

Agreement between the Government of the French Republic and the Government of the Republic of Honduras on the reciprocal encouragement and protection of investments

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

Desiring to strengthen economic cooperation between the two States and to create favourable conditions for French investments in Honduras and Honduran investments 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 purpose of this Agreement :

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

(a) movable and immovable property, as well as all other rights in rem such as mortgages, usufructs, bonds and similar rights

(b) shares 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 other legally established rights to all services of economic value;

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

(e) concessions granted by law or by contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources.

No change in the form of investment of assets may affect their qualification as 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" means natural persons possessing the nationality of one of the Contracting Parties in accordance with the legislation of that Party.

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

4. The term "income" means all sums produced by an investment and, more particularly but not exclusively, profits, interest, capital gains, dividends, royalties, fees and other current income.

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

Article 2. Scope of Application of the Agreement

This Agreement shall apply

(a) to investments made by nationals or companies of one of the Contracting Parties in the territories of the other Party situated on its mainland, within its territorial limits, internal waters, islands and islets, territorial sea, exclusive economic zone and continental shelf which extend beyond the territorial sea over which it has or may have, in accordance with international law, jurisdictional authority and sovereign rights to explore for, exploit and conserve natural resources;

(b) to all investments made before or after the date of entry into force of this Agreement, in accordance with the law of the Contracting Party in which the investment is made; however, the provisions of this Agreement shall not apply to any dispute which was submitted before the date of entry into force of this Agreement to the competent courts of the Contracting Party in which the investment is made.

Article 3. Encouragement and Admission of Investments

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

Article 4. Fair and Equitable Treatment

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

2. The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorisation to reside, work and travel by nationals of a Contracting Party in connection with an investment in the other Contracting Party.

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

1. Each Contracting Party shall apply to the nationals or companies of the other 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 a Contracting Party authorised to work in accordance with the domestic legislation of the other Party shall enjoy appropriate facilities for the exercise of their professional activities.

2. This treatment shall not, however, extend to the privileges which a Contracting Party grants to the nationals 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 organisation.

3. The provisions of this Article shall not apply to fiscal matters.

Article 6. Expropriation and Compensation

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

The Contracting Parties shall not take any measures of expropriation or nationalisation 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, except in the public interest and provided that such measures are not discriminatory.

Any measures of dispossession 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 the economic situation prevailing before any threat of dispossession was made public.

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

2. Nationals or companies of one of the Contracting Parties whose investments have been lost as a result of war or any other armed conflict, revolution, state of national emergency or revolt occurring in the other Contracting Party shall receive

from the latter 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

1. Each Contracting Party in which investments have been made by nationals or companies of the other Contracting Party 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 referred to in Article 1, paragraph 1, letters d and e
- (c) repayments of loans regularly contracted;
- (d) proceeds from the disposal or liquidation of the investment in whole or in part, including capital gains on the investment
- (e) compensation for loss or dispossession as provided for in Article 6, paragraphs 1 and 2.

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

3. 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. Guarantee and Subrogation

1. In so far 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 other Contracting Party.

2. Investments by nationals and 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 its nationals or companies, that first Party shall thereby be subrogated to the rights and actions of those nationals or companies.

4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to international arbitration as provided for in Article 10(3) of this Agreement or to continue proceedings before it until the conclusion of the proceedings in order to receive compensation including such payments.

Article 9. Specific Commitments

Investments which have been the subject of a specific undertaking by one Contracting Party to the 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 in so far as it contains provisions more favourable than those provided for in this Agreement.

Article 10. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute relating to investments 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.

2. If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall be submitted at the request of the investor :

- (a) the competent courts of the Contracting Party in which the investment is made
- (b) to international arbitration under the conditions set out in paragraph 3.

3. In the case of recourse to international arbitration, the dispute may be submitted, at the option of the investor

- a) To 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, opened for signature at Washington on 18 March 1965, provided that the Contracting Parties are signatories to that Convention;

(b) an ad hoc arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The arbitration shall be based on the provisions of this Agreement, the provisions of any specific agreements on investment and the principles of international law in this field. The arbitration shall also take into consideration the provisions of the domestic law of the Contracting Party involved in the dispute.

Arbitral awards shall be final and binding on the parties to the dispute.

Article 11. Settlement of Disputes between the 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 be submitted, at the request of either Contracting Party, to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint an arbitrator, and the two arbitrators shall appoint, by mutual agreement, a third arbitrator who shall be a national of a third State, who shall be appointed chairman of the tribunal by both Contracting Parties. All arbitrators shall be appointed within two months of the date on which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time-limit laid down in paragraph 3 above has 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 prevented from exercising this function, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The Tribunal shall itself determine its rules and interpret the award at the request of either Contracting Party. Each Contracting Party shall bear the expenses of its arbitrator in the arbitration tribunal, as well as the expenses of his representation in the arbitration proceedings. The chairman's fees and other related costs shall be shared equally between the Contracting Parties. However, the Tribunal may decide that one of the two Contracting Parties shall bear a larger share of the costs; this apportionment shall be binding on both Contracting Parties.

Article 12. Entry Into Force and Termination

1. 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.

2. The Agreement is concluded for an initial period of ten years and shall remain in force after that period, unless either Party denounces it in writing through diplomatic channels with one year's notice.

3. On the expiry 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 a further period of fifteen years.

Done at Tegucigalpa, this 28th day of April 1998 in two originals, each in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic :

Gilles Vidal

Ambassador of France

For the Government of the Republic of Honduras :

Reginaldo Panting

Minister of Trade

