

# **Agreement between the Russian Federation and the Government of the Republic of Nicaragua on the Promotion and Reciprocal Protection of Investments**

The Russian Federation and the Government of the Republic of Nicaragua, hereinafter referred to as the Contracting Parties,

Intending to create favorable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments under this Agreement will stimulate the flow of capital and promote the development of mutually beneficial economic and scientific-technical cooperation,

Intending to provide investors with the States of both Contracting Parties reliable and effective remedies for their rights and interests in connection with their investment, have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement, the following definitions shall mean:

a) "investment" means every kind of asset invested by investors of the State of one Contracting Party in the territory of the other Contracting Party in accordance with the law of the State of the latter Contracting Party, in particular:

- Movable and immovable property and related rights;
- Shares, stocks and other forms of participation in the capital of companies;
- Exclusive rights to intellectual property, such as copyrights, patents, utility models and industrial designs, trademarks and service marks, know-how, technology and information having commercial value;
- Right to engage in entrepreneurial activity, provided by the legislation of the latter Contracting Party or under an agreement made in accordance with the legislation relating, in particular, but not exclusively, to the exploration, development, production and exploitation of natural resources.

No change in the form of the investments does affect their character as investments provided that such change does not contradict the legislation of the State of the Contracting Party in whose territory the investments were made;

b) "investor" means any individual or legal entity of one of the two Contracting Parties who carries out investments in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party:

(i) "natural person" means any person who is a national of the first State. Contracting Party in accordance with its legislation;

(ii) "legal person" means any entity, whether public or private, established or organized under the laws of the State of the first Contracting Party;

c) "income" - means money received from investments, including, in particular, profits, dividends, interest, royalties and other fees;

d) "territory" means territory of the Russian Federation or the territory of the Republic of Nicaragua, as well as their respective exclusive economic zones and continental shelf, defined in accordance with National: legislation and international law;

e) "laws" means laws and other normative legal acts of the Russian Federation or the laws and other normative legal acts of the Republic of Nicaragua.

## **Article 2. Promotion, Admission and Protection of Investments**

1. Each Contracting Party seeks to promote investments of investors of the other Contracting Party in its territory and admit such investments in accordance with its laws and regulations.
2. Each Contracting Party shall, in accordance with its laws and regulations provide full legal protection in its territory of investments of investors and the investors of the other Contracting Party.

### **Article 3. Investment Treatment**

1. Each Contracting Party shall ensure in its territory fair and equitable treatment to investments made by investors of the other Contracting Party in respect of the ownership, use or disposal of such investments.
2. The treatment referred to in paragraph 1 of this Article, must not be less favorable than that provided by a Contracting Party to investments of investors of their state or the investments of investors of any third state.
3. Each Contracting Party reserves the right to apply and introduce in accordance with the laws of the state of its withdrawal from the national treatment provided in accordance with paragraph 2 of this article, with respect to foreign investors and their investments.
4. The provisions of this article with respect to most favoured nation should not be construed so as to oblige one Contracting Party to extend to investments made by investors of the other Contracting State Party, the benefits of any treatment, preference or privilege, which are available or can be provided in the future, the first Contracting Party:
  - a) in connection with its participation in a free trade area, customs union, monetary union, common market, and any similar economic integration entities, or any international agreement leading to the creation of such associations or entities;
  - b) On the basis of agreements to avoid double taxation or other agreements on taxation;
  - c) In accordance with the agreements between the Russian Federation and States formerly part of the former Union of Soviet Socialist Republics.
5. From the date of accession of the Russian Federation to the World Trade Organization, and without prejudice to the provisions of Articles 4, 5 and 8 of this Agreement, no Contracting Party shall be bound in accordance with this Agreement to provide treatment more favorable than that accorded by that Contracting Party in accordance with the its obligations under the Agreement establishing the World trade organization (WTO Agreement) of April 15, 1994, including the commitments to the General Agreement on trade in services (GATS), as well as in accordance with any multilateral arrangements, relating to investment treatment to which both States are parties Contracting Parties.

### **Article 4. Expropriation**

1. Investments of investors of one Contracting Party made in the territory of the other Contracting Party and investors of such revenues shall not be expropriated, nationalized or subjected to any other measures tantamount to expropriation or nationalization (hereinafter - the expropriation), except in cases where such measures taken in the public interest and in accordance with the procedure established by the laws of the state of the latter Contracting Party, are not discriminatory and are accompanied by payment of prompt, adequate and effective compensation.
2. The compensation referred to in paragraph 1 of this Article shall comply with the fair market value of the expropriated investments, calculated on the date immediately preceding the date of expropriation, or on the date immediately preceding the date when it became common knowledge about the impending expropriation, depending on which event occurs first. Compensation shall be paid without delay in a freely convertible currency and in accordance with Article 6 of this Agreement freely translated from the territory of one Contracting Party in the territory of the other Contracting Party. From the date of expropriation until the date of actual payment of compensation in the amount of compensation shall bear interest at a commercial rate established on a market basis, but not less than six-month LIBOR rate for loans in US dollars.

### **Article 5. Compensation for Damage and Prejudice**

Investors of the State of one Contracting Party whose investments and income suffer damages or losses due to war, armed conflict, rebellion, revolution, riot, civil disturbance, state of emergency or any other similar circumstances in the territory of the other Contracting Party, shall be granted by the latter Contracting Party in connection with the loss or damage in respect of restitution, indemnification, compensation or other settlement, treatment no less favorable than that the latter Contracting Party shall accord to investors of their state or to investors of any third state, depending on which of them,

according to investor, is more favorable.

## **Article 6. Transfer of Payments**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfillment of all their tax obligations free transfer abroad of payments related to their investments, and in particular:

- a) the initial capital and any additional funds used to maintain or expand investments;
- b) income;
- c) funds in repayment of loans and credits recognized by both Contracting Parties as investments, as well as the accrued interest;
- d) funds received from the partial or total sale or liquidation of investments;
- e) Compensation, compensation or other settlement, provided for in Articles 4 and 5 of this Agreement;
- f) wages and other remunerations received by the investor and citizens of the State of the latter Contracting Party who are allowed to work in the territory of the first Contracting Party in connection with investments;
- g) payments arising from the settlement of disputes in accordance with Article 8 of this Agreement.

2. Transfer of payments referred to in paragraph 1 of this Article shall be made without delay, in a freely convertible currency at the market rate of exchange applicable on the date of transfer, in accordance with the currency legislation of the Contracting Party in whose territory the investments were made.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, any Contracting Party may restrict the transfer of payments by a fair, non-discriminatory and good faith application of its laws and regulations.

## **Article 7. Subrogation**

In the case where one Contracting Party or its designated authority shall provide a financial guarantee to protect against non-commercial risks in connection with investments by investors of their state on the territory of the other Contracting Party and has made payment on the basis of this guarantee, the latter Contracting Party shall recognize the acquisition of the rights of the investor of the first Contracting Party by way of subrogation. These rights shall be exercised in accordance with the laws of the Contracting Party in whose territory the investments were made.

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

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1. Disputes between a Contracting Party and an investor of the other Contracting Party arising in connection with the investments of this investor in the territory of the first Contracting Party, including, but not limited to disputes concerning the size, conditions and procedures for payment of compensation in accordance with Articles 4 and 5 of this Agreement or of the order of transfer payments under article 6 of this Agreement shall be settled amicably as possible through negotiations.

2. If the dispute can not be settled amicably through negotiations within six months from the date of receipt of the written request of any party to a dispute to resolve it through negotiations, the dispute may be referred to select an investor for consideration:

- The competent court of the Contracting Party in whose territory the investments were made, or
- In the Court of Arbitration ay Jos in accordance with the Arbitration Rules of the International Trade Law of the United Nations Commission (UNCITRAL).

3. If the dispute shall be submitted in one of the vessels referred to in paragraph 2 of this article, the choice of the court is final.

4. The award deals with a dispute under consideration in accordance with this Article shall be final and binding on both parties to the dispute. Each Contracting Party shall ensure the implementation of such a decision in accordance with the

laws of the state.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible amicably through consultation or negotiation between the Contracting Parties.
2. If the dispute can not be settled amicably through consultation or negotiation between the Contracting Parties within six months from the date of receipt of the written request of either Contracting Party for consultations or negotiations, at the request of either Contracting Party, be referred to an arbitral tribunal.
3. The arbitral tribunal shall be constituted for each individual case, for which each Contracting Party shall appoint one member of the arbitration tribunal within two months from the date of receipt of the request for arbitration. Then, these two members of the arbitral tribunal shall elect a national of a third State who, with the approval of both Contracting Parties shall be appointed Chairman of the arbitral tribunal within two months from the date of appointment of the last two members of the arbitral tribunal.
4. If, within the time specified in paragraph 3 of this Article, the necessary appointments have not been made, in the absence of any other agreement between the Contracting Parties, any Contracting Party may request the International Court of Justice with a request to make such appointments. If the President of the International Court of Justice is a national of either Contracting Party or is otherwise unable to discharge the said function, then the Vice President of the International Court of Justice shall be invited to make the necessary appointments invited. If the Vice President of the International Court of Justice is also a national of either Contracting Party or is otherwise unable to discharge the said function, then the next in seniority member of the International Court of Justice next in seniority who is not a national of either Contracting Party, who is not unable to discharge the said functions shall be invited to make the necessary appointments.
5. The arbitral tribunal shall render its decision by majority vote. This decision is final and binding on the Contracting Parties. Each Contracting Party shall bear the expenses related to the activities of the arbitral tribunal of its own member and of its representation in the arbitration proceedings. The costs associated with the Chairman of the Arbitral Tribunal and other expenses, shall bear in equal shares by the Contracting Parties. The arbitral tribunal may, however, provide in its decision that one of the Contracting Parties shall bear a larger share of the costs, and the decision will be binding on both Contracting Parties. The arbitral tribunal shall determine its own procedure.

## **Article 10. Consultations**

The Contracting Parties shall at the request of any of them, shall hold consultations on matters relating to the interpretation or application of this Agreement.

## **Article 11. Application of the Agreement**

This Agreement shall apply to investments made by investors of the State of one Contracting Party in the territory of the other Contracting Party after the entry into force of this Agreement.

## **Article 12. Entry Into Force and Duration of the Agreement**

1. Each Contracting Party shall notify the other Contracting Party of the completion of internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last of the two notifications.
2. This Agreement shall remain in force for an initial period of ten years. After this period it shall be automatically extended for successive five-year periods, unless either Contracting Party notifies the other Contracting Party at least twelve months prior to the expiry of the period of its intention to terminate this Agreement.
3. This Agreement may be amended by mutual written consent of the Contracting Parties. Any amendment to this Agreement shall enter into force after each Contracting Party shall notify the other Contracting Party of the fulfillment of all internal procedures necessary for the entry into force of such amendment.
4. With respect to investments falling within the scope of this Agreement and made prior to the date of its action, the provisions of this Agreement shall remain in force for the next ten years from the date of termination of this Agreement.

Done in Moscow on 26 January 2012 in two original copies, each in Russian, Spanish and English languages, all texts being equally authentic. In case of divergence of interpretation of this Agreement, the English text.

For the Government of the Republic of Nicaragua

For the Government of the Russian Federation