

AGREEMENT
BETWEEN THE COMMONWEALTH OF THE BAHAMAS
AND
THE REPUBLIC OF HAITI
ON
THE PROMOTION AND PROTECTION OF INVESTMENTS

The Commonwealth of The Bahamas and the Republic of Haiti, (hereinafter referred to as "the Contracting Parties):

DESIRING to strengthen economic co-operation for the mutual benefit of both countries;

CONSCIOUS of the need to create favourable conditions for investments of either Contracting Party in the territory of the other;

RECOGNISING that the promotion and protection of investments under this Agreement will encourage initiatives in this area and increase prosperity in both countries; and

CONVINCED that these objectives can be achieved without impairing on health, safety and the environment and their general application;

HAVE AGREED AS FOLLOWS:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

1. "investment" refers to any kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the receiving country, including the following:

- (a) ownership of movable and immovable property and other property rights, such as mortgages, guarantees, rights, and similar rights;
- (b) shares, debentures, stocks, bonds and other forms of participation in companies;
- (c) claims to money or to any performance under contract having an economic value and being associated with an investment;



- (d) intellectual and industrial property rights, in particular copyrights, patents, trademarks, trade-names, technical process know-how and goodwill; and
- (e) rights to the achievement of economic and commercial activities granted by law or under contract, especially concessions for culture, development, extraction or exploitation of natural resources.

Investments in the territory of a Contracting Party by a company of the same Contracting Party but owned or controlled by investors of the other Contracting Party shall be regarded as investments of these investors had they been carried out in accordance with the laws and regulations of that Contracting Party.

Any change in the form in which assets are invested does not affect their character as investments provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. "investor" means any national or company of one of the Contracting Parties which makes investments in the territory of the other Contracting Party;

(a) "national" means any person having the nationality of one of the Contracting Parties in accordance with the laws thereof;

(b) "legal entities" including companies, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of either Contracting Party and have their seats in that Contracting party.

3. "income" refers to returns from an investment and includes, but not limited to, earnings, dividends, interest, capital gains, royalties and fees.

4. "territory" of both Contracting Parties, refers to terrestrial space, internal waters, territorial sea and airspace which covers, as well as the exclusive economic zone and the continental shelf extend beyond the territorial sea of each Contracting Party and which, in accordance with international law and its domestic law, the Contracting Party concerned has, or may have jurisdiction or sovereign rights.

ARTICLE 2 SCOPE

This Agreement applies to realised investments in the territory of a Contracting Party by investors of the other Contracting Party, whether made before or after its entry into force, but does not apply to the dispute which arises concerning investment or any claim which was settled before its entry into force.



ARTICLE 3
PROMOTION AND PROTECTION OF INVESTMENT

1. Each Contracting Party shall in its territory promote as far as possible investments of the other Contracting Party and admit such investments in accordance with its legal provisions.
2. Investments of the investors of either Contracting Party shall enjoy the constant protection and security in the territory of the other Contracting Party.
3. Without prejudice to its laws and regulations, neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party.
4. When a Contracting Party has accepted an investment in its territory, it shall issue, in accordance with its legislation, necessary for the realisation of investment approvals and permits, under its law, the execution of license agreements, technical assistance, commercial or administrative. Each Contracting Party shall endeavour to grant the necessary permits for the activities of consultants and other qualified persons regardless of their nationality.

ARTICLE 4
TREATMENT OF INVESTMENTS

1. Investments of investors of each Contracting Party shall, be accorded fair and equitable treatment in the territory of the other Contracting Party.
2. Without prejudice, and subject to its laws and regulations, each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favourable than that accorded to the investments and associated activities by its own investors.
3. Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favourable than that accorded to the investments and associated activities by the investors of any third State.
4. The provisions of Paragraph 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:
 - (a) the association of its present or future participation in a free trade zone, a customs union, economic or monetary union or any other similar international agreements including other forms of regional economic organisation; or
 - (b) an agreement or arrangement under international law or any domestic legislation relating wholly or largely to taxation.



ARTICLE 5
EXPROPRIATION

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to other forms or measures having equivalent effect of nationalisation or expropriation (hereinafter referred to as expropriation) except for:

- (a) of public interest or social interest, in accordance with legal provisions; and
- (b) provided that such measures are not discriminatory.

(c)

The Contracting Party shall adopt such measures to pay adequate and effective compensation without delay.

2. The compensation mentioned in Paragraph 1 of this Article shall be equivalent to the value of the expropriated investments immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier.

3. The value shall be determined in accordance with generally recognised principals of valuation.

4. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment.

5. Investors concerned have the right to appeal under the legislation of the Contracting Party making the expropriation, for prompt review of his case, including the evaluation of its investment and the payment of compensation by a judicial authority or other competent and independent authority of that Contracting Party, in accordance with the principles set out in this Article.

6. When a Contracting Party expropriates the assets of a company incorporated or constituted under the law in force in any part of its territory, and investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied to ensure prompt, adequate and effective compensation in respect of investors of the other Contracting Party who are owners of those shares.

ARTICLE 6
COMPENSATION FOR DAMAGES AND LOSSES

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, a state of national emergency, insurrection, riot or other similar events in the territory of the other Contracting party, shall be accorded by the other Contracting party, treatment as regards restitution, indemnification, compensation and other settlements no less favourable than that accorded to the investors of its own or any third state, whichever is more favourable to the investor concerned.



ARTICLE 7
TRANSFERS

1. Each Contracting Party shall accord to investors of the other Contracting Party the free transfer of all payments on their investments, in particular::

- (a) the initial capital and additional amounts to maintain and increase investment;
- (b) investment income, as defined in Article 1;
- (c) the fund repayment of loans related to an investment;
- (d) the compensation provided for in Articles 5 and 6;
- (e) the proceeds of sale or liquidation, total or partial of the investment;
- (f) earnings and other remuneration of the person recruited abroad as part of an investment;
- (g) payments of technical assistance or technical service fee, management fee;
- (h) payments in connection with contracting projects; and
- (i) payments from the settlement of a dispute.

2. Transfers shall be made without delay in a freely convertible currency at the prevailing market rate of exchange rate applicable within the Contracting Party accepting the investments on the market at the date of transfer.

3. Nothing in paragraph 1 of this Article shall affect transfer of compensation paid under Articles 4 and 5 of this Agreement.

4. In the event of serious balance of payments and external financial difficulties or threat thereof, a Contracting Party may adopt or maintain a restriction temporarily transfers. These restrictions:

- (a) must be immediately notified to the other Contracting Party;
- (b) must comply with the Articles of Agreement of the International Monetary Fund;
- (c) shall not exceed those necessary to deal with the circumstances described in paragraph 3 of this Article; and
- (d) should be applied fairly, without discrimination and on the basis of good faith.

ARTICLE 8
OTHER OBLIGATIONS

1. If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

2. Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting party as regards their investments.



ARTICLE 9
SUBROGATION

If one Contracting party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise:

- (a) the assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to its designated agency; and
- (b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

ARTICLE 10
SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

1. Any dispute between the Contracting Parties in the interpretation or application of this Agreement shall be resolved, to the extent possible, through diplomatic channels.
2. If the dispute cannot be resolved in the manner referred to in paragraph 1 within a period of six months from the beginning of negotiations, it shall, at the request of either Contracting Party, be referred to an arbitration tribunal.
3. The arbitral tribunal will comprise three arbitrators. Each Contracting Party shall appoint one arbitrator and the two arbitrators shall select a national of a third state as presiding arbitrator within five months from the date on which one or the other Contracting Party notifies the other party of its intention to refer the dispute to arbitration.
4. In case either Contracting Party does not appoint an arbitrator within the period specified in paragraph 3 of this Article, the other Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the Vice-President is in the same situation, the member of the highest in hierarchy at the International Court of Justice after the Vice-President and who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall render its decision on the basis of compliance with the standards contained in this Agreement and the rules and principles of international law.
6. Unless the Parties otherwise agree, the arbitral tribunal will establish its own procedure.
7. The arbitral tribunal will take its decision by a majority of votes and the latter shall be final and binding on both parties.

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8. Each Contracting Party shall take charge of the expenses of the arbitrator it has appointed, and those relating to its representation in the arbitration process. Other costs including those of the President are distributed in an equitable manner between the Contracting Parties.

ARTICLE 11
SETTLEMENT OF DISPUTES BETWEEN INVESTORS OF ONE CONTRACTING PARTY

1. Any dispute between an investor of one Contracting Party and the other Contracting Party relating to obligations of the latter Contracting Party in accordance with the provisions of this Agreement with respect to the first investment will be notified in writing by the Contracting Party which receives the investment. Wherever possible, the conflicting parties try to settle the dispute through an agreement amicably.

2. If the dispute cannot be solved in the manner referred to in paragraph 1 within a period of six months from the date of the written notification, the dispute may be submitted, at the option of the investor, to:

- (a) the competent court of the Contracting Party in whose territory the investment was made; or
- (b) an *Ad hoc* arbitral tribunal established by the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL); or arbitration of 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 signed in Washington since 18th March, 1965, in case both Parties become members of this Convention; or
- (c) arbitration under the Additional Facilitation Rules of ICSID, if only one of the Contracting Parties is a member of the Convention referred to in paragraph (c) of this article.

3. Each Contracting Party hereby gives its unconditional agreement to submit the dispute between it and the investors of the other Contracting Party to arbitration in accordance with the provisions of this article.

4. The arbitration shall be based on the provisions of this Agreement, and the laws of the Contracting Party in the territory.

5. A Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the damages alleged is received or will be received by the investor under a guarantee or contract insurance.

6. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party shall undertake to execute the sentences adopted in accordance with its laws.



ARTICLE 12
TRANSPARENCY

Each Contracting Party shall promptly publish or otherwise make available to the public its laws, regulations, procedures and administrative decisions and judicial decisions of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in its territory.

ARTICLE 13
CONSULTATIONS

1. Either Contracting Party may propose to the other Contracting Party to hold consultations on any matter concerning the interpretation or application of this Agreement. The other Contracting Party must be receptive to the proposal and offer adequate opportunities for such consultations.

2. The Contracting Parties shall hold meetings from time to time for the purpose of:

- (a) reviewing the implementation of this Agreement;
- (b) exchanging legal information and investment opportunities;
- (c) resolving disputes arising out of investments;
- (d) forwarding proposals on promotion of investments; and
- (e) studying other issues in connection with investments.

3. Where either Contracting Party requests consultation on any matter under paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation shall be held alternately in Nassau and Port-Au-Prince.

ARTICLE 14
ENTRY INTO FORCE

The Contracting Parties shall notify each other in fulfilling their respective constitutional procedures for the entry into force of this Agreement. The agreement will come into force on the thirtieth day following the date of receipt of the last notification.

ARTICLE 15
DURATION AND TERMINATION

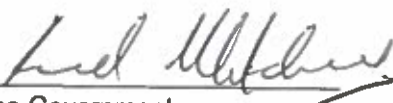
1. This Agreement shall remain in force for an initial period of ten (10) years. After the expiry of the initial period of ten years, this Agreement shall remain in force indefinitely unless either Contracting Party notifies in writing to the other Contracting Party of its decision to terminate this Agreement. This decision shall be effective one (1) year after the date of notification.

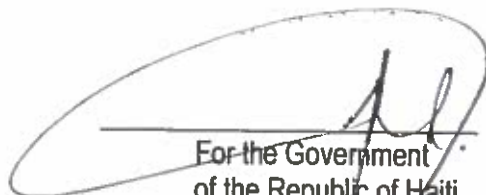
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2. Regarding the existing investment at the date of termination of this Agreement, the provisions of Articles 1 to 14 of this Agreement will still be applied for a period of ten (10) years from the date of termination of the Agreement.

IN WITNESS WHEREOF the undersigned representatives, duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at Nassau in the English and French languages, both versions being equally authentic this 29th day of July in the year 2014.


For the Government
of the Commonwealth of The Bahamas


For the Government
of the Republic of Haiti

