

# CONVENTION BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Paraguay,

Desiring to enhance economic cooperation between the two States and create favourable conditions for investments French Republic of Paraguay in France and Paraguay,

Convinced that, within the framework of this Agreement, the association of investors of the two Contracting Parties will be promoted,

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 Convention:

1. The term "investment" means assets, rights and interests of any kind and particularly but not limited to:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits, 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 Parties;
- c) Claims, rights to performance bonds or having an economic value;
- d) Copyrights, industrial property rights, technical processes, trade names and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources; provided that such assets, in whatever form, shall 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 Convention.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the legislation of the State in whose territory the investment is made or to the approval granted to the initial investment.

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

3. The term "companies" juridical means any person in the territory of one of the Contracting Parties in accordance with its law and having its registered office.

## Article 2.

Each Contracting Party recognizes and encourages within the framework of its laws investments made in its territory by nationals and companies of the other contracting party.

## 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 party and to ensure the enjoyment of the right thus recognized is hampered in either law or in fact.

This treatment shall be at least equal to the most favourable treatment applied in its territory.

#### **Article 4.**

Companies and nationals of either Contracting Party shall enjoy on the Exercise of the business and economic activities related to investment in the territory of the other party national treatment and most advantageous applied in its territory.

#### **Article 5.**

The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is, directly or indirectly dispossessing nationals and companies of the other contracting party of their investments in its territory, except for a public purpose and provided that such measures are not discriminatory.

The expropriation or nationalization measures that might be taken shall be subject to the payment of just compensation which shall correspond to the real value of the investment at the time of the nationalization or expropriation.

This compensation and the methods of payment will be set at the latest from the date of dispossession, must be effectively realizable. it shall be paid without delay and freely transferable.

#### **Article 6.**

Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party, shall ensure to such nationals or companies access foreign currency in order to guarantee the freedom of transfer:

- a) Returns from investments;
- b) Fees derived from the rights referred to in article 1 (1) above;
- c) Payments for interest, commissions and repayment of loans and borrowings under contracts;
- d) The proceeds of the sale of or the partial or total liquidation of the investment including capital gains or increases in the capital invested;
- e) Compensation to nationalization or expropriation as provided for in article 5 above.

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

The transfers referred to in the preceding paragraphs shall be effected without delay and at the exchange rate applied by the Central Bank on the date of transfer.

#### **Article 7.**

If the legislation of either contracting party provides a guarantee for investments abroad, the latter may be granted within the framework of a case-by-case review, to investments made by companies or nationals of that Party in the territory of the other.

Investments of nationals and companies of one Contracting Party in the territory of the other party may request the Security referred to in the preceding paragraph only if they have previously obtained accreditation of that other party.

#### **Article 8.**

Each Contracting Party agrees to submit to the International Centre for Settlement of Investment Disputes (ICSID) disputes may object to a national or a company of the other contracting party, including where this is entered into the rights of one of its nationals or companies under article 9 of this Convention.

#### **Article 9.**

If one of the Contracting Parties, by virtue of a guarantee donnée for an investment made in the territory of the other party makes its payment to one of its nationals or companies, it is thereby entered into the rights and claims of the national or company. the rights of subrogation shall also apply to the transfer of rights referred to in article 6 above.

### **Article 10.**

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals and companies of the other party shall be governed, without prejudice to the provisions of this Convention, by the terms of that commitment, insofar as it would include provisions more favourable than those provided for by this Convention.

### **Article 11.**

The treatment provided for in articles 3 and 4 of this Agreement shall not apply to privileges which either Contracting Party accords to nationals and companies of any third State by virtue of its participation in the agreements relating to a free trade area, customs union, or common market agreements with Latin American States.

### **Article 12.**

Any dispute concerning the interpretation or application of this Convention which cannot be settled through diplomatic channels within six months may be submitted at the request of either of the two Contracting Parties to an arbitral tribunal which shall be constituted in the following manner:

Each Contracting Party shall appoint an arbitrator within one month from the date of receipt of the request for arbitration. the two arbitrators thus appointed shall choose, within a period of two months after notification to the party that its arbitrator the latter, a third arbitrator who is a national of a third State who shall be the Chair of the arbitral tribunal.

If the time limits specified in paragraph above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary-General 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 Under-Secretary-General the oldest and who is not a national of either Contracting Party make the necessary appointments.

The Contracting Parties may agree in advance to designate for a renewable period of five years the person who will act as third arbitrator in the event of a dispute. The tribunal shall take its decisions by a majority of votes. The decision of the arbitral tribunal shall be final and enforceable by virtue of law.

The tribunal shall determine its own rules of procedure.

Each Contracting Party shall bear the cost of the arbitrator it has appointed in accordance with the above provisions. the cost of the Chairman and the remaining costs shall be borne in equal parts by both contracting parties.

### **Article 13.**

This Convention shall be approved in accordance with the constitutional procedures applicable for each of the two States: the exchange of instruments of ratification or approval shall take place as soon as possible.

This Agreement shall enter into force one month after the date on which the exchange of instruments of ratification or approval.

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 in writing and through diplomatic channels with one year notice.

In the event of termination, the present Agreement shall continue to apply to investments made prior to its denunciation or authorized for the period specified for each of them. this period shall not less than ten years or more than twenty years from the date of denunciation.

In WITNESS WHEREOF, the representatives of the two Governments, duly authorized thereto, have signed the present Agreement.

For the Government of the French Republic,

Léon Bouvier

For the Government of the Republic of Paraguay,

Alberto Nogues.

MINISTRY OF FOREIGN RELATIONS

NR N° 25/78

Asuncion, November 30, 1978.

To His Excellency Mr Leon Bouvier, Ambassador Extraordinary and Plenipotentiary of the French Republic, Asuncion.

Mr. Ambassador,

I have the honour to draw Your Excellency's attention to the "Agreement on the Reciprocal Encouragement and Protection of Investments" signed today between the Governments of our two countries and which will come into force one month from the date of the exchange of instruments of ratification or approval, and to propose the following Arrangements:

1. For the application of Article 1 of the Convention, the French investor shall fulfil the obligations provided for by Law No. 550 of 19 December 1975 "De fomento de las inversiones para el desarrollo economico y social" of the Republic of Paraguay, or any successor, modification or supplement thereto in the future.
2. The following procedure is established for obtaining the legal agreement provided for the admission of investment to the Republic of Paraguay:
  - a) The national or company concerned shall submit its application with the Department of External Relations accompanied by the corresponding project ;
  - b) The application will be examined by the Central Bank of Paraguay and subsequently by the Ministry of the Economic Branch corresponding to the main project;
  - c) The Executive Branch will issue the decree authorizing the investment in accordance with this Convention. This procedure shall be applicable in each case.
3. The free transfer referred to in Article 6 shall be carried out in accordance with the investment, banking, administrative and financial legislation governing the said operation in the Republic of Paraguay.

It is understood that these laws shall not have effects contrary to the provisions of the same Article 6 of the said Convention.

Should the French Government approve the foregoing, this Note and Your Excellency's Note in reply hereto shall constitute an Agreement between the two Governments which shall enter into force one month from the date of the exchange of the instruments of ratification or approval.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

ALBERTO NOGUES,

Minister for Foreign Affairs.

FRENCH REPUBLIC

The French Ambassador.

Asuncion, November 30, 1978.

To His Excellency Mr. Alberto Nogues, Minister of Foreign Affairs of the Republic of Paraguay.

His Excellency the Minister,

I have the honour to acknowledge receipt of your letter dated 30 November 1978, NR n° 25/78:

"1. For the application of Article 1 of the Convention, the French investor shall fulfil the obligations provided for by Law No. 550 of 19 December 1975 "De fomento de las inversiones para el desarrollo economico y social" of the Republic of

Paraguay, or any successor, modification or supplement thereto in the future.

2. The following procedure shall be established for obtaining the "Declaration of Inversiones para el desarrollo economico y social" of the Republic of Paraguay the legal agreement for the admission of the investment in the Republic of Paraguay:

- a) The national or company concerned shall submit its application to the Ministry of External Relations accompanied by the corresponding project;
- b) The application will be examined by the Central Bank of Paraguay and subsequently by the Ministry of the Economic Branch corresponding to the main project;
- c) The Executive Branch will issue the decree authorizing the investment in accordance with this Convention. This procedure shall be applicable in each case.

3. The free transfer referred to in Article 6 shall be carried out in accordance with the investment, banking, administrative and financial legislation governing the said operation in the Republic of Paraguay.

It is understood that these laws shall not have effects contrary to the provisions of the same Article 6 of the said Convention.

I have the honour to confirm my agreement to this text.

Please accept, Mr. Minister, the assurance of my highest consideration.