 25, 1955.

Madagascar

Ordinance No. 62-024, 19 September 1962.

Ordinance No. 60-138, 3 October 1960.

Ordinance No. 60-123, under fiscal stability with regard to taxes, duties and other direct and indirect charges and fees.

Mali


MAURITANIA

Law No. 61-122, 26 June 1961, determining the regime of private investments.

Law No. 61-106, 29 May 1961, establishing a long-term tax regime relating to the exploration and exploitation of hydrocarbides.


The Mineral Legislation applicable to concessions: 59-061, 10 July 1959; 60-005, 9 January 1961; 60-006, 13 January 1960; and 60-121, 13 July 1960.

Law No. 59-060, 10 July 1959, instituting a long-term tax regime applicable to companies having concessions relating to deposits of iron ore in Mauritania.


MOROCCO


Commercial Code, 22 Safar 1345, (1st September, 1926).


Decision of the Vice-President of the Council, Minister of National Economy and Agriculture, 13 September 1958, fixing the composition and rules of procedure of the investment commission, No. 2395, 19 September 1958.

Decision of the Vice-President of the Council, Minister of Economy and Agriculture, 13 September 1958, defining the industrial sectors that may benefit from the provisions of the above Law of 13 September 1958 (Dahir No. 1-58-263).

Dahir of 2 rabia I, 1373, 10 November 1953.
NIGER


Law No. 61-8, 29 May 1961, relating to the prospecting, exploration and exploitation of mineral substances.

Law No. 61-4, relating to the research, exploitation and transport through pipes of hydrocarbides and the fiscal regime of their activities on the Territory of the Republic of Niger.

Decree No. 61-100-MTP, approving the convention of arbitration after Article 80, Law No. 61-4, 19 May 1961.


NIGERIA

Drawback (Customs) Regulations, 1959.


Industrial Development (Import Duties Relief) Ordinance, 1957.

Industrial Development (Income Tax Relief) Ordinance No. 8, 1958.

SENEGAL


Decree No. 62-050, 11 April 1962.


SOMALIA

Foreign Investment Law No. 10, 13 February 1960.

SUDAN

ACT No. 8, 1956, Concessions for Approved Enterprises.


TANGANYIKA

Law No. 57-36, 11 September 1957, on the fiscal regime of the contractual enterprises.

Decision No. 576, 16 October 1941, and modified by deliberation No.36, 22 October 1953, and Law No. 61-41, 28 December, 1961.

Law No. 60-32, 2 November 1960, completing the list of materials and supplies annexed to Law No. 57-36, 11 September 1957.


TUNISIA


Decree, 4 June 1957, on the Guarantee Fund for the repatriation of capital and profits derived from foreign investments.


UNITED ARAB REPUBLIC

Law No. 156, 1 April 1953, on the investment of foreign capital in economic development projects, amended by Law No. 475, 2 September 1954.

Law No. 66, 19 February 1953, on Mines and Quarries, as amended by Law No. 86, 14 March 1956, and Law No. 98, 3 May 1959.

Decree No. 69, 28 February 1959, concerning the application of Law No. 86, 14 March 1956.

Law No. 20, 13 January 1957, as amended by Law No. 138, 29 June 1957, relating to the appointment of a representative to the boards of companies of national interest.
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Company Law No. 26, 10 January 1954, amended by Law No. 26, 16 March 1955.

Ministerial Decree No. 6, 25 January 1954.

Law No. 169, 1952, regarding the exemption of foreign aviation companies from some taxes, as amended by Law No. 588, 1953.

Law No. 219, 7 May 1963.

Law No. 430, 3 September 1953, establishing tax exemptions for the strengthening and development of the national economy.

UPPER VOLTA

Law No. 24-61-AN, 5 July 1961, creating a fund to aid new industries.

Law No. 12-60-AN, 2 February 1960, enumerating the categories of enterprises which may benefit from the long-term tax regime.

Law No. 13-60-AN, 2 February 1960, fixing the long-term tax regime applicable to categories of contractual enterprises.