

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF HAITI ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Haiti, hereinafter referred to as "the Contracting Parties",

Desiring to increase economic co-operation between the two States and to create favourable conditions for French investments in Haiti and Haitian investments in France,

Convinced that the promotion and protection of such investments are likely to stimulate transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

1. The term "investments" shall apply to such assets as all categories of property, rights and interests, particularly but not exclusively:

(a) Movable and immovable property and all other proprietary rights such as mortgages, preferences, usufructs, sureties and similar rights;

(b) Shares, premiums on shares and other forms of participation, albeit minority or indirect, in companies organized in the territory of either Contracting Party in accordance with the provisions of paragraph 3 below;

(c) Debentures, claims and rights to any benefits having an economic value;

(d) Copyright, industrial property rights (such as patents for inventions, licences, trade marks, industrial designs), technical processes, registered trade names and good-will;

(e) Concessions accorded by law or by virtue of a contract, including concessions for agriculture, prospecting, mining or developing natural resources including those which are located in the maritime zones of the Contracting Parties, as specified in paragraph 5 of this article,

It is understood that such assets shall be or shall have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime zones the investment is made, before or after the entry into force of this Agreement.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary to the legislation of the State in whose territory or maritime zones the investment is made.

2. The term "nationals" shall apply to individuals having the nationality of either Contracting Party, in accordance with their relevant legislation.

3. The term "companies" shall apply to:

(a) Any body corporate organized in the territory of either Contracting Party in accordance with its legislation and having its registered office there; or

(b) Any body corporate which is directly or indirectly controlled by nationals of either Contracting Party or by bodies corporate having their registered office in the territory of either Contracting Party and organized in accordance with the legislation of that Party.

In the cases referred to in subparagraph b) above, the status as a company of a Contracting Party shall be recognized in advance by the Contracting Party in whose territory or maritime zones the investment is made. Should that status not be recognized, the two Contracting Parties shall consult with each other in order to reach a mutually acceptable solution.

4. The term "income" shall apply to any proceeds from an investment, such as profits, royalties or interest, for a given period.

5. The term "maritime zones" shall apply to sea zones and undersea zones over which the Contracting Parties exercise, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2.

Each Contracting Party shall allow and promote, in accordance with the legislation and the provisions of this Agreement, investments in its territory and maritime zones by nationals and companies of the other Party.

Article 3.

Each Contracting Party shall undertake to grant in its territory and maritime zones just and equitable treatment in accordance with its legislation, and in compliance with the principles of international law, to the investments of nationals and companies of the other Party and to ensure that the exercise of the right so granted is not impeded either de jure or de facto.

Article 4.

Each Contracting Party shall apply in its territory and maritime zones, to the nationals or companies of the other Party, in respect of their investments and activities related to those investments, the treatment accorded to its nationals or companies, or the treatment accorded to nationals or companies of the most favoured nation, if the latter is more advantageous. In this regard, nationals authorized to work in the territory and maritime zones of either Contracting Party shall be accorded every facility for the conduct of their professional activities.

This treatment shall not, however, include privileges granted by either Contracting Party by virtue of its participation in or association with a free trade area, customs union, common market or any other regional economic organization to nationals or companies of third States.

Article 5.

1. Investments made by nationals or companies of either Contracting Party shall enjoy in the territory of the other Contracting Party, full protection and security.

2. Neither Contracting Party shall take measures of expropriation or nationalization or any other measures the effect of which would be to dispossess, directly or indirectly, the nationals or companies of the other Party of any investment belonging to them in its territory or maritime zones, except on the grounds of the public interest and provided these measures are not discriminatory and are in accordance with the provisions of article 10.

Dispossession measures which may be taken shall give rise to the payment of prompt and suitable compensation, the amount of which shall be calculated on the full and real value of the investment concerned. The assessment of this amount shall not be affected by any reduction in the market value which may result from public knowledge or an official announcement of a dispossession or from measures having a similar effect which are taken by the Contracting Party in whose territory or maritime zones the investment is made.

This compensation, its amount and the payment conditions shall be fixed no later than the day of the dispossession. It shall be effectively realizable, paid without delay and freely transferable. Until the date of payment, it shall yield interest calculated at the rate of interest agreed by the Contracting Parties.

3. The investors of one Contracting Party whose investments have suffered losses due to war or to any other armed conflict, revolution, national emergency or revolt occurring in the territory or maritime zones of the other Contracting Party shall receive from the latter Party a treatment no less favourable than that granted to its own investors or to those of the most favoured nation. In any event, they shall receive adequate compensation.

Article 6.

Each Contracting Party in whose territory or maritime zones investment has been made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:

- (a) Interest, dividends, benefits and other current returns;
- (b) Royalties deriving from intangible rights specified in paragraphs 1 (d) and (e) of article 1;
- (c) Payments for the settlement of lawfully contracted loans;
- (d) Proceeds from the conveyance or the total or partial liquidation of the investment, including the appreciation or increase of the invested capital;
- (e) Compensation for dispossession or loss as provided for in article 5, paragraphs 2 and 3 above.

The nationals of each Contracting Party authorized to work in the territory or maritime zones of the other Contracting Party in relation to an agreed investment shall also be authorized to transfer to their country of origin their remuneration without prejudice to their obligations towards the last-mentioned Party resulting from the equitable, non-discriminatory and application of the domestic legislation of that Party.

The transfers referred to in the preceding paragraphs shall be effected within a reasonable time, in accordance with international financial practice, at the normal rate of exchange officially applicable on the date of transfer.

Article 7.

When the regulations of either Contracting Party provide for a guarantee for investments made abroad, this guarantee may be granted, within the framework of an examination made case by case, to investments made by nationals or companies of that Party in the territory or maritime zones of the other Party.

The investments of nationals or companies of either Contracting Party in the territory or maritime zones of the other Party may not obtain the guarantee referred to in the above paragraph unless they have previously obtained the agreement of the last-mentioned Party.

Article 8.

Disputes concerning investments between either Contracting Party and a national or company of the other Contracting Party shall, if possible, be settled by amicable agreement between the two Parties concerned.

If such a dispute cannot be settled within six months of the date on which the question was raised by either Party to the dispute, a final settlement shall be made at the request of either Party in accordance with the rules of conciliation or arbitration of the International Chamber of Commerce. The arbitral award shall be binding on the Parties.

Article 9.

If one Contracting Party, pursuant to a guarantee given for an investment in the territory of the other Party, makes payments to one of its nationals or companies, it shall thereby be subrogated to the rights and shares of such national or company.

Such payments shall not affect the rights of the recipient of the guarantee to have recourse to the arbitration procedure provided for in the preceding article or to pursue actions introduced in that context until the outcome of the proceedings.

It shall remain understood that these actions shall be undertaken either by the recipient of the guarantee or by the surrogate or by the two jointly.

Article 10.

Each Contracting Party shall ensure that its special investment commitments with respect to the nationals or companies of the other Party are in accordance with the provisions of this Agreement.

If a more favourable special commitment is or has been granted to a national or a company for an investment, the more favourable treatment shall govern that investment, without prejudice to the provisions of this Agreement, the more favourable treatment being applied.

Article 11.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through the diplomatic channel.
2. If the dispute is not settled within six months of the date on which the question was raised by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an Arbitral Tribunal.
3. The said Tribunal shall be composed for each particular case, as follows: Each Contracting Party shall designate one member, and the two members shall designate, by mutual agreement, a national of a third State who shall be appointed chairman by the two Contracting Parties. All members shall be appointed within two months from the date on which either Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.
4. If the time-limits set forth in paragraph 3 above have not been complied with, either Contracting Party shall, in the absence of any other applicable agreement, request the Secretary-General of the Permanent Court of Arbitration at the Hague to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise unable to discharge this function, the clerk of the court shall make the necessary appointments.
5. The Arbitral Tribunal shall take its decisions by majority. These decisions shall be final and legally binding on the Contracting Parties.

The Tribunal shall determine its own rules of procedure. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal should provide otherwise, in view of special circumstances, legal expenses, including judges' fees, shall be shared equally between the two Governments.

Article 12.

Each of the Parties shall notify the other of the completion of the internal procedures required for this Agreement to take effect. It shall enter into force one month after the date of the final notification.

The Agreement is concluded for an initial period of 10 years; it shall remain in force thereafter unless it is denounced through the diplomatic channel by either Contracting Party on notice of one year.

After the expiry of the period of validity of this Agreement, investments made while this Agreement was in force will continue to enjoy the protection of its provisions for an additional period of 10 years unless a special commitment provides for an additional longer period.

Article 13.

This Agreement shall abrogate and replace the Convention between the two Parties on the Protection of Investments concluded at Port-au-Prince on 2 July 1973.

Done at Paris on 23 May 1984 in duplicate.

For the Government of the French Republic

Christian Nucci

For the Government of the Republic of Haiti:

Jean-Robert Estimé

I.

Mr President,

I have the honour to refer to the Agreement on the Reciprocal Promotion and Protection of Investments concluded this day between the Government of the Republic of Haiti and the Government of the French Republic, and to precise you that the interpretation of this Agreement is as follows:

1. As regards article 3:

(a) The following shall be deemed to be de jure or de facto impediments to just and equitable treatment: any restriction on the purchase and transport of raw materials and indirect materials, energy and fuels and means of production and operation of any kind, any restriction on the sale and transport of products domestically and abroad and any other measures having a similar effect.

(b) The Contracting Parties shall, in accordance with their internal legislation, give favourable consideration to requests for entry and permission to reside, work and travel made by nationals of either Contracting Party for investment purposes in the territory of the other Contracting Party.

2. As regards article 5:

The rate of interest agreed by the Contracting Parties is the official rate of interest of the special drawing rights as established by the International Monetary Fund.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Mr President, the assurances of my highest consideration.

Christian Nucci

Chairman of the Delegation of France

II.

Mr President

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

"I have the honour to refer to the Agreement on the Reciprocal Promotion and Protection of Investments concluded this day between the Government of the Republic of Haiti and the Government of the French Republic, and to precise you that the interpretation of this Agreement is as follows:"

1. "As regards article 3:"

(a) "The following shall be deemed to be de jure or de facto impediments to just and equitable treatment: any restriction on the purchase and transport of raw materials and indirect materials, energy and fuels and means of production and operation of any kind, any restriction on the sale and transport of products domestically and abroad and any other measures having a similar effect."

(b) "The Contracting Parties shall, in accordance with their internal legislation, give favourable consideration to requests for entry and permission to reside, work and travel made by nationals of either Contracting Party for investment purposes in the territory of the other Contracting Party."

2. "As regards article 5:"

"The rate of interest agreed by the Contracting Parties is the official rate of interest of the special drawing rights as established by the International Monetary Fund."

I have the honor to confirm the agreement of my Government with the foregoing.

Please accept, Mr President, the assurances of my highest consideration.

Jean-Robert Estimé

Chairman of the Delegation of Haiti