

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

The Government of the French Republic and the Government of the Republic of Guatemala, 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 Guatemala and Guatemalan 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, rights and interests of every kind, and more particularly but not exclusively

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

b) shares and other forms of participation, even if they are minority or indirect, in the legal persons referred to in paragraph 2 b of this article

c) Debt-claims or rights to any benefits having economic value;

d) intellectual, commercial and industrial property rights such as copyrights, patents, technical processes, licenses, trademarks, trade names, industrial models, know-how, company names and leasehold rights

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

No change in the initial form of the investment shall affect its qualification as an investment, provided that such change is not contrary to the law of the Contracting Party in which the investment is made.

2. The term "investor" means, in respect of each Contracting Party

(a) all natural persons who, in accordance with the legislation of the Contracting Party, are considered to be nationals thereof

(b) All legal persons incorporated in the territory of one of the Contracting Parties in accordance with the laws of that Party and having their registered office therein, or controlled directly or indirectly by nationals of one of the Contracting Parties or by legal persons having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

3. The term "income" means all sums produced by an investment, such as profits, royalties or interest, over a given period.

Income from the initial investment, as well as from reinvestment, shall enjoy the same protection.

4. The term "maritime zones" means those maritime zones over which the Contracting Parties have, in accordance with International Law, sovereignty, sovereign rights or jurisdiction for the purpose of exploring, exploiting and preserving

natural resources.

Article 2. Scope

1. This Agreement shall apply to investments made, before or after the date of entry into force of this Agreement, by investors of one of the Contracting Parties in the territory of the other Party in accordance with its legal provisions. However, this Agreement shall not apply to any dispute which has been submitted before its date of entry into force to the competent courts of the Contracting Party in which the investment is made.

2. The provisions of this Agreement shall apply to investments made by French investors in Guatemala, including in its maritime zones, and to investments made by Guatemalan investors in France, including in its maritime zones.

Article 3. Encouragement, Admission and Protection of Investments

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

The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorisation to reside, work and move from one Contracting Party to the other in respect of an investment made in the other Contracting Party.

Article 4. Fair and Equitable Treatment, National Treatment and Most-favoured-nation Treatment

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

2. Each Contracting Party shall apply to investors 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 investors, or to investors of a third country, if the latter treatment is more favourable. In this connection, nationals of a Contracting Party authorised to work in the territory of the other Party shall be afforded appropriate material facilities for the exercise of their professional activities.

3. If a Contracting Party grants special advantages to investors from a third State under an agreement relating to the establishment of a free trade area, a customs union, a common market, an economic union or any other form of regional economic organisation, that Party shall not be obliged to grant the above-mentioned advantages to investors from the other Contracting Party.

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

Article 5. Treatment In the Event of Losses

Investors of one of the Contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt occurring in the other Contracting Party shall be accorded by the latter Party treatment no less favourable than that accorded to its own investors or to those of the most favoured nation.

Article 6. Expropriation and Compensation

1. Investments made by investors of one Contracting Party shall enjoy full protection and security in the other Contracting Party.

2. The Contracting Parties shall not take any measures of dispossession or nationalisation or any other measures the effect of which is to dispossess, directly or indirectly, investors of the other Party of investments belonging to them, except in the public interest or in the public interest and provided that such measures (hereinafter referred to as measures of dispossession) are not discriminatory or contrary to any particular undertaking.

Any measures of dispossession that may be taken shall be subject to the payment of prompt and adequate compensation, the amount of which shall be equal to the real value of the investments concerned and shall be assessed by reference to an

economic situation prior to any threat of dispossession.

The compensation shall be paid before the date of dispossession. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall bear interest until the date of payment at the appropriate market rate.

Article 7. Free Transfer

1. Each Contracting Party shall grant without delay to investors of the other Contracting Party the free transfer of, in particular but not exclusively

(a) interest, dividends, royalties, profits and other current income

(b) royalties arising from the rights and concessions referred to in paragraph 1 (d) and (e) of Article 1

(c) payments made for the repayment of loans regularly contracted

(d) capital or proceeds from the sale or liquidation of the investment in whole or in part, including capital gains on the investment

e) Additional capital required for the continuation or development of the investments;

(f) funds resulting from the settlement of a dispute and the compensation provided for in Article 6.

2. Natural persons who are considered as nationals of each Contracting Party and who have been authorised to work in the other Contracting Party as part of an approved investment shall also be authorised to transfer an appropriate proportion of their remuneration to their country of origin.

Such transfers shall be made at the normal rate of exchange officially applicable on the date of transfer.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party shall, to the extent possible, be settled amicably.

2. If such a dispute has not been so settled within three months from the date of the request for settlement, it shall be submitted at the request of the investor

(a) the competent courts or domestic arbitration of the Contracting Party

(b) to international 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, signed in Washington on 18 March 1965.

To this effect, each Contracting Party gives its irrevocable consent in advance that any dispute may be submitted to such arbitration.

3. Once the investor has submitted a dispute to the competent court or national arbitration of the Contracting Party in which the investment was made, or to ICSID arbitration, he may waive his claim and opt for another procedure provided that no final award has been made.

4. Arbitral awards are final and binding on the parties to the dispute.

Article 9. Settlement of Disputes between Contracting Parties

1. Disputes between Contracting Parties 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 the date of notification, it shall be submitted, at the request of either Contracting Party, to an ad hoc arbitration tribunal, in accordance with the provisions of this article.

3. The said tribunal shall consist of three members and shall be constituted as follows: within two months from the date of notification of the request for arbitration, each Contracting Party shall appoint an arbitrator. These two arbitrators shall, within one month of the appointment of the last of them, appoint by mutual agreement a third member who shall be a national of a third State and who shall be appointed Chairman of the Tribunal.

4. If the time limits laid down in paragraph 3 above have 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 President of the Tribunal must be a national of a third State with which both Contracting Parties maintain diplomatic relations.
6. The arbitration tribunal shall take its decisions on the basis of the provisions of this agreement and the principles of international law, and by a majority of votes. It shall determine its own rules of procedure.
7. Each Contracting Party shall bear the expenses of its arbitrator and of his representation in the arbitration proceedings. The chairman's fees and other costs of the proceedings shall be shared equally between the Contracting Parties, unless they make other arrangements.
8. The decisions of the tribunal shall be final and binding on both Contracting Parties. The Tribunal shall interpret the award at the request of either Contracting Party.

Article 10. Guarantee and Subrogation

1. To the extent that the legislation of one of the Contracting Parties provides for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by investors of that Party in the other Contracting Party.
2. Investments made by investors of one of the Contracting Parties in the other Party may only obtain the guarantee referred to in the above paragraph if they have first obtained the approval of the latter Party.
3. If one of the Contracting Parties or an agency approved by it, by virtue of a guarantee given for an investment in the other Party, makes payments to an investor, it shall thereby be subrogated to the rights and actions of that investor, including the right to have recourse to international arbitration in accordance with Article 8 of this Agreement.
4. Such payments shall not affect the rights of the guaranteed investor to have recourse to ICSID arbitration or to pursue claims before ICSID to the end of the proceedings, in its own name as well as in the name of the Contracting Party which is subrogated to its rights and actions.

Article 11. Specific Commitments

Investments which have been the subject of a specific commitment by one of the Contracting Parties to the investors of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that commitment in so far as it contains provisions more favourable than those provided for in this Agreement.

Article 12. Entry Into Force and Duration

1. Each Contracting Party shall notify the other of the completion of the constitutional 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 shall remain in force for a period of ten years and may be extended thereafter for an unlimited period. At the end of this period of ten years, the Agreement may be terminated at any time by either Contracting Party through diplomatic channels with one year's notice.
3. Investments made before the date on which the denunciation of the Agreement took effect shall continue to enjoy the protection of its provisions for a further period of fifteen years.

Done at Guatemala City, this 27th day of May 1998, in two originals, each in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic:

Serge Pinot

Ambassador of France

For the Government of the Republic of Guatemala:

Juan Mauricio Wurmser

Minister of Economy