

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF HIS MAJESTY THE KING OF NEPAL ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Government of the French Republic and the Government of His Majesty the King of Nepal (hereinafter referred to as "the Contracting Parties"),

Desiring to enhance economic cooperation between the two States, in accordance with the principles of international law, and to create favourable conditions for French investments in Nepal and Nepalese 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:

1.1. The term "investment" means 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 by the same minority indirect or to companies established in the territory of one of the Parties;
- c) The obligations and rights, claims to any performance having economic value;
- d) Copyrights, industrial property rights, such as patents, licences, trademarks, industrial designs or models, 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 including those situated in maritime areas of each of the Contracting Parties,

Provided that such assets must be or have been invested before or after the entry into force of this Agreement in the territory or maritime zones of a Contracting Party in accordance with its legislation.

Any alteration of the form of investment of assets invested in the territory or maritime zones of a Contracting Party shall not affect their classification as investment, provided that such change is not contrary to the legislation of that Party.

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

1.3. The term "companies" means any juridical person in the territory of one of the Contracting Parties in accordance with its law and having its registered office or directly or indirectly controlled by nationals of one of the Contracting Parties.

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

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

1.5. The term "maritime zones" means the maritime and submarine areas over which the Contracting Parties exercise, in accordance with International Law, sovereignty, sovereign rights or jurisdiction.

## **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 party in its territory and in the maritime zones.

## **Article 3.**

Each Contracting Party undertakes to ensure in its territory and in its maritime zones fair and equitable treatment of investments of the nationals and companies of the other Party and to ensure that the exercise of the right so recognized shall not be hindered either in law or in fact.

## **Article 4.**

Each Contracting Party shall in its territory and in the maritime zones to nationals or companies of the other Contracting Party as regards their investments and activities associated with such investments, the treatment accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation, whichever is more favourable. In this connection, nationals who are authorised to work in the territory or maritime zones of one of the Contracting Parties shall be able to benefit from appropriate facilitations for the performance of their duties.

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 organizations.

## **Article 5.**

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

5.2. 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 and in the maritime zones except for a public purpose and provided that they are neither discriminatory nor contrary to a specific engagement.

The dispossession measures that might be taken shall be subject to the payment of prompt and adequate compensation in the amount calculated on the real value of the investment concerned must be assessed in relation to a normal economic situation.

Such compensation, its amount and has no later than the date of dispossession. such compensation shall be effectively realizable. it shall be paid without delay and in any event within six months from the date of dispossession. it shall be freely transferable.

5.3. the investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory or maritime zones of the other Contracting Party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own investors or to those of the most favoured nation.

## **Article 6.**

Each Contracting Party in the territory or maritime zones of the investment which has been 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 borrowings;
- 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 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.**

If the legislation of either Contracting Party provides a guarantee for investments abroad, it may be granted to investments made by companies or nationals of that Party in the territory or maritime zones of the other Contracting Party, after examination on a case-by-case basis.

Investments of nationals and companies of one of the Contracting Parties on the territory or in the maritime zones of the other Party may obtain the guarantee referred to in the above paragraph only if they have first obtained the approval of the latter Party.

## **Article 8.**

In the event of a dispute with respect to investments between a Contracting Party and a national or company of the other Contracting Party, the dispute shall as far as possible be settled amicably between the two parties concerned.

If the dispute has not been settled within a period of 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 of the 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 done at Washington on 18 March 1965.

## **Article 9.**

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 the national or company.

Such payments shall not affect the rights of the holder of the security to resort to ICSID or to continue its actions brought before the Tribunal until the end of the procedure.

## **Article 10.**

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 11.**

11.1. The disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

11.2. 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.

11.3. the arbitral 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. 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.

11.4. 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 Under-Secretary-General the oldest and who is not a national of either Contracting Party shall make the necessary appointments.

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

The Tribunal shall determine its own rules. It shall interpret its award at the request of either Contracting Party. Unless the Tribunal provides otherwise in particular circumstances, the costs of the proceedings, including the fees of the arbitrators, shall be apportioned equally between the two Governments.

## **Article 12.**

Each Party shall notify the other of the completion of the internal procedures necessary for the entry into force of this Agreement. this Agreement shall enter into force one month after the date of receipt of the two notifications.

This Agreement is concluded for an initial period of ten years and shall continue in force thereafter the term unless one of the two parties may share with the other Contracting Party through diplomatic channels with one year's notice of its intention to denounce the agreement.

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 Kathmandu on May 2, 1983, in two originals, each in the English and French languages, both texts being equally authentic.

For the Government of the French Republic:

Claude Cheysson,

Minister for Foreign Affairs

For the Government of His Majesty the King of Nepal:

Padma Bahadur Khatri,

Minister of Foreign Affairs and Water Resources

## **Exchange of Letters**

EXCHANGE OF LETTERS NO. 1

Dear Minister

I have the honor to refer to the Agreement signed today between the Government of the French Republic and the Government of His Majesty the King of Nepal on the Reciprocal Encouragement and Protection of Investments and to inform you that the interpretation of this Agreement is as follows, with respect to Article 3.

(a) 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 deemed to be de jure or de facto impediments to fair and equitable treatment. Measures taken for reasons of public safety, public health or public order shall not be considered as legal or de facto barriers, provided that they are not abusive or discriminatory. I understand that the term "public morality" in Nepalese law is interchangeable with the term "ordre public" in French law.

(b) The Contracting Parties shall give sympathetic consideration, within the framework of their respective legislation, to applications for entry, residence, work and travel permits by nationals of one Contracting Party for investment in the territory of the other Contracting Party.

I would be grateful if you could inform me of your Government's agreement with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

His Excellency

PADMA BAHADUR KHATRI,

Minister of Foreign Affairs and Water Resources

CLAUDE CHEYSSON,

Minister of Foreign Affairs

Dear Minister

I have the honor to acknowledge receipt of your letter of today, which reads as follows

"I have the honor to refer to the Agreement signed today between the Government of the French Republic and the Government of His Majesty the King of Nepal on the reciprocal encouragement and protection of investments and to inform you that the interpretation of this Agreement is as follows, with regard to Article 3.

(a) 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 deemed to be de jure or de facto impediments to fair and equitable treatment. Measures taken for reasons of public safety, public health or public order shall not be considered as legal or de facto barriers, provided that they are not abusive or discriminatory. I understand that the term "public morality" in Nepalese law is interchangeable with the term "ordre public" in French law.

(b) The Contracting Parties shall give sympathetic consideration, within the framework of their respective legislation, to applications for entry, residence, work and travel permits by nationals of one Contracting Party for investment in the territory of the other Contracting Party.

I would be grateful if you could inform me of your Government's agreement with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration. "

I have the honor to inform you of my Government's agreement with the above.

Please accept, Sir, the assurances of my highest consideration.

PADMA BAHADUR KHATRI,

Minister of Foreign Affairs and Water Resources

EXCHANGE OF LETTERS No. 2

Dear Minister,

I have the honour to refer to the Agreement signed today between the Government of His Majesty the King of Nepal and the Government of the French Republic on the Reciprocal Encouragement and Protection of Investments and to inform you that during the negotiations which led to the signing of this Agreement, your delegation indicated that the expression "public interest" mentioned in Article 5, paragraph 2, of the said Agreement, also includes the notion of "defence" to which the legislation of my country refers.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

PADMA BAHADUR KHATRI,

Minister of Foreign Affairs and Water Resources

Dear Mr. Minister

I have the honor to acknowledge receipt of your letter of today's date which reads as follows:

"I have the honour to refer to the Agreement signed today between the Government of His Majesty the King of Nepal and the Government of the French Republic on the reciprocal encouragement and protection of investments and to inform you that, during the negotiations which led to the signing of this Agreement, your delegation indicated that the expression "public interest" mentioned in Article 5, paragraph 2, of the said Agreement also includes the notion of "defense" to which the legislation of my country refers.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

I have the honor to inform you of my Government's agreement with the above.

Please accept, Sir, the assurances of my highest consideration.

His Excellency

PADMA BAHADUR KHATRI

Minister of Foreign Affairs and Water Resources

CLAUDE CHEYSSON,

Minister of External Relations

EXCHANGE OF LETTERS No. 3

Dear Minister

I have the honor to refer to the Agreement signed today between the Government of His Majesty the King of Nepal and the Government of the French Republic on the reciprocal encouragement and protection of investments and to inform you that the interpretation of Article 6 of this Agreement is as follows

"Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Party, in respect of their investments, the free transfer of investments and income. This guarantee shall apply subject to the right of each contracting party, in the event of exceptional balance of payments difficulties, to exercise equitably and in good faith the powers conferred by its laws, in accordance with its responsibilities and commitments as a member of the International Monetary Fund. This provision shall apply only for a limited period and on a non-discriminatory basis, and shall include the possibility of making transfers in several installments.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

PADMA BAHADUR KHATRI,

Minister of Foreign Affairs and Water Resources

Dear Minister

I have the honor to acknowledge receipt of your letter of today's date which reads as follows:

"I have the honor to refer to the Agreement signed today between the Government of His Majesty the King of Nepal and the Government of the French Republic on the reciprocal encouragement and protection of investments and to inform you that the interpretation of Article 6 of this Agreement is as follows:

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Party, in respect of their investments, the free transfer of investments and income. This guarantee shall apply subject to the right of each contracting party, in the event of exceptional balance of payments difficulties, to exercise fairly and in good faith the powers conferred by its laws, consistent with its responsibilities and commitments as a member of the International Monetary Fund. This provision applies only for a limited period of time and on a non-discriminatory basis, and includes the possibility of making transfers in multiple installments.

I should be grateful if you would inform me of your Government's agreement to the contents of this letter.

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

I have the honor to inform you of my Government's agreement with the foregoing.

Please accept, Sir, the assurances of my highest consideration.

His Excellency

PADMA BAHADUR KHATRI,

Minister of Foreign Affairs

CLAUDE CHEYSSON,

Minister of Foreign Affairs