

# **Agreement between the Government of the French Republic and the Government of the Republic of Nicaragua on the reciprocal encouragement and protection of investments**

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

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investment in Nicaragua and Nicaraguan investment in France,

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

Have agreed on the following provisions:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights and interests of any kind and, more particularly but not exclusively:

(a) Movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, bonds and all similar rights;

(b) shares, stock premiums and other forms of participation, even minority or indirect, in companies incorporated in one of the contracting parties

(c) Bonds, debts duly contracted and rights to any benefits of economic value;

(d) intellectual, commercial and industrial property rights, such as copyrights, patents, licenses, trademarks, industrial designs and models, technical processes, know-how, registered names and goodwill

(e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime zones of the contracting parties.

It is understood that such assets must be or have been invested in accordance with the laws of the Contracting Party in which the investment is made, whether before or after the entry into force of this Agreement. This Agreement shall not, however, apply to disputes arising prior to its entry into force which relate to governmental actions taken prior to its entry into force.

No change in the form of investment of assets shall affect their characterization as an investment, provided that such change is not contrary to the law of the Contracting Party in which the investment is made.

2. The term "nationals" refers to all natural persons possessing the nationality of one of the Contracting Parties, in accordance with its national legislation.

3. The term "companies" means any legal entity incorporated in one of the Contracting Parties, in accordance with the laws of that Party and having its registered office therein, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in one of the Contracting Parties and incorporated in accordance with the laws of that Party.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. "Maritime areas" means those maritime areas over which the Contracting Parties exercise, in accordance with international law, sovereignty, sovereign rights or jurisdiction for the purpose of exploration, exploitation and preservation of natural resources.

## **Article 2. Scope of the Agreement**

The provisions of this Agreement shall apply to investments by French nationals or companies in Nicaragua, including in its maritime zones, and to investments by Nicaraguan nationals or companies in France, including in its maritime zones.

## **Article 3. Encouragement and Admission of Investments**

Each of the Contracting Parties shall admit and encourage, within the framework of its legislation and the provisions of this Agreement, investments made by nationals and companies of the other Contracting Party.

## **Article 4. Fair and Equitable Treatment**

Each Contracting Party undertakes to accord fair and equitable treatment, in accordance with the principles of international law, to investments of nationals and companies of the other Party and to ensure that the exercise of the right so recognized is not hindered in law or in fact. In particular, although not exclusively, any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measure having a similar effect, shall be considered as impediments in law or in fact to fair and equitable treatment.

The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to stay, work and travel submitted by nationals of one Contracting Party in connection with an investment made in the other Contracting Party.

## **Article 5. National Treatment and Most-favoured-nation Treatment**

Each Contracting Party shall apply to the nationals or companies of the other Contracting Party, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its own nationals or companies, or the treatment accorded to the nationals or companies of the most favoured nation, whichever is more favourable. In this connection, nationals of one of the contracting parties authorized to work in the other contracting party shall be accorded appropriate facilities for the exercise of their professional activities.

This treatment shall not, however, extend to the privileges which a contracting party grants to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

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

## **Article 6. Dispossession and Compensation**

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

2. The Contracting Parties shall not take any 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 Contracting Party of investments belonging to them except in the public interest and provided that such measures (hereinafter referred to as "measures of expropriation") are not discriminatory or contrary to any particular undertaking.

Any expropriation measures that may be taken shall be subject to the payment of prompt and adequate compensation, the amount of which, equal to the real value of the investments concerned, shall be assessed in relation to the normal economic situation prevailing before any threat of expropriation measures became public.

This compensation, its amount and the way it is to be paid shall be fixed at the latest on the date of dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It shall bear interest until the date of payment, calculated at the appropriate market interest rate.

3. The nationals or companies of one of the contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of emergency or revolt occurring in the other contracting Party, shall be accorded by 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 7. Free Transfer**

Each Contracting Party in which nationals or companies of the other Contracting Party have made investments shall accord to such nationals or companies the free transfer of

- (a) interest, dividends, profits and other current income ;
- (b) royalties derived from the rights designated in paragraph 1, letters d and e of Article 1;
- c) Payments made for the repayment of loans regularly contracted;
- d) Proceeds from the total or partial sale or liquidation of the investment, including capital gains;
- (e) the compensation for loss or dispossession provided for in Article 6, paragraphs 2 and 3 above.

Nationals of each of the Contracting Parties who have been authorized to work in the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

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

## **Article 8. Settlement of Disputes between an Investor and a Contracting Party**

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

If such a dispute has not been settled within six months from the time it was raised by either of the parties to the dispute, it shall be submitted at the request of either of these parties 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 in Washington on March 18, 1965.

## **Article 9. Guarantee and Subrogation**

- 1. 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, to investments made by nationals or companies of that Party in the other Party.
- 2. Investments by nationals or companies of one of the Contracting Parties in the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter Party.
- 3. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the other Party, makes payments to one of its nationals or to one of its companies, it is thereby subrogated to the rights and actions of that national or company.
- 4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue actions brought before it until the proceedings have been completed.

## **Article 10. Specific Commitments**

Investments which have been the subject of a specific undertaking by one of the Contracting Parties in respect of 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 insofar as it contains provisions more favourable than those provided for in this Agreement.

## **Article 11. Settlement of Disputes between Contracting Parties**

- 1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic

channels.

2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint one member and the two members shall appoint, by mutual 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 of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, 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 is otherwise unable to serve, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

## **Article 12. Entry Into Force and Duration**

Each of the Parties 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.

The Agreement is concluded for an initial period of ten years. It shall remain in force after this period, unless one of the Parties denounces it through diplomatic channels with a one-year notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Signed in Managua, on February 13, 1998, in two originals, each in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic:

Sylvie Alvarez,

Ambassador of France

For the Government of the Republic of Nicaragua:

Christmas Sacasa,

Minister of Economy