

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN ON RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

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

Wishing to strengthen economic cooperation between the two states and to create favourable conditions for French investments in Azerbaijan and Azerbaijani investments in France,

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer 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 "investment" means all assets, such as property rights and interests of all kinds, and particularly but not limited to:

- a) movable and immovable property as well as any other rights in rem such as mortgages, liens, usufructs, deposits and similar rights;
- b) shares, stocks and other forms of participation, even minority or indirect, in companies incorporated in the territory of one of the Contracting Parties,
- c) obligations, rights, and claims to any performance having economic value;
- d) intellectual, commercial and industrial property rights, such as copyrights, patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how and goodwill;
- e) concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources including those situated in the territories referred to in the protocol attached to this Agreement.

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

Any alteration of the form in which assets are invested shall not affect their classification as an investment, provided that such change is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

2. The term "national" means natural persons having the nationality of one of the Contracting Parties.

3. The term "companies" means any juridical person in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office or controlled directly or indirectly by nationals of either Contracting Party, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

4. The term "returns" means all amounts yielded by an investment interests, such as profits, royalties or during a period of time.

Investment returns and in case of reinvestment, returns from their reinvestment shall enjoy the same protection as the investment.

Article 2.

Each Contracting Party recognizes and encourages, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other Contracting Party in its territory.

Article 3.

Each Contracting Party undertakes to provide, in its territory, fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other Contracting Party and to ensure the enjoyment of the right thus recognized is hampered in either law or in fact. In particular, though not exclusively, shall be regarded as barriers of fact or law in fair and equitable treatment, any restriction to purchase and transport of raw materials and auxiliary materials, energy and fuel and means of production or operation of any kind, interference with the sale and transport of goods within the country and abroad, as well as any other measures having a similar effect.

The Contracting Parties shall consider sympathetically, within the framework of their domestic law, applications for entry and residence permits, and movement of nationals of one Contracting Party in respect of an investment in the territory of the other Contracting Party.

Article 4.

Each Contracting Party shall apply in its territory to the nationals or companies of the other Party, in respect of their investments and activities related to such investments, treatment not less favourable than that accorded to its nationals or companies, or treatment accorded to the nationals or companies of the Most-Favoured-Nation, whichever is more favourable. In this connection, nationals authorised to work in the territory of one of the Contracting Parties shall be entitled to benefit from appropriate material facilities for the exercise of their professional activities.

Such treatment shall not, however, extend to privileges granted by a Contracting Party to nationals or companies of a third State by virtue of its participation in or association with a free trade area, customs union, common market or any other form of regional economic organisation.

The provisions of this Article shall not apply to fiscal matters.

Article 5.

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

2. The Contracting Parties shall not take measures of expropriation or nationalization or any other measures the effect of which is to deprive, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory, except in the public interest and provided that such measures are neither discriminatory nor contrary to a specific commitment.

Any measures of possession which may be taken must give rise to the payment of prompt and adequate compensation, the amount of which, equal to the real value of the investments concerned, must be assessed in relation to a normal economic situation prior to any threat of possession.

Such compensation, its amount and the terms of payment shall be fixed no later than the date of dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It produces, until the date of payment, interest calculated at the appropriate market interest rate.

3. Nationals or companies of one of the Contracting Parties whose investments have suffered losses due to war or another armed conflict, revolution, state of national emergency or revolt in the territory of the other Contracting Party, shall receive from the latter Party treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6.

Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:

a) returns, dividends, interests and other current income;

- b) royalties arising out of intangible rights referred to in paragraph 1, subparagraphs (d) and (e) of article 1;
- c) payments made for the reimbursement of loans contracted regularly;
- d) the proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) compensation of dispossession or loss as provided for in article 5, paragraphs 2 and 3 above.

The nationals of either Contracting Party who have been authorised to work in the territory of the other Contracting Party in respect of an approved investment shall also be authorised to transfer an appropriate proportion of their remuneration to their country of origin.

The transfers referred to in the preceding paragraphs shall be effected without delay formally at the normal rate of exchange applicable on the date of transfer.

Article 7.

To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, for investments made by nationals or companies of that Party in the territory of the other Party.

Investments by nationals and companies of one of the Contracting Parties in the territory of the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the agreement of the latter Party.

Article 8.

Any investment dispute between a Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties concerned.

If such a dispute has not been settled within a period of six months from the date on which it was raised by one of the parties to the dispute, it shall be submitted at the request of either party to the dispute to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on 18 March 1965.

Article 9.

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

The said payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the ICSID or to pursue the actions brought before it until the conclusion of the procedure.

Article 10.

Investments which have been the subject of a special undertaking by one of the Contracting Parties to nationals and companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking to the extent that it contains more favourable provisions than those provided for in this Agreement.

Article 11.

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.
2. If within six months from the time at which it was raised by either Contracting Party, the dispute is not settled, it shall be submitted, at the request of either Contracting Party to an arbitral tribunal.
3. The Tribunal shall be constituted for each individual case in the following way: each Contracting Party shall appoint one member and these two members shall designate by common agreement, a national of a third State who shall be appointed Chairman of the Tribunal by both Contracting Parties. All members shall be appointed within two months from the date one

Contracting Party has informed the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party, in the absence of any other agreement, may invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and enforceable automatically to the Contracting Parties.

The court itself determines its own rules. It shall interpret the award at the request of either Contracting Party. Unless otherwise provided by the Tribunal, taking into account special circumstances, the costs of the arbitral proceedings, including the fees of the arbitrators, shall be divided equally between the Contracting Parties.

Article 12.

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This Agreement is concluded for an initial period of ten years. It shall remain in force after the term unless one of the Contracting Parties denounces it through diplomatic channels with one year notice.

On expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of twenty years.

Done in Baku on 01/09/1998 in two originals, one in French, one in Azerbaijani and one in Russian, the French and Azerbaijani texts being equally authentic.

For the Government of the French Republic

For the Government of the Republic of Azerbaijan