

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

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

Desiring to strengthen the economic cooperation between the two States and to create favorable conditions for French investments in the Dominican Republic and Dominican 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;

Intend to create conditions for the parties to consult promptly, in a spirit of transparency, on matters relating to the application or interpretation of this Agreement;

Determined to create favourable conditions for investments based on a reciprocal basis stable and fair and equitable treatment,

Have agreed as follows:

## **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 particularly but not limited to:

- a) movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, guarantees and all similar rights;
- b) shares, stock premiums and other forms of participation, even minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;
- c) Bonds, debts and rights to any benefits of economic value;
- d) Intellectual, commercial and industrial property rights, such as copyrights, patents, licenses, trademarks, industrial models and designs, technical processes, know-how, registered names and goodwill;
- e) Concessions granted by law or by virtue of a contract, in particular concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime zone of the Contracting Parties.

It is understood that such assets must be or have been invested in accordance with the law of the Contracting Party in the territory or maritime area in which 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 investment, provided that such change is not contrary to the legislation of the Contracting Party in the territory or maritime area in which the investment is made.

2. The term "national" means natural persons having the nationality of either Contracting Party, in accordance with its legislation.

3. The term "companies" juridical means any person in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office or directly or indirectly controlled 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 income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory (territorial sea, land area, soil and subsoil and airspace above them, as well as the maritime area of each of the Contracting Parties, hereinafter referred to as defined as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties and in accordance with international law, sovereign rights and jurisdiction for the purpose of prospecting, exploration and preservation of natural resources.

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

Each Contracting Party shall promote and admit, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other party in its territory and in the maritime area.

## **Article 3. Fair and Equitable Treatment**

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, fair and equitable treatment, in accordance with the principles of international law, to the investments of the nationals and companies of the other Party, and to ensure that the exercise of the right so recognized is not impeded either 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 measures having a similar effect, shall be considered as impediments in law or in fact to fair and equitable treatment.

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

## **Article 4. National Treatment and Most-favoured-nation Treatment**

Each contracting party shall apply to the nationals or companies of the other party, in its territory and maritime zone, 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 the more advantageous. In this connection, nationals authorized to work in the territory and maritime area of one of the Contracting Parties must be able to benefit from appropriate material facilities for the exercise of their professional activities.

This treatment does not extend to the privileges which either Contracting Party accords to nationals or companies of any third State by virtue of its association or participation in a free trade area, customs union, Common Market or any other form of regional economic organization.

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

## **Article 5. Nationalisation, Expropriation and Compensation**

1. Investments made by nationals or companies of either contracting party shall enjoy full protection and security in the territory and maritime zone of 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 dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory and maritime area, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

All measures of nationalization, expropriation or any other measure of similar effect which may be taken shall give rise 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 a normal economic situation prior to any threat relating to such measures.

This compensation, its amount and the manner in which it is to be paid, shall be fixed at the latest on the date of the nationalization, expropriation or any other measure of similar effect. This compensation is effectively realizable, paid without delay and freely transferable. It shall bear interest until the date of payment at the market rate of interest determined by reference to "international financial statistics" published by the International Monetary Fund.

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

## **Article 6. Free Transfer**

Each Contracting Party in the territory or maritime area in which the investments were made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:

- a) Profits, dividends, interests and other current income;
- b) Royalties arising out of intangible rights referred to in paragraph 1 (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) The compensation referred to in article 5, paragraphs 2 and 3 above.

The nationals of either Contracting Party who have been authorised to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment 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 formally at the normal rate of exchange applicable on the date of transfer.

## **Article 7. Settlement of Disputes between an Investor and a Contracting Party**

1. 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.
2. If such a dispute cannot be settled within six months from the time at which it was raised by either party to the dispute, it shall be submitted at the request of either party or to an ad hoc tribunal according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or the International Centre for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965, provided that both parties are members of the Centre.

The arbitration shall be made on the basis of the provisions of this Agreement, the terms of any specific agreements concluded under the investment as well as the rules and principles of international law.

No Contracting Party shall give diplomatic protection or bring an international claim in respect of a dispute which one of its nationals or companies and the other Contracting Party shall have submitted to arbitration under this Agreement, unless the other Contracting Party has failed to comply with the award rendered in such dispute or has ceased to comply. diplomatic protection referred to above shall not include informal diplomatic exchanges aimed at facilitating the resolution of the dispute.

## **Article 8. Guarantees and Subrogation**

1. Insofar as 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 territory or maritime zone of the other Party.
2. Investments of nationals and companies of one Contracting Party in the territory or maritime zones 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.

3. If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment in the territory or maritime zones of the other party makes its payment to one of its nationals or companies, it is thereby entered into the rights and claims of that national or company.

4. Such payments shall not affect the rights of the holder of the security to have recourse to dispute settlement bodies referred to in Article 7 or to continue its actions brought before them until the end of the procedure.

## **Article 9. Specific Commitments**

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

## **Article 10. Settlement of Disputes between the Contracting Parties**

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 as follows: 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 made, either Contracting Party, 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 if he is otherwise prevented from exercising this function, the most senior Under-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 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 special circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

## **Article 11. Entry Into Force and Duration**

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.

The Agreement is concluded for an initial period of ten years. It will remain in force after this period unless one of the parties denounces it through diplomatic channels with a 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 Paris, this 14th day of January 1999, in two originals, each in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic:

Charles Josselin

Minister Delegate for Cooperation and Francophonie

For the Government of the Dominican Republic:

Eduardo Latorre

