

Annex II

Agreement on encouragement and reciprocal protection of investments between
the Republic of Honduras
and the Kingdom of the Netherlands.

The Republic of Honduras
and
the Kingdom of the Netherlands,

hereinafter referred to as the Contracting Parties,

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the nationals of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

(a) the term “investments” means every kind of asset and more particularly, though not exclusively:

- (i) movable and immovable property as well as any other rights in rem in respect of every kind of asset;
- (ii) rights from shares, bonds and other kinds of interests in companies and joint ventures;
- (iii) claims to money, to other assets or to any performance having an economic value;
- (iv) rights in the field of intellectual property, technical processes, goodwill and know-how;
- (v) concessions and other rights granted by law or under contract, including rights of prospecting, exploration, extraction, exploitation and winning of natural resources.

(b) the term “nationals” shall comprise with regard to either Contracting Party:

- (i) natural persons having the nationality of that Contracting Party in conformity with its laws;
- (ii) legal persons constituted under the law of that Contracting Party;
- (iii) legal persons constituted under the law of a third State, as subsidiary companies, controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii).

(c) the term 'territory' means:

the land area including its airspace and the territorial sea, as well as the exclusive economic zone and the continental shelf, which extends outside the limits of the territorial sea, over which jurisdiction and sovereign rights are exercised, in accordance with international law.

Article 2

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of nationals of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3

- 1) Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party and shall not impair, by unreasonable, arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting Party shall accord to such investments full security and protection.
- 2) Each Contracting Party shall accord to such investments treatment not less favourable than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the national concerned.
- 3) If a Contracting Party has accorded special advantages to nationals of any third State by virtue of international agreements establishing free trade zones, customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.
- 4) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.
- 5) If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties contain a regulation, whether general or specific, entitling investments in its territory by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 4

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State who are in the same circumstances, whichever is more favourable to the nationals concerned. For this purpose, however, any special fiscal advantages accorded by that Contracting Party shall not be taken into account:

- a) under an agreement for the avoidance of double taxation; or
- b) by virtue of its participation in a free trade zone, customs union, economic union or similar institution;
or
- c) on the basis of reciprocity with a third State.

Article 5

(1) The Contracting Parties shall guarantee that payments relating to an investment may be freely transferred, without delay, in a freely convertible currency. Such transfers include in particular though not exclusively:

- a) profits, interests, dividends and other current income;
- b) funds necessary
 - (i) for the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - (ii) to replace capital assets in order to safeguard the continuity of an investment;
- c) additional funds necessary for the development of an investment;
- d) funds in repayment of loans;
- e) royalties or fees;
- f) incomes, salaries and other earnings of nationals of a Contracting Party that they have obtained in the territory of the other Contracting Party in relationship to the investments referred to in the present Agreement;
- g) the proceeds of sale or liquidation of the investment;
- h) payments arising under Article 7;
- i) payments following the settlement of disputes.

(2) Notwithstanding the preceding paragraph, a Contracting Party may delay the transfer through the equitable, non-discriminatory and good faith application of measures:

- a) to protect the rights of creditors,
- b) relating to or ensuring compliance with laws and regulations
 - (i) on the issuing, trading and dealing in securities, futures and derivatives,
 - (ii) concerning reports or records of transfers, or
- c) in connection with criminal offences and orders of judgements in administrative and adjudicatory proceedings,

provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's obligations under this Agreement.

(3) The provisions of this Agreement shall not affect the rights and obligations of the Contracting Parties as members of the International Monetary Fund under the Articles of the Fund.

Article 6

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

- a) the measures are taken in the public necessity or interest and under due process of law;
- b) the measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;
- c) the measures are accompanied by prompt, adequate and effective compensation. Such compensation shall represent the real market value or in the absence thereof the genuine value, before the moment the measures or the impending measures became public knowledge, of the investments affected, shall include interest until the date of payment, at a normal commercial rate or at the banking rate in the country concerned, whichever is best to the claimants, and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned in any freely convertible currency.

Article 7

Nationals of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

Article 8

If the investments of a national of one Contracting Party in the territory of the other Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said national pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

Article 9

(1) Disputes which might arise between one of the Contracting Parties and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party shall, whenever possible, be settled amicably between the parties concerned.

(2) If the dispute has not been settled within a period of six months from the date either party to the dispute requested amicable settlement, that Contracting Party consents the dispute be submitted at the request of the national concerned to:

a) a competent domestic court of the Contracting Party in which territory the investment was made;

b) the International Centre for Settlement of Investment Disputes (ICSID), for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965;

c) an international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3) A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall in accordance with Article 25 (2) (b) of the Convention on the Settlement of Investment Disputes between States and Nationals of other States for the purpose of the Convention be treated as a national of the other Contracting Party

4) The arbitral awards shall be final and binding on the parties to the dispute and will be executed under the laws of the Contracting Party in whose territory the investment was made.

5) Each Contracting Party hereby consents to submitting investment disputes for resolution at the choice of the national to any of the dispute settlement fora mentioned in the preceding paragraphs.

Article 10

The provisions of the present Agreement shall also apply to the investments made prior to the date of its entry into force by nationals of a Contracting Party. However, they shall not apply to claims that have arisen prior to its entry into force.

Article 11

Either Contracting Party may propose the other Contracting Party that consultations be held on any matter concerning the interpretation or application of the Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 12

- 1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a period of six months by means of diplomatic negotiations, shall, unless the Contracting Parties have otherwise agreed, be submitted, at the request of either Contracting Party, to an arbitral tribunal, composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Contracting Party.
- 2) If one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Contracting Party to make such appointment, the latter Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.
- 3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.
- 4) If, in the cases provided for in the paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments.

- 5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Contracting Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute ex aequo et bono if the Contracting Parties so agree.
- 6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.
- 7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

Article 13

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification provided for in Article 14, paragraph (1) provides otherwise.

Article 14

- 1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of fifteen years.
- 2) Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.
- 3) In respect of investments made before the date of the termination of the present Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.
- 4) Subject to the period mentioned in paragraph (2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE in two originals at, on,
in the Spanish, Netherlands and English languages, the three texts being authentic.
In case of difference of interpretation the English text will prevail.

For the Republic of Honduras:

For the Kingdom of the Netherlands: