

OFFICIAL DOCUMENTS

FRANCE-UNITED STATES

CONVENTION OF ESTABLISHMENT, WITH PROTOCOL AND JOINT DECLARATION

*Signed at Paris, November 25, 1959; ratifications exchanged November 21, 1960; in force December 21, 1960*¹

The President of the United States of America and the President of the French Republic, President of the Community, desirous of strengthening the ties of peace and friendship traditionally existing between the two countries and of encouraging closer economic intercourse between their peoples, conscious of the contribution which may be made to these ends by arrangements that provide in each country reciprocal rights and privileges on behalf of nationals and companies of the other country, thus encouraging mutually advantageous investments and mutually beneficial commercial relations, have resolved to conclude a convention of establishment and, for that purpose have appointed as Plenipotentiaries:

The President of the United States of America,

The Honorable AMORY HOUGHTON, Ambassador of the United States of America at Paris,

and the President of the French Republic, President of the Community,

M. MAURICE COUVE DE MURVILLE, Minister of Foreign Affairs,

who, having communicated to each other their full powers, found to be in due form, have agreed on the following Articles:

ARTICLE I

Each High Contracting Party shall accord equitable treatment to nationals and companies of the other High Contracting Party, both as to their persons and as to their property, enterprises and other interests, and shall assure them within its territories full legal and judicial protection.

ARTICLE II

1. Nationals of either High Contracting Party shall, subject to the laws relating to the entry and sojourn of aliens, be permitted to enter the territories of the other High Contracting Party, to travel therein freely, and to reside therein at places of their choice. They shall in particular be permitted to enter the territories of the other High Contracting Party and to remain therein, for the purpose of:

¹ Treaties and Other International Acts Series, No. 4625; 11 U. S. Treaties 2398.

(a) carrying on trade between the territories of the two High Contracting Parties and engaging in related commercial activities;

(b) developing and directing the operations of an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital.

2. Nationals of each High Contracting Party shall enjoy, within the territories of the other High Contracting Party, freedom of conscience, of worship, of information and of the press.

3. The provisions of the present Article shall be subject to the right of either High Contracting Party to take measures that are necessary for the maintenance of public order and for the protection of public health, morals, and safety.

ARTICLE III

1. Nationals and companies of either High Contracting Party shall be accorded national treatment with respect to access to the courts of justice as well as to administrative tribunals and agencies, within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights. Companies of either High Contracting Party not engaged in activities within the territories of the other High Contracting Party shall enjoy such access therein without any requirement of registration. Nationals of either High Contracting Party shall be accorded the benefits of legal aid within the territories of the other High Contracting Party under the same conditions as its own nationals.

2. Contracts entered into between nationals and companies of either High Contracting Party and nationals and companies of the other High Contracting Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of such other High Contracting Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other High Contracting Party. No award duly rendered pursuant to any such contract, and final and enforceable under the laws of the place where rendered, shall be deemed invalid or denied effective means of enforcement within the territories of either High Contracting Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such High Contracting Party.

ARTICLE IV

1. The lawfully acquired rights and interests of nationals and companies of either High Contracting Party shall not be subjected to impairment, within the territories of the other High Contracting Party, by any measure of a discriminatory character.

2. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either High Contracting Party located within the territories of the other High Contracting Party shall be free from molesta-

tion and other unjustifiable measures. Official searches conducted on such premises, when necessary, shall be carried out in conformity with the law and with every consideration for the convenience of the occupants and the conduct of business.

3. Property of nationals and companies of either High Contracting Party shall not be expropriated within the territories of the other High Contracting Party except for a public purpose and with payment of a just compensation. Such compensation shall represent the equivalent of the property taken; it shall be accorded in an effectively realizable form and without needless delay. Adequate provision for the determination and payment of the said compensation must have been made no later than the time of the taking.

4. Nationals and companies of either High Contracting Party shall in no case be accorded, within the territories of the other High Contracting Party, less than national treatment with respect to the matters set forth in paragraphs 2 and 3 of the present Article.

ARTICLE V

1. Nationals and companies of either High Contracting Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activities for gain within the territories of the other High Contracting Party, whether directly or through the intermediary of an agent or of any other natural or juridical person. Accordingly, such nationals and companies shall be permitted within such territories:

(a) to establish and to maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business;

(b) to organize companies under the general company laws of such other High Contracting Party, and to acquire majority interests in companies of such other High Contracting Party;

(c) to control and manage the enterprises which they have established or acquired.

Moreover, the enterprises which they control, whether in the form of an individual proprietorship, of a company or otherwise, shall, in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other High Contracting Party.

2. Each High Contracting Party reserves the right to determine the extent to which aliens may, within its territories, create, control, manage or acquire interests in, enterprises engaged in communications, air or water transport, banking involving depository or fiduciary functions, exploitation of the soil or other natural resources, and the production of electricity.

3. Each High Contracting Party undertakes not to intensify, within its territories, existing limitations as regards enterprises belonging to or controlled by nationals and companies of the other High Contracting Party which are already engaged in the activities cited in the preceding paragraph. Moreover, each High Contracting Party shall permit, within its

territories, transportation, communications and banking companies of the other High Contracting Party to maintain branches and agencies, in conformity with the laws in force, which are necessary to the operations of an essentially international character in which they are engaged.

ARTICLE VI

1. Nationals and companies of either High Contracting Party shall be permitted to engage, at their choice, within the territories of the other High Contracting Party, accountants and other technical experts, lawyers, and personnel who by reason of their special capacities are essential to the functioning of the enterprise. But these persons must fulfill the conditions necessary to the exercise of their calling under the applicable legislation.

2. In any event, such nationals and companies shall be permitted to engage accountants and other technical experts, who are not nationals of the other High Contracting Party, without regard to their having qualified to practice a profession within the territories of such other High Contracting Party, but exclusively for conducting studies and examinations for internal purposes on behalf of such nationals and companies.

ARTICLE VII

1. Nationals and companies of either High Contracting Party shall be accorded, within the territories of the other High Contracting Party, national treatment with respect to leasing, utilizing and occupying real property of all kinds appropriate to the exercise of the rights accorded them by the other Articles of the present Convention. They shall also be accorded therein, as regards the acquisition and possession of real property, all other rights to which aliens and alien companies are entitled under the legislation of such other High Contracting Party, each High Contracting Party reserving the right to invoke reciprocity in this respect.

2. Nationals and companies of either High Contracting Party shall be accorded, within the territories of the other High Contracting Party, national treatment with respect to leasing and acquiring, by purchase or otherwise, as well as with respect to possessing, personal property of every kind, whether tangible or intangible, with the exception of ships. However, either High Contracting Party may impose restrictions on alien ownership of materials dangerous from the viewpoint of public safety and alien ownership of interests in enterprises carrying on particular types of activity, but only to the extent compatible with the enjoyment of the rights and privileges defined in Article V or provided by other provisions of the present Convention.

3. Nationals and companies of either High Contracting Party shall be accorded within the territories of the other High Contracting Party national treatment with respect to the right to dispose of property of all kinds.

ARTICLE VIII

1. Nationals and companies of either High Contracting Party shall be accorded, within the territories of the other High Contracting Party, national

treatment with respect to obtaining and maintaining patents of invention and with respect to rights appertaining to trademarks, trade names and certification marks, or which in any manner relate to industrial property.

2. The High Contracting Parties undertake to cooperate with a view to furthering the interchange and use of scientific and technical knowledge, particularly in the interest of increasing productivity and improving standards of living within their respective territories.

ARTICLE IX

1. The following categories:

(a) nationals of either High Contracting Party residing within the territories of the other High Contracting Party,

(b) nationals of either High Contracting Party not residing within the territories of the other High Contracting Party but engaged in trade or other gainful pursuit within such territories, whether or not through a permanent establishment or a fixed place of business.

(c) companies of either High Contracting Party engaged in trade or other gainful pursuit within the territories of the other High Contracting Party, whether or not through a permanent establishment or a fixed place of business,

(d) associations of either High Contracting Party that are engaged in scientific, educational, religious or philanthropic activities within the territories of the other High Contracting Party, whether through a fixed place of business or otherwise,

shall not be subject to any form of taxation or any obligation relating thereto, within the territories of such other High Contracting Party, which is more burdensome than that to which nationals, companies and associations of such other High Contracting Party in the same situation are or may be subject.

2. Nationals, companies and associations of either High Contracting Party, not falling within one of the categories specified in paragraph 1 above, shall not be subject, within the territories of the other High Contracting Party, to any form of taxation or any obligation relating thereto which is more burdensome than that to which nationals, companies and associations of any third country in the same situation are or may be subject.

3. Enterprises of either High Contracting Party, the capital of which is owned or controlled in whole or in part, directly or indirectly, by one or more nationals of the other High Contracting Party, shall not be subject in the first High Contracting Party to any form of taxation or any obligation relating thereto which is more burdensome than that to which other like enterprises of the first High Contracting Party are or may be subject.

4. The nationals, companies and associations of either High Contracting Party referred to in paragraph 1 (b), (c), and (d) of the present Article shall not be subject, within the territories of the other High Contracting Party, to any form of taxation upon capital, income, profits or any other basis, except by reason of the property which they possess within those

territories, the income and profits derived from sources therein, the business in which they are there engaged, the transactions which they accomplish there, or any other bases of taxation directly related to their activities within those territories.

5. The term "form of taxation," as used in the present Article, includes all taxes of whatever nature or denomination.

6. Each High Contracting Party reserves the right to:

(a) extend to the nationals, companies and associations of third countries, specific tax advantages on the basis of reciprocity;

(b) accord special tax advantages by virtue of agreements with third countries for the avoidance of double taxation;

(c) apply special provisions in allowing, to non-residents, exemptions of a personal nature in connection with income and inheritance taxes;

(d) extend special advantages to its own nationals and residents in connection with joint returns by husband and wife.

7. The foregoing provisions shall not prevent the levying, in appropriate cases, of fees relating to the accomplishment of police and other formalities, if these fees are also levied on other foreigners. The rates for such fees shall not exceed those charged the nationals of any other country.

ARTICLE X

1. Nationals and companies of either High Contracting Party shall be accorded by the other High Contracting Party the same treatment as nationals and companies of such other High Contracting Party in like situations, with respect to payments, remittances and transfers of funds or financial instruments between the territories of the two High Contracting Parties as well as between the territories of such other High Contracting Party and any third country. This treatment shall be not less favorable than that accorded to nationals and companies of any third country in like situations.

2. Neither High Contracting Party shall impose exchange restrictions as defined in paragraph 5 of the present Article except to the extent necessary to prevent its monetary reserves from falling to a very low level or to effect a moderate increase in very low monetary reserves. The provisions of the present Article do not alter the obligations either High Contracting Party may have to the International Monetary Fund or preclude imposition of particular restrictions whenever the Fund specifically authorizes or requests a High Contracting Party to impose such restrictions.

3. The two High Contracting Parties, recognizing that the freedom of movement of investment capital and of the returns thereon would be conducive to the realization of the objectives of the present Convention, are agreed that such movements shall not be unnecessarily hampered. In this spirit, each High Contracting Party will make every effort to accord, in the greatest possible measure, to nationals and companies of the other High Contracting Party the opportunity to make investments and to repatriate the proceeds of the liquidation thereof. This principle shall apply also to

the compensation referred to in Article IV, paragraph 3, of the present Convention. Each High Contracting Party shall make reasonable provision for the withdrawal of earnings from investments, whether in the form of salaries, dividends, interest, commissions, royalties, payments for technical services, or payments for other current transactions relative to investments. If more than one rate of exchange is in force, the rate applicable to such withdrawals shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, a rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

4. Exchange restrictions shall not be imposed by either High Contracting Party in a manner unnecessarily detrimental or arbitrarily discriminatory to the claims, investments, transport, trade, and other interests of the nationals and companies of the other High Contracting Party, nor to the competitive position thereof.

5. The term "exchange restrictions" as used in the present Article includes all restrictions, charges and taxes, regulations, or other requirements imposed by either High Contracting Party which burden or interfere with payments, remittances, or transfers of funds or of financial instruments between the territories of the two High Contracting Parties.

ARTICLE XI

Each High Contracting Party will take the measures it deems appropriate with a view to preventing commercial practices or arrangements, whether effected by one or more private or public commercial enterprises, which restrain competition, limit access to markets or foster monopolistic control, whenever such practices, or arrangements have or might have harmful effects on trade between the two countries.

ARTICLE XII

The provisions of the present Convention shall not preclude the application of measures:

- (a) regulating the importation and exportation of gold and silver;
- (b) regarding fissionable materials, the radio-active by-products of the utilization or manufacture of such materials, or raw materials which are the source of fissionable materials;
- (c) regulating the manufacture of and traffic in arms, munitions and implements of war, as well as traffic in other materials carried on directly or indirectly for the purpose of supplying military establishments;
- (d) necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests.

ARTICLE XIII

The High Contracting Parties may deny to any company, in the ownership or direction of which nationals of a third country or countries have

directly or indirectly a controlling interest, the advantages of the present Convention, except with respect to recognition of juridical status and access to the courts.

ARTICLE XIV

1. The term "national treatment" means treatment accorded to nationals and companies of either High Contracting Party within the territories of the other High Contracting Party upon terms no less favorable than the treatment therein accorded, in like situations, to the nationals and companies, as the case may be, of such other High Contracting Party.

2. National treatment accorded under the provisions of the present Convention to French companies shall, in any State, territory or possession of the United States of America, be the treatment accorded therein to companies constituted in other States, territories and possessions of the United States of America.

3. As used in the present Convention, the term "nationals" ("ressortissants") means natural persons having the nationality of a High Contracting Party and not domiciled in a non-metropolitan territory thereof to which the present Convention does not extend.

4. As used in the present Convention, the term "companies" ("sociétés") means :

(a) as concerns the United States of America, corporations, partnerships, limited liability companies, and other entities having legal personality, whether or not with limited liability, but for pecuniary profit;

(b) as concerns France, "sociétés civiles," "sociétés en nom collectif," "associations en participation," "sociétés en commandite simple," "sociétés en commandite par actions," "sociétés anonymes," "sociétés à responsabilité limitée" and, in general, entities having legal personality for pecuniary profit.

5. Companies constituted under the applicable laws and regulations within the territories of either High Contracting Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other High Contracting Party.

6. Non-profit associations lawfully constituted within the territories of either High Contracting Party shall have their juridical status recognized by the other High Contracting Party and shall, *inter alia*, be accorded within the territories thereof the rights provided in Article III, paragraph 1, of the present Convention.

ARTICLE XV

1. The present Convention shall apply :

(a) As concerns the United States of America, to all territories under the sovereignty or authority thereof, other than the Panama Canal Zone and the Trust Territory of the Pacific Islands;

(b) As concerns the French Republic, to the metropolitan departments, the Algerian departments, the departments of The Oasis and Saoura, the departments of Martinique, Guadeloupe, Guiana and Reunion.

2. The present Convention may be made applicable, by virtue of exchanges of notes between the Governments of the High Contracting Parties, to the Overseas Territories of the French Republic or to one or several such Territories, under the conditions fixed, in each case, in the said exchanges of notes.

3. The present Convention may be made applicable, in the same manner, to the member States of the Community or to one or several such States.

ARTICLE XVI

1. Each High Contracting Party shall accord sympathetic consideration to such representations as the other High Contracting Party may make with respect to any question affecting the application of the present Convention, and shall afford opportunity for an exchange of views relative thereto.

2. Any dispute between the High Contracting Parties as to the interpretation or application of the present Convention, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.

ARTICLE XVII

The entry into force of the present Convention shall terminate the Trade-mark Convention signed at Washington April 16, 1869.¹

ARTICLE XVIII

1. The present Convention shall be ratified. It will enter into force one month after the exchange of the instruments of ratification, which will take place at Washington.

2. The present Convention shall have an initial term of ten years. It shall remain in force thereafter until either High Contracting Party terminates it by giving to the other High Contracting Party a written notice one year in advance.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Convention and have hereunto affixed their seals.

DONE in duplicate, in the English and French languages, both equally authentic, at Paris, this twenty-fifth day of November, one thousand nine hundred fifty-nine.

AMORY HOUGHTON

[SEAL]

M COUVE DE MURVILLE

[SEAL]

PROTOCOL

The undersigned Plenipotentiaries, duly authorized by their respective Governments, are further agreed on the following provisions, which shall form an integral part of the Convention of Establishment between the

¹ Treaty Series 94; 16 Stat. 771.

United States of America and France dated the twenty-fifth of November, one thousand nine hundred fifty-nine.

1. (a) The protection provided in Article I engages the competent authorities of each High Contracting Party to inform immediately the consuls of the other High Contracting Party of the arrest or detention of any of its nationals, if the latter so requests. The consul may then be authorized to visit such national, in conformity with the regulations of the institution of detention, and to confer with him. The competent authority will assure the transmission to the consul of all correspondence directed to him by such national.

(b) Such national shall have the right to all guaranties provided in the laws of the High Contracting Party within the territories of which he is detained, and which assure accused persons of humane treatment, the right to be informed immediately of the accusations against them, to be defended by an attorney of their choice, and to be judged as rapidly as possible.

2. (a) Notwithstanding the provisions of the present Convention, the laws and regulations in force within the territories of either High Contracting Party which govern the access of aliens to the professions and occupations, as well as the exercise of such callings and other activities by them, remain applicable as concerns nationals and companies of the other High Contracting Party.

(b) However, the procedures provided for by the above-mentioned laws and regulations, as well as those provided for by the laws and regulations governing the entry and sojourn of aliens, must not have the effect of impairing the substance of the rights set forth in Article II, paragraph 1 (a) and (b).

(c) The provisions of Article II, paragraph 1 (b), shall be construed as extending to nationals of either High Contracting Party proceeding to the territories of the other High Contracting Party for the purpose of occupying a position of responsibility in an enterprise on behalf of nationals and companies of the first High Contracting Party that have invested a substantial amount of capital in such enterprise or that are in the process of making such an investment.

(d) The advantages accorded a national of either High Contracting Party under the provisions of Article II, paragraph 1 (a) and (b), with respect to entry and sojourn in the territories of the other High Contracting Party, shall extend to his spouse and minor unmarried children who accompany or next follow to join him.

3. The provision of Article III, paragraph 1, relating to access to the courts of justice, shall not affect the regulations in force within the territories of either High Contracting Party concerning the *cautio judicatum solvi*.

4. The provisions of the last sentence of Article III, paragraph 2, shall not affect the reservation concerning the place where the award is rendered, made by France in adhering to the Convention of New York of June 10, 1958 for the recognition and execution of foreign arbitral awards.

5. In Article IV, paragraph 3, the term "expropriated . . . for a public purpose" extends *inter alia* to nationalizations.

6. The provisions of Article IV, paragraph 3, providing for the payment of compensation, shall extend to interests held directly or indirectly by nationals and companies of either High Contracting Party in property expropriated within the territories of the other High Contracting Party.

7. The provisions of Article V, paragraph 1, shall not impair the laws and regulations in force within the territories of either High Contracting Party which reserve the practice of certain professions to nationals.

8. The provisions of Article V, paragraph 1, do not preclude the right of either High Contracting Party to apply special requirements to alien insurance companies to the end that they furnish guaranties, in the interest of insured persons and of third parties, equivalent to those required of companies of the country.

9. The provisions of Article VI, paragraph 2, are adopted with regard to accountancy until such time as it may have become possible to conclude an agreement concerning the exercise of this profession.

10. The right to invoke reciprocity as provided in Article VII, paragraph 1, shall permit the French Government, taking into account the treatment accorded French nationals and companies in a State, territory or possession of the United States of America, to apply analogous treatment to nationals and companies of the United States of America, respectively domiciled in such State, territory or possession or constituted under its laws.

11. In the event that a French national or company, having acquired real property by testate or intestate succession, should be precluded by reason of alienage from enjoying rights of ownership in such property in a State, territory or possession of the United States of America, such national or company will be allowed a period of at least five years in which to dispose of it.

12. The provisions of Article VII, paragraphs 2 and 3, shall not prevent the enforcement of regulations governing transactions on the part of non-residents and aliens in foreign stocks and bonds.

13. The provisions of Article X, paragraph 1, shall not preclude differing treatment from being applied to different currencies, as may be required by the state of the balance of payments of either High Contracting Party.

14. Either High Contracting Party, with a view to protecting its currency or facilitating the servicing of the proceeds of investments and the repatriation of capital, may subject to authorization the making of investments by foreign nationals and companies.

15. The phrase, "in the greatest possible measure," employed in Article X, paragraph 3, shall be understood to refer to the conditions cited in Article X, paragraph 2.

16. Residence criteria may be applied for purposes of determining whether or not nationals and companies of either High Contracting Party are in "like situations" as that term is employed in paragraph 1 of Article XIV and in the other provisions of the present Convention.

17. Article XV does not apply to territories which are subject to the authority of either High Contracting Party solely as a military base or by reason of temporary military occupation.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present protocol and have hereunto affixed their seals.

DONE in duplicate, in the English and French languages, both equally authentic, at Paris, this twenty-fifth day of November, one thousand nine hundred fifty-nine.

AMORY HOUGHTON

[SEAL]

M COUVE DE MURVILLE

[SEAL]

JOINT DECLARATION

The two Governments deem it appropriate to clarify, at the moment of proceeding to the signing of the Convention of Establishment between the United States of America and France, the import of the reservations relating, on the one hand, to the enforcement of the laws governing the entry and sojourn of aliens and, on the other hand, to the enforcement of the laws regulating the access of aliens to the professions and occupations.

It is expressly stipulated in the Protocol to the Convention that those reservations shall not impair the substance of the rights granted to the nationals of either High Contracting Party who have invested a substantial amount of capital or are in the process of making such an investment within the territories of the other High Contracting Party, or who proceed thereto for the purpose of engaging in trade between the two High Contracting Parties.

However, the two Governments also have the intention of facilitating, to the greatest possible extent and on a basis of real and effective reciprocity, the establishment of nationals who are not within the above-cited categories and, in particular, of qualified personnel who are indispensable to the conduct of the enterprises created by nationals and companies of either High Contracting Party within the territories of the other High Contracting Party.

Consequently, and in conformity with the spirit which animated the negotiation of the present Convention, the two Governments consider that they should reciprocally exercise the greatest possible liberality consistent with their national laws both with respect to the entry and sojourn of aliens and with respect to their establishment, effective reciprocity being understood by them as pertaining globally to the whole of the two systems of regulation.

The present Declaration shall be annexed to the Convention of Establishment between the United States of America and France dated the twenty-fifth of November, one thousand nine hundred fifty-nine.

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