

AGREEMENT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF PANAMA AND THE DOMINICAN REPUBLIC

The Government of the Republic of Panama and the Government of the Dominican Republic (hereinafter referred to as the Contracting Parties);

Desiring to enhance cooperation in the interests of both Contracting Parties;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, involving transfers of capital;

Recognizing that the reciprocal promotion and protection of investments under a bilateral agreement stimulate the flow of capital and private initiatives in this field, increasing prosperity of both nations.

Have decided and agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term "investor" designates the following subjects who has made investments in the territory of the other Contracting Party in accordance with this Agreement:

- a) Natural or natural persons who, according to the law of that Contracting Party, are considered to be nationals of the same;
- b) Legal entities, including companies, corporations, business associations or any other entity constituted under the laws of the other Contracting Party where the investment takes place, as well as their effective economic activities in the territory of that Contracting Party;
- c) Legal entities constituted under the law of any country that are directly or indirectly controlled by nationals of that Contracting Party or by legal entities, whose headquarters is located in the territory of that same Contracting Party, where the Entity has also effective economic activity.

2. The term "investment" means every kind of assets or rights related thereto, provided that it is carried out in accordance with laws and regulations of the Contracting Party in whose territory they are undertaken, and shall include in particular, though not exclusively:

- a) Movable and immovable property law on them as well as other rights in rem, such as mortgages, usufructs and clothing;
- b) Actions and social quotas and any other participation having economic value in companies;
- c) Rights of claim or any other performance having economic value;
- d) Intellectual Property Rights, including copyrights, industrial property rights, such as patents, technical processes, trade marks or trade names, trademarks, industrial designs, business names, know-how and right of key;
- e) Concessions conferred by law, by an administrative act or under a contract, including concessions to cultivate, extract, explore or exploit natural resources.

Any change in the form in which assets are reinvested shall not affect their character as investments provided that such change is made in accordance with the legislation of the Contracting Party in whose territory the investment has been made.

3. The term "returns" means income deriving from an investment or linked to it, and includes profits, dividends, interests,

capital gains, royalties, fees and payments in kind.

4. The term "territory" includes, in addition to the land, sea and air space under the sovereignty of each Contracting Party, marine and submarine areas over which they exercise sovereign rights and jurisdiction in accordance with their respective laws and international law.

Article II. Scope

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. However, it shall not apply to differences or disputes which have arisen prior to its validity or directly related to events before its Entry into Force.

Article III. Admission, Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of investment, encourage investments in its territory of investors of the other Contracting Party, shall contribute to the development and smooth shall admit in accordance with its legislation.

2. 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 hinder the management, maintenance, use, enjoyment, extension and sale and liquidation of such investments by unreasonable or discriminatory measures.

Article IV. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of investors of the other Contracting Party and shall ensure that the exercise of the rights recognized shall not be hindered in practice.

2. Each Contracting Party shall accord to investments of investors of the other contracting party in its territory treatment no less favourable than that accorded to its own of investments or investors to investors of any third country, whichever is more favourable treatment.

3. Where a contracting party grants special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union, economic union, a common market or other form of regional economic organization or any multilateral international agreements concluded in the framework of an international organisation of which the Contracting Parties are members, as well as any international agreement designed to facilitate trade and cross-border frontier, which it belongs to that Contracting Party at present or future membership in or by virtue of any agreement relating wholly or mainly to taxation matters, that Party shall not be obliged to accord such advantages to investors of the other contracting party.

Article V. Free Transfer

1. Each Contracting Party shall, without delay, to investors of the other Contracting Party the free transfer of funds related to investments, in a freely convertible currency, in particular, though not exclusively:

- a) Dividends, interests, income, profits and other income;
- b) Repayments of loans from abroad in connection with an investment;
- c) The capital or the proceeds of the total or partial sale or liquidation of an investment;
- d) The proceeds of the settlement of a dispute and compensation in accordance with this Agreement.

2. Transfers shall be made in accordance with the rate of exchange prevailing on the date of transfer, according to the Law of the Contracting Party which has admitted the investment once tax obligations.

3. A transfer shall be deemed to be made without delay "when it has been made within the period normally necessary for the completion of the formalities of transfer pursuant to the exchange regulations in force, and the availability of currencies at the market exchange rate of the Contracting Parties.

4. Notwithstanding paragraphs 1, 2 and 3 of this article, a Party may prevent a transfer through the equitable and non-discriminatory application of its laws in the following cases:

- a) Bankruptcy or insolvency or the protection of the rights of creditors;
- b) Criminal or administrative offences based on final judgements;
- c) A breach of the obligations in accordance with the legislation in force in the host Party of the investment;
- d) Guarantees for the enforcement of judgements in contentious proceedings;
- e) In normal situations of exceptional difficulties or serious balance of payments, in accordance with article XII of the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO), concerning restrictions to safeguard the balance of payments.

Article VI. Expropriation and Compensation

1. Neither of the Contracting Parties shall take measures of expropriation or nationalization, which deprives an investor directly or indirectly, of the other contracting party of its investment, except for reasons of public purpose or social interest and provided that a prompt, effective and adequate compensation. The expropriation shall be carried out under due process of law without discrimination and in accordance with the legal procedures of the receiving party of the investment.
2. The compensation shall be based on the market value of the investments have affected at the time immediately preceding the date on which the measure was taken or has become public knowledge the impending expropriation, whichever occurs first and shall include interest at the market rate of interest, determined by reference to the International Financial Statistics published by the International Monetary Fund apply from the date of expropriation until the date of payment, and shall be freely transferable and convertible.
3. Investors of one contracting party affected by expropriation shall have a right to a prompt review by a judicial authority of the other contracting party of its case and of the evaluation of their investments in accordance with the principles set out in this article.

Article VII. Compensation for Losses or Damages

Investors of either Contracting Party whose investments in the territory of the other contracting party are damage or loss owing to war, armed conflict, a national state of emergency, civil disturbance or other similar events in the territory of the other Contracting Party, shall receive from this latter, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that accorded to its own investors or of any third State.

Article VIII. Subrogation

1. If a Contracting Party or an agency authorised by it has granted an insurance or other financial guarantee against non-commercial risks with 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 of subrogation to 1.0s rights, when the investor has made a payment under such insurance or guarantee.
2. If a Contracting Party has paid to an investor and it has assumed its rights and benefits, such an investor may not claim their rights and benefits to the other Contracting Party, except with the express authorization of the first contracting party.

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

1. Disputes arising under this agreement between one Contracting Party and an investor of the other Contracting Party which has made investments in the territory of the first, shall, as far as possible, be settled through amicable negotiations.
2. Where such negotiations do not produce a settlement within six (6) months from the date of request for settlement, the investor may submit the dispute to:
 - a) The competent courts of the Contracting Party in whose territory the investment was made; or
 - b) An ad hoc tribunal which, unless the parties to the dispute agree otherwise, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - c) To international arbitration of the International Centre for Settlement of Investment Disputes), established by the Agreement on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at

Washington on 18 March 1965; or

d) To arbitration by the additional facility of the (ICSID), if only one of the contracting parties is a member of the Convention referred to in paragraph (c) of this article.

3. Each Contracting Party consents to advance and irrevocably any difference that may be subject to one of the arbitral tribunals mentioned in subparagraphs (b), (c) and (d) above.

4. Once the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been made or to one of the arbitral tribunals referred to above, the choice of one or other of the procedure shall be final.

5. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment has been made.

6. The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes are completed, except where the other party in the dispute has not complied with the court decision or the decision of the arbitral tribunal, under the terms established in the respective decision or award.

Article X. Settlement of Disputes between the Contracting Parties

1. Any dispute arising between the contracting parties concerning the interpretation and application of this Agreement shall be settled as far as possible through diplomatic negotiations.

2. If an agreement cannot be achieved within six (6) months from the date of notification of the dispute, either Contracting Party may submit it to an ad hoc tribunal, in accordance with the provisions of this article.

3. The arbitral tribunal shall consist of three members and shall be constituted in the following manner: (2) within two months after the date of notification of the request for arbitration, each Contracting Party shall appoint an arbitrator. Those two arbitrators within thirty (30) days after the appointment of the last one, shall select a third member who shall be a national of a third State, who shall chair the Tribunal. The designation of the Chairman shall be approved by the Contracting Parties within thirty days after the date of his nomination.

4. If within the periods specified in paragraph 3 of this article, the appointment has not been made or required the approval has been granted, either Contracting Party may request the President of the International Court of Justice to make the appointment. If 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 Vice-President shall make the appointment, and if the latter is prevented or is a national of either of the Contracting Parties, the judge of the Court who in seniority who is not a national of one of the Contracting Parties shall make the appointment.

5. The President of the Tribunal shall be a national of a third State with which both contracting parties maintain diplomatic relations.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles of international law and applicable general principles of law recognized by the contracting parties. The Tribunal shall decide by a majority of votes and shall determine its own procedural rules.

7. Each Contracting Party shall bear the costs of the arbitrator, as well as those relating to its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the proceedings shall be settled in equal parts by the contracting parties unless they agree otherwise.

8. The decisions of the Tribunal shall be final and binding on both contracting parties.

Article XI. Transparency and Consultations

1. The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

2. Both Contracting Parties shall, within the extent possible to its laws and regulations, which may affect the investments of investors of the other Contracting Party in the territory of the first Contracting Party shall promptly publish so as to enable interested parties had knowledge thereof.

Article XII. Application of other Special Rules and Commitments

If the provisions of law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Agreement contain rules) whether general or specific to accord to investments by investors of the other contracting party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail over the present Agreement.

Article XIII. Final Provisions

1. The Contracting Parties shall notify each other the fulfilment of their constitutional requirements for the Entry into Force of this Agreement. This Agreement shall enter into force forty five (45) days after the last notification.
2. It shall remain in force for an initial period of ten (10) years and shall be automatically renewed for further periods of equal length, except that the agreement is denounced.
3. After ten (10) years, either Contracting Party may denounce this Agreement by a written notification, done at least six (6) months before its expiration.

In the event of a complaint, the provisions of articles 1 to article XII to this Agreement shall continue to apply to investments made before the date of the complaint, for a further period of ten (10) years.

Done in Santo Domingo de Guzmán, capital of the Dominican Republic, within six (6) days of February 2003, in duplicate in the English language, both texts being equally authentic.

BY THE GOVERNMENT OF THE REPUBLIC OF PANAMA

JOAQUIN JÁCOME DIEZ

Minister for Trade and Industry

BY THE GOVERNMENT OF THE DOMINICAN REPUBLIC

HUGO TOLENTINO DIPP

Secretary of State for Industry and Foreign Affairs