

## **CHAPTER TWENTY-SIX**

### **INVESTMENT PROMOTION AND PROTECTION**

#### **ARTICLE 158**

#### ***Scope of Co-operation in Investment Promotion and Protection***

The Member States recognise the need for effective resource mobilisation, investment and the importance of encouraging increased flow of private sector investment into the Common Market for development. To this end, the Member States agree to adopt harmonised macro-economic policies that shall attract private sector investment into the Common Market.

#### **ARTICLE 159**

#### ***Investment Promotion and Protection***

1. In order to encourage and facilitate private investment flows into the Common the Market, Member States shall:
  - (a) accord fair and equitable treatment to private investors;
  - (b) adopt a programme for the promotion of cross-border investment;

- (c) create and maintain a predictable, transparent and secure investment climate in the Member States;
  - (d) remove administrative, fiscal and legal restrictions to intra-Common Market investment; and
  - (e) accelerate the deregulation of the investment process.
2. For the purposes of investment protection, the following activities shall be considered as investment:
- (a) movable and immovable property and other property rights such as mortgages, loans and pledges;
  - (b) shares and any other rights of participation in the management or economic results of a company or a firm, whether incorporated or not, including minority shares, corporate rights and any other kind of shareholding;
  - (c) stocks, bonds, debentures, guarantees or other financial instruments of a company or a firm, government or other public authority or international organisation;
  - (d) claims to money, goods, services or other

performance having economic value;

(e) intellectual and industrial property rights, technical processes, know-how, goodwill and other benefits or advantages associated with a business; and

(f) such other activities that may be declared by the Council as investments.

3. The Member States agree that part of the conducive climate to investment are measures aimed at protecting and guaranteeing such investment. To this end, the Member States shall:

(a) subject to the accepted principle of public interest, refrain from nationalising or expropriating private investment; and

(b) in the event private investment is nationalised or expropriated, pay adequate compensation.

4. For the purposes of paragraph 3 of this Article, expropriation shall include any measures attributable to the government of a Member State which have the effect of depriving an investor of his ownership or control of, or a substantial benefit from his investment and shall be interpreted to include all forms of expropriation such

as nationalisation and attachment as well as creeping expropriation in the form of imposition of excessive and discriminatory taxes, restrictions in the procurement of raw materials, administrative action or omission where there is a legal obligation to act or measures that frustrate the exercise of the investors rights to dividends, profits and proceeds of the right to dispose of the investment.

5. The benefits to private investors include the right to:

- (a) repatriate investment returns including dividends and interest or other equivalent charges;
- (b) repatriate royalties and other payments deriving from licences, franchises, concessions and other similar rights;
- (c) repatriate funds for repayment of loans;
- (d) repatriate proceeds from the liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital;
- (e) payments for maintaining or developing the investment project, such as funds for acquiring raw or auxiliary materials, semi-finished products as well

as replacing capital assets;

(f) remit the earnings of expatriate staff of the investment project; and

(g) the right to enjoy exemption from customs duties and other fiscal exemptions for the period provided for in the investment package of a Member State and depending on the area of investment.

6. The Member States agree that a reasonable period of stability of investment climate is the period required to refinance the investment.

## **ARTICLE 160**

### ***Information on Investment Incentives and Opportunities***

The Member States undertake to increase awareness of their investment incentives, opportunities, legislation, practices, major events affecting investments and other relevant information through regular dissemination and other awareness - promoting activities.

## **ARTICLE 161**

### ***Double Taxation Agreements***

The Member States undertake to conclude between

themselves agreements on the avoidance of double taxation.

## **ARTICLE 162**

### ***Multilateral Investment Agreements***

The Member States agree to take necessary measures to accede to multilateral agreements on investment dispute resolution and guarantee arrangements as a means of creating a conducive climate for investment promotion. To this end, the Member States undertake to accede to:

- (a) the International Convention on Settlement of Investment Disputes Between States and Nationals of Other States, 1965;
- (b) the Convention Establishing the Multilateral Investment Guarantee Agency; and
- (c) any other multilateral agreements designed to promote or protect investment.