I I I I I I I I I I I I I I I Republic of Equatorial Guinea OFFICIAL GAZETTE OF THE STATE \ SUMMARY No.: 1. Act No. 7/1992, dated 30 April, on the Investment Regime in the Republic of Equatorial Guinea.—pp. 2–9 2. Act No. 6/1990, dated 29 October, on the Special Investment Regime for Small and Medium-sized Enterprises (SMEs) in the Republic of Equatorial Guinea. – Pages 9–14 3. Law No. 16/1995, dated 13 June, regulating small and medium-sized enterprises in the Republic of Equatorial Guinea.—Pages 14–20 4. Decree No. 127/2004, dated 14 September, laying down supplementary regulations to promote national participation in business activity.—Pages 20–22

Law No. 7 of 1992, dated 30 April, on the Special Investment Regime in the Republic of Equatorial Guinea. --- EXPLANATORY MEMORANDUM The Government of the Republic of Equatorial Guinea, determined in its resolve to strengthen support for and guarantees to the private sector, as it recognises that this constitutes the fundamental framework for the economic take-off of the country, and therefore committed to the implementation of the established development programmes, wishes to grant it the advantages it requires to carry out its activities more effectively. Bearing in mind the spirit and criteria set out in the Common Investment Code of the countries of the Central African Customs and Economic Union of Central Africa (UDEAC) and the experience gained in the implementation of Decree-Laws No. 1/1979, dated 17 November, and No. 7/1985, dated 1 June, respectively, on Foreign Capital Investment and the ~I Special Special Investment Regime in the Republic of Equatorial Guinea, it is appropriate, given the current situation, to adopt economic measures that promote and encourage private sector activities. Accordingly, and following approval by the Chamber of People's Representatives, at its session held from 26 March to 1 April 1992, I hereby enact the pre- present Law on the Investment Regime in the Republic of Equatorial Guinea CHAPTER I GENERAL PROVISIONS Article 1. 1.— Within the framework of this Law, 'investment' shall be understood to mean any of capital on a permanent basis, which is aimed at generating economic output . 2.— A 'foreign capital investment' is defined as one made by foreign natural or legal persons, as well as 2 Equatorial Guineans legally resident abroad. 3.—The following are considered to be investments: a) Contributions in foreign currency from foreign sources entering the country via the Central Bank. b) Direct contributions to an Equatorial Guinean company of capital goods of foreign origin. The valuation of capital goods originating from abroad, which must be used by the company itself, may not exceed the fixed value for the payment of customs duties. c) Direct contributions of technical assistance, patents or foreign manufacturing licences to an Equatorial Guinean company. Such contributions of technical assistance, patents, or foreign manufacturing licences shall be subject to prior authorisation of the contracts in question and to their assessment by the Ministry of Planning, Economic Development and Public Investment. d) Reinvestments of profits realised by foreign investors. e) The contribution of any other assets, property or services, subject to prior authorisation by the Ministry of Planning, Economic Development and Public Investment. 4. Investments may be carried out by means of: a) The establishment of a company in Equatorial Guinea. b) Participation in the formation of an Equatorial Guinean company through the total or partial acquisition of its shares or, in the case of companies whose capital is not represented by shares, of its equity interests. The acquisition of subscription rights shall be deemed, for these purposes, to be equivalent to the acquisition of shares.

I I I I I I c) The conduct of business activities in Equatorial Guinea by foreign natural or legal persons, through the establishment of branches or business premises. d) Any other form not covered by the preceding sub-paragraphs, subject to authorisation by the Ministry of Planning, Economic Development and Public Investment. Article 2.— The purpose of this Act is to: 1. Encourage and promote productive investment in the Republic of Equatorial Guinea. 2. Promote the establishment and development of economic activities aimed at creating new jobs and training opportunities for Equatorial Guineans, the development of economic activities aimed at creating new jobs and training opportunities for Equatorial Guineans, the production of competitive goods and services for domestic consumption and export, the improvement of the quality of life in rural and urban areas, and the increase in the participation of foreign nations in the share capital of companies. Article 3.— Companies whose projects have been approved in accordance with this Act shall automatically benefit from the advantages set out in this Act. Article 4. — Extractive mining companies and those engaged in the exploration and exploitation of hydrocarbons shall be governed by the special Act on the subject. CHAPTER II ON THE APPROVAL OF INVESTMENTS Article 5.1. —Subject to the approval of foreign investments, in accordance with the provisions of paragraph 4 of this article, the Ministry of Planning, Economic Development and Public Investment shall automatically approve all investment projects covered by this Act, provided that such projects are not 3 included on the negative list of . Such approvals or rejections shall be granted within 60 days of the submission of the application to the Ministry of Planning in a form acceptable to the Ministry. The applications shall describe the project and its promoters, providing sufficient background information to satisfy the requirements of paragraph 4 of this article. The application must detail any potential adverse impact on the environment, on the safety of workers or on health arising from the pro posed project. It must also set out the specific measures that the promoters will take to prevent or limit such con consequences. Foreign investors must also specify in their applications the forum chosen for international arbitration. 2. – The negative list of derived activities shall be issued by the National Investment Commission, which shall be subject to revision as often as deemed necessary. The list shall identify those activities reserved exclusively for the State or for domestic investors, that is to say, those activities directly or indirectly prohibited to foreign capital. The Commission shall also specify those activities which are not eligible for all or some of the incentives established under this Act. 3.- Investors may apply for amendments to the negative list in their favour. Such applications shall be forwarded by the Ministry of Planning to the National Investment Commission for a decision. If accepted, the negative list shall be amended. 4.- The Ministry of Planning shall issue a certificate approving or rejecting the pro ject, following the completion of background checks on the foreign investors involved in the pro ject. The background checks shall cover credit references, commercial history and the moral integrity of the investors.

II I ~ I I I ~ I ~ I I I I I 5. The certificate of approval set out in the previous point shall specify the incen incentives and benefits granted to the company in relation to the project; it shall describe or identify all requirements relating to its operation, specifying its export plan. Article 6.— For statistical purposes, the Ministry of Planning shall maintain a register of Foreign Capital in which all investments of Foreign Capital covered by this Act shall be recorded. CHAPTER III ON INVESTMENT INCENTIVES Article 7.1.— With the exception of the exclusions set out in the current negative list, established by Article 5, enterprises whose projects have been approved in accordance with this Act shall automatically be entitled to the following incentives: a) For the creation of new jobs, companies shall benefit from a reduction in their taxable base for Income Tax, in an amount equivalent to 50 per cent of the wages paid to national employees. The percentage set out in this sub-clause shall remain in force without change for eighteen years. b) For the training of national , companies shall benefit from a reduction in their taxable base for income tax, in an amount equivalent to 200 per cent of the non-wage costs allocated to the training of the company’s national employees. The percentage set out in this sub-clause shall remain in force for eighteen years. c) For the promotion of non-traditional exports, companies shall receive a credit certificate valid for the payment of any tax and/or customs liability equivalent to 15 per cent of the sums received in a commercial bank on behalf of the 4 company, in respect of its non-tra ditional exports. Upon presentation of the export certificate and proof of the entry into the country of the funds therefrom into the PAFS, the Ministry of Economy, Trade and Business Promotion shall issue a credit certificate in favour of the beneficiary company, transferable to third parties, for the amount corresponding to the incentive. The percentage specified in this clause shall remain in force without modification for eighteen years. d) For regional or local development, companies carrying out projects approved in areas or localities remote from major urban centres shall benefit from: • Full amortisation of infrastructure expenses paid and applicable to the tax year to which the expenditure relates, with the right to carry forward to subsequent years the amortisation of any that may be recorded to subsequent years. • Total exemption from payment of any kind of tax liability, with the exception of Income Tax, Sales Tax, Customs Duties and other duties applicable to their activities in remote areas. e) Where Ecuadorians hold a stake in the company's share capital, and whose projects have been approved in accordance with this Act, such companies shall benefit from a reduction in their income tax base, by the amount resulting from applying 1 per cent to the excess over 50 per cent of the shareholding of national shareholders in the share capital. For the calculation of this incentive, any change in the shareholding of foreign nationals in the capital of such companies shall be registered with the Ministry of Planning for the purpose of keeping the Register of Foreign Capital up to date. The percentages agreed upon in this sub-clause shall be recorded with the Ministry of Planning in order to maintain an up-to-date Register of Foreign Capital. The percentages agreed upon in this sub-clause shall be subject to review by the National Investment Commission.

I I I I I I I I I I I I I I I I I I I I 2. The incentive percentages awarded to a specific company in accordance with the preceding paragraph shall be those in force at the time of the project's approval, or any other, more favourable percentages promulgated subsequently. Article 8.— Losses for tax purposes that may result from the application of the incentives set out in sub-paragraphs (a) and (b) of Article 7-1 of this Act shall not be deferred for subsequent deduction. CHAPTER IV ON THE PRIVILEGES GRANTED TO INVESTORS Article 9 .. - Companies whose projects are approved in accordance with this Act shall shall be exempt from: 1. Any requirement for a prior licence for import or export, and 2. Any 'ad hoc' levy imposed on imports or exports imposed by provisions that do not have the force of law. Article 10.— The Ministry of Planning shall, whenever necessary, designate those pro ducts which may be imported or exported without a licence and free from 'ad hoc' levies, as indicated in paragraph 2 of Article 9 above. Article 11.— Companies whose projects are approved under this Act shall be entitled entitled to receive the necessary permits for employees, both national and foreign, required to carry out such projects, in accordance with the relevant legal provisions in force. CHAPTER V ON GUARANTEES Article 12. 1.— In accordance with its obligations under public international law, the State undertakes to treat all investors within 5 the national territory fairly and equitably. Therefore, the State shall not expropriate, shall not interfere with the enjoyment of their rights, nor shall it breach contractual obligations contractual obligations entered into with them, unless it acts in the public interest by providing the corresponding fair and adequate compensation in a freely convertible currency. 1 2.— Foreign employees of com panies carrying out projects ap proved under this Act and their dependants shall enjoy in Equatorial Guinea all the rights and protections provided for by international law. 3. — Foreign investors participating in projects approved under this Act shall be entitled to convert into foreign currency and transfer abroad the company's net profits paid to them in the form of dividends. 4.— Once the relevant taxes have been paid, foreign investors may convert into foreign currency and transfer abroad the proceeds from the liquidation winding-up of the company, sale or other disposal, in whole or in part, of their investment registered in accordance with Article 6 of this Act. 5.— Companies approved under this Act shall be authorised to freely transfer abroad the sums necessary to pay their debts and other obligations relating to the project, in foreign currency. 6.— The certificate of approval issued by the Ministry of Planning and ratified by the Office of the Prime Minister shall be valid for the purposes of programmes run by multinational and national insurance schemes against political risks. Article 13.— Natural or legal persons lawfully established in Equatorial Guinea may, in accordance with the laws and regulations in force, enter into and perform any contract they deem to be in their interests, particularly in commercial and financial matters; ; determine their policy on production, distribution and marketing; and, in general, carry out any act of management in accordance with the rules and customs of commerce in Equatorial Guinea.

I I I I I I I I I I I I I I CHAPTER VI ON THE SETTLEMENT OF DISPUTES Article 14.— Any dispute arising between the Government of the Republic of Equatorial Guinea and a foreign investor of a company whose project is approved under this Act shall be resolved, as far as possible, through direct negotiations between the parties. If such a dispute cannot be resolved by mutual agreement within a period of three months following the date on which the commencement of such negotiations is requested, the dispute shall be submitted to the courts and tribunals of the State; and in the event of disagreement by one of the parties and prior to the domestic remedies have not been exhausted, the dispute may be referred to an Arbitral Tribunal at the initiative of either party. The Arbitral Tribunal shall be established and shall operate in accordance with one of the following procedures, at the discretion of the claimant: \ 1. Treaties relating to the pro tection of investments con cluded between Equatorial Guinea and the State of which the foreign investor is a national. 2. A conciliation or arbitration agreement entered into by the parties. 3. The Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, , and 4. The 'Supplementary Mechanism' adopted on 17 September 1978 by the Governing Council of the International Centre for the Settlement Disputes concerning Investments, applicable to those cases in which one of the parties does not satisfy the jurisdictional requirements of the Convention referred to in the preceding paragraph. 6 The Government of Equatorial Guinea undertakes, by virtue of this Act, to submit to the jurisdiction of any Arbitral Tribunal established in accordance with this Article. The consent to such jurisdiction on the part of the foreign investor shall be expressly declared at the time of the application for approval of the project. CHAPTER VII ON THE ESTABLISHMENT OF AN INVESTMENT PROMOTION AGENCY Article 15.— For the promotion of private , the Government shall establish an Investment Promotion Centre as an autonomous institution dedicated to the promotion of private investment. Article 16.— The Centre shall have the following functions: 1. To advise the Government on policy regarding private investment, both foreign and domestic, and related matters. 2. To provide investors with useful information on investment opportunities, incentives, the operating conditions for a company, laws and their regulations, administrative procedures, etc. 3. To assist investors in general in resolving problems that arise in their dealings with the Government. , etc. 3. To assist investors in general in resolving any problems that may arise in their dealings with the Government. 4. To selectively promote foreign investment and the involvement of foreigners in private enterprises through publicity, contracts abroad and the provision of information and guidance regarding specialised and specialised national resources, technology, capital and commercial opportunities. Article 17.— The Investment Promotion Centre shall have the following organisational structure: 1. A Board of Directors composed of representatives from the private sector. It shall consist of

five or more members, of whom two shall represent the Government and shall be appointed by the Prime Minister, and three shall represent the private sector, appointed by the Business Association. The Chair and the Deputy Chair shall come from the private sector and shall be elected by a simple majority. The term of office of the Council members shall be two years, renewable; that of the Chair shall be four years. The Council's functions shall be: 1. To review the policy recommendations of the Centre's Executive Director; to review the Centre's annual work programmes, objectives and results; of the Centre; and to collaborate with the Executive Director of the Centre in the organisation of major promotional events and in the mobilisation of technical and financial assistance from abroad. \ 2. An Executive Director, appointed upon the recommendation of the Council and supported by a small team of his or her own choosing, shall be responsible for the day-to-day management of the Centre's operations. They shall receive salaries competitive with the market. Article 18.— The Government shall provide the resources for the Centre's funding and shall supplement, if necessary, such funding with resources from foreign donors or external private sources. TRANSITIONAL PROVISION The preferential regulations and establishment agreements concluded prior to the enactment of this Act in respect of companies carrying out their activities in the Republic of Equatorial Guinea shall remain in force. REPEALING PROVISION Any provisions of equal or lower rank that conflict with this Act are hereby repealed, in particular Decree- 7 Laws Nos. 1/1979, dated 17 November and No. 7/1985, dated 1 June. FINAL PROVISION This Act shall come into force on the same day as its publication in the national media. Given at Malabo, on the thirtieth day of April in the year one thousand nine hundred and ninety-two. FOR A BETTER GUINEA -OBIANG NGUEMA MBASOGO- PRESIDENT OF THE REPUBLIC. Law No. 2/1994, dated 6 June, introducing certain amendments to Law No. 7/1982, dated 30 April, on the Investment Regime in the Republic of Equatorial Guinea.— With the aim of strengthening support for and guarantees of private investment in the country, on 30 April 1982 the Government approved and enacted Law No. 7 of 1982, on the Investment Regime in the Republic of Equatorial Guinea; And, whereas it is necessary to introduce certain amendments to the aforementioned Act so that investors may maximise their benefit from the incentives, privileges and guarantees it affords. Accordingly, on the proposal of the Ministry of Economy and Finance, following deliberation by the Council of Ministers at its meeting held on 11 March 1994, and approved by the Chamber of People's Representatives, People's Representatives, at its Ordinary Plenary Session held in Malabo from 25 April to 24 May of the same year, I hereby enact this Act, which introduces certain amendments to Act No. 7/1982, dated 30 April, on the Investment Regime in the Republic of Equatorial Guinea. CHAPTER ONE ON AMENDMENTS TO THE LAW ON THE INVESTMENT REGIME IN THE REPUBLIC OF EQUATORIAL GUINEA Article 1.— Article 1, paragraphs 2 and 3 of Act No. 7 of 1982, are amended,

by adding, after the words 'abroad' and 'investments', the following text; the relevant paragraphs shall then read as follows: • Paragraph 2.— 'Foreign Investment' , means that made by foreign natural or legal persons, as well as Equatoguan eans legally resident abroad, with funds originating from abroad. • Paragraph 3.— The following are considered to be foreign investments: Article 2.— The text of Article 5, paragraph 1 of Law No. 7 of 1982 is amended, with the following phrases being added: "subject to the approval of the Foreign Investment Authority in accordance with the provisions of paragraph 4 of this article, the Ministry of Economy and deleting the phrase "subject to the approval of foreign investments in accordance with the provisions of paragraph 4 of this article, the Ministry of Economy and Finance", so that the said sub-paragraph now reads as follows. Notwithstanding the fact that foreign investors are subject to subsequent approval, the Ministry of Economy and Finance shall automatically approve all investment projects covered by this Act, provided that such projects are not included on the negative list of reserved activities. Such approvals or rejections shall be granted within 60 days of the submission of the application to the Ministry of Economy and Finance in a form acceptable to the Ministry. Applications shall describe the project and its promoters, providing sufficient background information to satisfy the requirements of paragraph 4 of this article. The application must detail any potential adverse impact on the environment, on the safety of workers or on health arising from the proposed project. It must also set out the specific measures that the promoters will take to prevent or limit such consequences. Foreign investors must also specify in their applications the forum chosen for international arbitration. Article 3.— The text of Article 7, paragraph 1, sub-paragraphs (a), (b), (c), (d) and (e) of Law No. 7 of 1982, dated 30 April, 8 by deleting, respectively, the text of the aforementioned sub-paragraphs, which shall henceforth read as follows: • Sub-paragraph (a) For the creation of new jobs, companies shall benefit . r, an additional reduction in their annual taxable income equivalent to 50 per cent of the total project-related wages paid by the company to its during the relevant tax year. • Sub-paragraph b) For the training of domestic staff, companies shall benefit from a reduction in the calculation of their annual taxable income equivalent to 200 per cent of the non-wage training costs for national employees borne by them during the relevant fiscal year. • Paragraph (c) For the promotion of non-traditional non-traditional exports, companies shall receive a credit certificate towards the payment of any tax or advance payment liability in an amount equivalent to 15 per cent of the foreign currency received in respect of their non-traditional exports at commercial banks in Equatorial Guinea for conversion into local currency. • Paragraph (d) For regional or local development, companies that carry out approved projects in areas or localities areas remote from major urban centres shall benefit from: Full depreciation as a deductible cost in the tax year in which it was incurred, with the right to defer indefinitely into the future all infrastructure expenses paid by the company in the execution of the project, provided that the works are for public or social use, such as bridges, roads, schools, paid by the company in the implementation of the project, provided that the works are for public or social use, such as bridges, roads, schools, health centres or similar works.

I . I I I I I I I I I I I I I ' I I - Exemption from all forms of tax liability, with the ex ception of income tax, sales tax, customs duties and other charges applied to their operations in remote areas. • Sub-paragraph (e) For the participation of Ecuatoguineans in the share capital of the Company, whose projects have been been approved in accordance with this Act, companies shall benefit from a percentage deduction on their income tax rate, in an amount equal to the percentage by which the minimum level of share capital held by the company through domestic investors during the year has exceeded 50 per cent. Article 4.— The text of Article 14 of Act No. 7 of 1982, dated 30 April, is amended by deleting the text in its entirety and replacing it with the following: \ 1. If so requested by a foreign investor in their application for approval of an investment project in accordance with Article 5, the certificate of approval shall provide that any any dispute, litigation, difference or claim arising between the investor and the Government in respect of the approved project which cannot be resolved amicably shall be settled by means of international arbitration. 2. Where a certificate of approval for an investment project provides that disputes shall be resolved through arbitration by the United Nations Commission on International Trade Law in force on the date of issue of the certificate, between the Government and the , in whose name the certificate is issued, for the resolution of disputes by other means shall be deemed to have been agreed. 3. The arbitration clause in a certificate of approval for an investment project shall also be deemed to have been entered into with the 9 consent of both the Government and the holder of the certificate to the arbitral jurisdiction established in the certificate. The award of the Arbitral Tribunal shall be final and binding on both parties. 4. Notwithstanding the provisions of this article, the right of a holder of a certificate of approval shall not be restricted, where such certificate does not require the resolution of disputes through international arbitration, to to pursue the remedies available before the Equatorial Guinean courts or those arising from a bilateral investment protection agreement concluded between Equatorial Guinea and the country of which the holder of holder of a certificate of approval for an investment project. ADDITIONAL PROVISIONS First.— Pursuant to the reorganisation of the various ministerial departments, , the term ‘Ministry of Economy and Finance’ shall be deemed to apply wherever the term ‘Ministry of Planning’ appears in Law No. 7/1982, dated 30 April. Second.— The Ministry of Economy and Finance is authorised to draw up the Regulations for the Implementation of this Act, which shall be submitted to the Government for approval. REPEAL PROVISION Any provisions of equal or lower rank that conflict with this Act are hereby repealed. Given at Malabo, on the sixth day of June in the year one thousand nine hundred and ninety-four. FOR A BETTER GUINEA -OBIANG NGUEMA MBASOGO- PRESIDENT OF THE REPUBLIC. Act No. 6/1990, dated 29 October, on the Special Investment Regime for Small and Medium-sized Enterprises