

Agreement between the Swiss Confederation and the Republic of Nicaragua on the Promotion and Reciprocal Protection of Investments

Preamble

The Swiss Federal Council and the: Government of the Republic of Nicaragua, hereinafter referred to as the « Contracting Parties »

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

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to:

- (a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- (b) Legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;
- (c) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

(2) The term "investments" shall include every kind of assets and particularly:

- (a) Movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;
- (b) Shares, parts or any other kinds of participation in companies;
- (c) Claims to money or to any performance having an economic value;
- (d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;
- (e) Concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

(3) The term "territory" means the territory of each Contracting Party and includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2. Promotion, Admission

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations,

(2) When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorisations concerning the activities of Consultants and other qualified persons of foreign nationality.

Article 3. Protection, Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments. In particular, each Contracting Party shall issue the necessary authorizations mentioned in Article 2, paragraph (2) of this Agreement.

(2) Each Contracting Party shall ensure fair-and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 4. Free Transfer

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, particularly of

(a) Interests, dividends, benefits and other current returns;

(b) Repayments of loans;

(c) Amounts assigned to cover expenses relating to the management of the investment;

(d) Royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;

(e) Additional contributions of capital necessary for the maintenance or development of the investment;

(f) The proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values.

Article 5. Dispossession, Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation; The amount of compensation, interest included, shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereto without regard to its residence or domicile.

(2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, resolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 3, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other settlement.

Article 6. Pre-agreement Investments

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to its entry into force. It shall, however, not be applicable to disputes which have arisen prior to its entry into force.

Article 7. More Favourable Provisions

Notwithstanding the terms set forth to the present Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

Article 8. Principle of Subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 10 of this Agreement (Disputes) between Contracting Parties), consultations will take place between the parties concerned.

(2) If these consultations do not result in a solution within six months from the date of request for consultations and if the investor concerned gives a written consent, the dispute shall be submitted to the arbitration of the International Centre for Settlement of Investment Disputes, instituted by the Convention of Washington of March 18, 1965, for the settlement of disputes regarding investments between States and nationals of other States. Each party may start the procedure "by addressing a request to that effect to the Secretary-General of the Centre as foreseen by Article 28 and 36 of the above-mentioned Convention. Should the parties disagree on whether the conciliation or arbitration is the most appropriate procedure, the investor concerned shall have the choice. The Contracting Party which is party to the dispute can, at no time whatsoever during the settlement procedure or the execution of the sentence, allege the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

(3) A company which has been incorporated or constituted according to the laws in force on the territory of the Contracting Party and which, prior to the origin of the dispute, was under the control of nationals or companies of the other Contracting Party, is considered, in the sense of the Convention of Washington and according to its Article 25 (2) (b), as a company of the latter.

(4) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to the arbitration of the Centre, unless

(a) The Secretary-General of the Centre or a commission of conciliation or an arbitral tribunal decides that the dispute is beyond the jurisdiction of the Centre, or

(b) The other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal

Article 10. Disputes between Contracting Parties

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall, be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is

prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 11. Observance of Commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 12. Final Provisions

(1) This Agreement shall enter, into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done at Managua, on the 20th of November, 1998, in six originals, two in French language, two in Spanish language and two in English language, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Swiss Federal Council

N. Fonhoden

For the Government of the Republic of Nicaragua

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