

# **AGREEMENT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN**

## **PREAMBLE**

The Government of the Republic of Nicaragua and the Government of the Islamic Republic of Iran hereinafter referred to as the "Parties",

Wishing to intensify economic cooperation to the mutual benefit of both States,

With the purpose of utilizing their economic resources and potential facilities in the area of investments, as well as creating and maintaining favorable conditions for investments by nationals of both Parties in each of their territories, and

Recognizing the need to promote and protect investments by nationals of the territory of the other Party,

Have agreed on the following:

## **Article 1. Definitions**

For the purposes of this Agreement, the meanings of the terms used are as follows:

1. The term "investment" refers to any type of assets and property, including the following, by an investor of one Party in the territory of the other Party in accordance with the laws and regulations of the other Party (hereinafter referred to as the Host Party):

(a) Movable and immovable property and related rights;

(b) Shares or other forms of participation in companies;

(c) Profits, earnings, money and/or accounts receivable;

(d) Intellectual and industrial property rights such as patents; utility models, industrial designs, trademarks, trade names and know-how;

(e) Rights to search for, extract or exploit natural resources.

2. The term "investors" refers to the following persons investing in the territory of the other Party within the framework of this Agreement:

(a) Natural persons who, under the laws of either Party, are considered its nationals and do not have the nationality of the other Party;

(b) Legal persons of each Party that are established under the laws of that Party and their headquarters or economic activities located in the territory of that Party.

3. The term "returns" refers to amounts legally withheld from an investment, including profits derived from investments, dividends, royalties, and fees.

4. The term "territory" means:

With respect to Iran: areas under its sovereignty and jurisdiction, including its maritime areas.

With respect to Nicaragua: the territory of the Republic of Nicaragua, in accordance with its national legislation and

international law.

## **Article 2. Investment Promotion**

1. Each Contracting Party shall encourage its nationals to invest in the territory of the other Party.
2. Each Contracting Party shall, within the framework of its laws and regulations, create favourable conditions for attracting investment of nationals of the other Party into its territory.

## **Article 3. Investment Admission**

1. Each Party shall admit investments from natural and legal persons of the other Party in its territory in accordance with its laws and regulations.
2. When an investment is admitted, either Party shall, in accordance with its laws and regulations, grant all necessary permits for the realization of such investment.

## **Article 4. Investment Protection**

1. Investments of natural and legal persons of either Party made within the territory of the other Party shall receive from the host Party full legal protection and fair treatment no less favourable than that accorded to its investors or to investors of any third state who are in a similar situation.
2. If a Party grants special advantages to investors of a third country pursuant to a treaty concerning the establishment of a free trade area, customs union, common market, economic union or any other form of regional economic organization or pursuant to an agreement relating wholly or mainly to taxation, that Party shall not be obliged to accord such advantages to investors of the other Party.

## **Article 5. Most Favorable Provisions**

Notwithstanding the terms set out in this Agreement, the most favorable provisions that have been or may be agreed by either Party with an investor of the other Party are applicable.

## **Article 6. Expropriation and Compensation**

1. Investments by natural and legal persons of either Party shall not be nationalized, expropriated or subject to similar measures by the other Party except where such measures are carried out in the public interest in accordance with due process of law, in a non-discriminatory manner and are accompanied by prompt, effective and adequate compensation.
2. The amount of compensation shall be equivalent to the market value of the investment immediately before the nationalization or expropriation action was taken or became known.

## **Article 7. Losses**

Investors of either Party whose investments suffer losses due to armed conflict, revolution or a state of emergency in the territory of the other Party shall be accorded by the other Party treatment no less favorable than that accorded to its investors or to investors of any other third state.

## **Article 8. Repatriation and Transfer**

1. Each Party, in accordance with its laws and regulations, shall permit in good faith the following transfers related to investments referred to in this Agreement, to be made freely and without delay outside its territory:
  - (a) Returns;
  - (b) Profits from the sale and/or liquidation of all or part of an investment;
  - (c) Profits and fees related to the transfer of technology agreements;
  - (d) Amounts paid pursuant to Article 6 and/or 7 of this Agreement;

- (e) Installment loans related to an investment provided that they are repaid from such investment activities;
- (f) Wages and monthly salaries received by employees of an investor that has obtained in the territory of the host Party, the corresponding work permits related to such investments.
- (g) Payments arising from a decision of the authority referred to in Article 12.

2. The above transfers shall be made in a freely convertible currency at the current exchange rate in accordance with the exchange regulations prevailing on the date of transfer.

3. Notwithstanding this Article, a Party may delay or prevent a transfer through the application of equitable, non-discriminatory and good faith legislation in the following cases, but not limited to:

- (a) Bankruptcy, insolvency, or protection of the rights of creditors;
- (b) Criminal or administrative offences;
- (c) Ensuring the enforcement of judgments in judicial proceedings;
- (d) Payment of tax obligations;

4. The investor and the host Party may agree on another provision for the repatriation or transfer mechanism referred to in this Article.

## **Article 9. Subrogation**

If a Party or its designated agency, within the framework of a legal system, subrogates an investor in relation to a payment made under an insurance or guarantee agreement against non-commercial risks:

- (a) Such subrogation shall be recognized by the other Party;
- (b) The subrogee shall not exercise any rights other than the rights that the investor would have had to exercise;
- (c) Disputes between the subrogator and the host Party shall be settled in accordance with Article 12 of this Agreement.

## **Article 10. Fulfilment of Commitments**

Each Party shall ensure that the commitments it has agreed upon are respected with respect to investments by natural or legal persons of the other Party.

## **Article 11. Scope of the Agreement**

1. This Agreement shall apply to all investors and investments made by investors of either Party in the territory of the other Party admitted by its laws and regulations, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute or claim concerning an investment that arose before the entry into force of this Agreement.

2. This Agreement shall apply to investments approved by the competent authority of the host Party.

(a) The competent authority in the Islamic Republic of Iran is the: "Investment Organization, Economy and Technical Assistance of Iran (O.I.E.T.A.I)" or any other authority that may succeed it.

(b) The competent authority in the Republic of Nicaragua is the Nicaraguan Investment Committee, in accordance with Law 344 on the Promotion of Foreign Investments and its Regulations.

## **Article 12. Settlement of Disputes between One Party and Investor(s) of the other Party**

1. If any dispute arises between the host Party and the investor(s) of the other Party with respect to an investment, the host Party and the investor(s) shall endeavour principally to resolve the dispute amicably through negotiation and consultation.

2. In the event that the host Party and the investor(s) are unable to reach agreement within six months from the date of the notice of claim by one party to the other, either party may refer the dispute:

- To a competent court of the Party in whose territory the investment is made, or

- To an ad-hoc arbitration tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Except to the extent that those rules have been

(a) Modified by the Parties; or

(b) Modified by the arbitrators, unless either Party objects to the proposed amendment.

3. A dispute which relates principally to the competent courts of the host Party, while it is pending, cannot be referred to arbitration unless the Parties agree; and in the event that a final judgment is to be considered, it cannot be referred to arbitration.

4. National courts shall not have jurisdiction over any dispute referred to arbitration. However, the provisions of this paragraph do not prevent the successful party from seeking enforcement of the arbitration decision before national courts.

5. Subject to other provisions agreed upon by the Parties, the arbitral tribunal shall determine its own procedure and the place of arbitration.

6. The decisions of the arbitral tribunal shall be binding on the Parties. The Parties undertake to implement the decisions in accordance with national law. The Parties to the dispute may seek enforcement of an arbitral award under the New York Convention.

### **Article 13. Settlement of Disputes between the Parties**

1. All disputes arising between the Parties concerning the interpretation or application of this Agreement shall, in the first instance, be settled amicably by consultation. In the event of disagreement, either Party may, in accordance with its laws and regulations, and by sending a notice to the other Party, refer the case to a three-member arbitral tribunal consisting of two arbitrators appointed by the Parties and one principal arbitrator.

2. In case the dispute is referred to the arbitral tribunal, each Party shall appoint an arbitrator within sixty days from the receipt of the notification and the arbitrators appointed by the Parties shall appoint the principal arbitrator within sixty days from the date of the last appointment. If either Party fails to appoint its own arbitrator or if the arbitrators appointed fail to agree on the appointment of the principal arbitrator within the said period, each Party may request the President of the International Court of Justice to appoint the arbitrator of the failing party or the principal arbitrator, as the case may be. However, the principal arbitrator must be a national of a State having diplomatic relations with both Parties at the time of the appointment.

3. In the event that the principal arbitrator is appointed by the President of the International Court of Justice, if the President of the International Court of Justice is unable to perform that function or if he or she is a national of either Party, the appointment shall be made by the Vice-President of the International Court of Justice, and if the Vice-President of the International Court of Justice is unable to perform that function or if he or she is a national of either Party, the appointment shall be made by the senior member of that court who is not a national of either Party.

4. Subject to other provisions agreed by the Parties, the arbitral tribunal shall determine its own procedure and the place of arbitration.

5. Unless the court decides otherwise, and taking into account the individual circumstances, the costs of the arbitration, including the arbitrators' fees, shall be divided equally between the Parties.

6. The decisions of the arbitral tribunal shall be binding on the Parties.

### **Article 14. Agreement's Validity**

1. This agreement shall be approved/ratified by the competent authority of each Party in accordance with its laws and regulations.

2. This Agreement shall remain in force for a period of ten years after 30 days from the date of the last notification through diplomatic means by either Party to the other Party that it has completed the necessary procedures in accordance with its laws and regulations for the entry into force of this Agreement. After such period, this Agreement shall remain in force unless either Party notifies the other Party in writing of its termination. In this case, the Agreement shall be deemed to have been terminated six months after such period.

3. After the expiration of the term or termination of this Agreement, its provisions shall apply to investments under this Agreement for an additional period of ten years.

4. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall form an integral part of this Agreement and shall enter into force under the same procedures required for the entry into force of this Agreement.

## **Article 15. Language and Number of Texts**

This Agreement, which contains a preamble and fifteen articles, is made in duplicate in the Persian, Spanish and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

Signed in Tehran, Islamic Republic of Iran, on 10 August 2019, corresponding to 19 Mordad 1398, by representatives of the Government of the Islamic Republic of Iran and the Government of the Republic of Nicaragua.

For the Government of the Republic of Nicaragua

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