

**AGREEMENT BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF ECUADOR AND THE**

**GOVERNMENT OF THE REPUBLIC OF GUATEMALA ON THE PROMOTION**

**AND RECIPROCAL PROTECTION OF**

**INVESTMENTS**

The Government of the Republic of Ecuador and the Government of the Republic of Guatemala, hereinafter referred to as the "Contracting Parties",

DESIROUS of intensifying economic cooperation for the mutual benefit of both countries and maintaining fair, equitable and favorable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the promotion and protection of investments on the basis of this Agreement will contribute to stimulating the individual economic initiative and will be conducive to increasing the prosperity of both Contracting Parties,

CONSCIOUS of the need to establish an adequate legal framework to regulate and guarantee the reciprocal promotion and protection of investments between the two countries;

HAVE AGREED AS FOLLOWS:

**Article 1. Definitions**

For the purposes of this Convention:

1. The term "investment" refers to all types of assets owned or Control, direct or indirect, of an investor of a Contracting Party, Carried out in the territory of the other Contracting Party in accordance with Their legislation.

It includes, in particular but not exclusively:

- (A) shares, participations, or rights to participate in companies and in any other form of joint venture;
- (B) ownership of movable and immovable property, real rights such as mortgages, leases, usufruct and other similar rights;
- (C) credits, securities, rights over money and any other benefit that has an economic value directly linked to a specific investment;
- (D) intellectual property rights, including, in particular, copyright and related rights; Industrial property rights such as trademarks, geographical indications, drawings, patents, industrial designs, layout designs (topographies) of integrated circuits, know-how, plant breeders' rights and other similar rights;
- (E) rights conferred by law, by administrative act or under contract, including concessions or rights for exploration, exploration, extraction and exploitation of natural resources; Y,
- (F) reinvestment of profits, these being understood as the investment of the same in the company that generates them.

Any change in the initial form in which the assets are invested or reinvested does not affect their character as an investment.

2. The term "gains" means the sums obtained or produced by an investment made in accordance with this Agreement, such as profits, interest, dividends and royalties.

3. The term "territory" means:

In the case of Ecuador: Land, airspace and territorial sea, including those maritime areas adjacent to the outer limit of the territorial sea, where it may, under its law and international law, exercise sovereignty, sovereign rights or jurisdiction.

In the case of Guatemala: Land, inland waters, territorial sea and airspace under its sovereignty, including the contiguous zone, the exclusive economic zone and the continental shelf where it exercises sovereign rights and jurisdiction, in accordance with the national legislation And international.

4. The term "investor" means:

(A) natural persons having the nationality of either Contracting Party, in accordance with its laws, or

(B) legal persons, such as corporations, corporations, companies, trade associations, institutions or other entities constituted or established under the legislation of a Contracting Party and having their domicile within either Contracting Party.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall promote and create favorable conditions in its territory for investments made by investors of the other Contracting Party and shall admit them in accordance with its legislation.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's legislation, shall enjoy full protection and legal security of this Agreement.

3. Each of the Contracting Parties, within the framework of its laws, will give a positive consideration to the requests for obtaining the necessary permits in connection with the investments in its territory, including authorizations for the hiring of administrative and technical personnel of High level of their choice, regardless of their nationality,

4. Each Contracting Party shall promptly publish or otherwise make available its generally applicable laws, regulations, procedures and administrative rulings, as well as international conventions which may affect the investments of investors of a Contracting Party in the territory Of the other Contracting Party. Likewise, in order to increase investment flows, they will exchange information on investment opportunities in each Contracting Party.

## **Article 3. Treatment of Investments**

1, Each Contracting Party shall ensure a fair and equitable treatment for investments made by investors of the other Contracting Party of

Accordance with this Convention and shall not prevent, through arbitrary or

Discriminatory, free administration, use, use, enjoyment or disposal of investments made by investors of that Contracting Party.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or profits derived therefrom, shall receive treatment no less favorable than that which the receiving Party grants to the investments and Profits obtained by its own investors or by investors of a third State, which is more favorable to the investor.

3. Investors of one Contracting Party shall receive, on the part of the other Contracting Party, in respect of the administration, maintenance, use, enjoyment or disposal of their investments, treatment no less favorable than that which that Contracting Party grants to its own investors Or investors of a third State, which is more favorable to the investor.

## **Article 4. Exceptions**

The provisions of this Agreement shall not be construed as obliging one of the Contracting Parties to grant to investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

(A) any existing or future free trade zone, customs union or common market of which one of the Contracting Parties is or

may become a member;

(B) any international agreement relating wholly or in part to tax matters; or

(C) any multilateral convention or treaty relating to investments of which one of the Contracting Parties is or may become a party.

## **Article 5. Expropriation**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measure having an effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") except for Reasons of national security, necessity or public interest and social order, on a non-discriminatory basis and under due process of law.

2. In the case of an expropriation in accordance with the provisions of paragraph 1, such measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. The sum of such compensation shall correspond to the fair market value of the investment expropriated at the moment immediately prior to the expropriation or in the event that it becomes public knowledge, whichever occurs first.

Said fair market value will be expressed in a currency of free convertibility based on the existing market exchange rate for that currency at that time. The compensation shall also include interest at the prevailing commercial market rate from the date of expropriation to the effective date of payment.

3. The investor whose investment is expropriated shall be entitled to review both his case and the appraisal of his investment by the judicial authorities or other competent authorities of the other Contracting Party in accordance with the principles contained in this Article.

## **Article 6. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflict, revolution, state of national emergency, insurrection, disturbance or any other similar event shall be accorded, by way of Restitution, compensation, compensation or other agreement, treatment no less favorable than that accorded by the Contracting Parties to their own investors or to investors of any third State, which is more favorable to the affected investor. The resulting payments must be freely transferable.

## **Article 7. Transfers**

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of its investments, without any restriction or delay, in a currency of free convertibility and at the exchange rate applicable on the market on the date of the transfer.

The provisions of the preceding paragraph do not limit the right of Contracting Parties to require the registration of investment or transfers to the competent national authority and compliance with the tax obligations established by the current legislation of the Contracting Party receiving the investment.

These transfers shall include in particular, but not exclusively:

(A) capital and additional amounts to maintain, develop or

Increase investment;

(B) earnings;

(C) the proceeds from the total or partial sale or liquidation of the investment;

(D) the amounts required for the payment of expenses arising from the operation of the investment, such as repayment of loans, payment of royalties or royalties and concession rights or other similar expenses;

(E) the compensation and compensation provided for under Articles 5 and 6; Y,

(F) payments arising from the settlement of a dispute.

2. Notwithstanding the first paragraph of this Article, each Contracting Party shall be entitled, in circumstances of exceptional or serious balance of payments difficulties, to temporarily limit transfers, in an equitable and non-discriminatory

manner, in accordance with internationally agreed criteria Accepted. Limitations adopted or maintained by one Contracting Party in accordance with this paragraph, as well as their elimination, shall be promptly notified to the other Contracting Party.

## **Article 8. Subrogation**

If a Contracting Party or one of its agencies makes a payment to an investor by virtue of a guarantee or insurance against non-commercial risks that it has contracted in relation to an investment of any of its investors in the territory of the other Contracting Party, That other Contracting Party shall recognize the validity of the subrogation in favor of that Contracting Party or one of its agencies in respect of any right or title of the Contracting Party.

Investor. The Contracting Party or one of its agencies shall be authorized, within the limits of subrogation, to exercise the same rights as the investor would have been authorized to exercise, provided that those rights remain in force or are legally recognized by the other Contracting Party.

## **Article 9. Inquiries**

The Contracting Parties, at the request of one of them, shall consult each other on any matter related to the application or interpretation of this Agreement.

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

1. Any dispute relating to the provisions of this Agreement between an Investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled by friendly consultations.

2. If the dispute can not be resolved amicably within six months from the date of the request for amicable settlement, the investor shall be entitled to refer the case to the competent courts of the Contracting Party in whose territory the investment was made or, To international arbitration.

In the latter case, the investor may choose to submit the case:

(A) to the International Center for Settlement of Investment Disputes (ICSID), established in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March Of 1965. Where one of the Contracting Parties is not a Contracting State

Of the said Convention, the dispute may be resolved in accordance with its Supplementary Mechanism; or

(B) an ad hoc arbitration tribunal which, unless otherwise agreed by the parties to the dispute, shall be established in accordance with the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL).

Both parties to the dispute give their irrevocable consent for all investment disputes to be submitted to the aforementioned national court or alternative international arbitration procedures.

3. An investor who has submitted a dispute to the national jurisdiction may nevertheless resort to one of the arbitration tribunals mentioned in paragraph (2) of this Article if, before the national court issues its judgment in the matter in question Controversy, the investor waives to pursue the case through national procedures.

4. Neither Contracting Party which is a party to a dispute may raise an objection during any stage of the arbitration procedure or the execution of an arbitral award on the grounds that the investor, who is the party to the dispute, has received a Compensation that covers all or part of your losses under insurance.

5. The award shall be final and binding on the parties to the dispute and shall be enforced in accordance with national law.

6. The Contracting Parties may not interfere by means of diplomatic actions, matters related to controversies subject to proceeding

Judicial or international arbitration, in accordance with the provisions of this Article,

Until the corresponding proceedings are concluded, except in the case where the other party to the dispute has not complied with the judicial decision or the decision of the Arbitral Tribunal, in the terms established in the respective judgment or decision.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Convention shall, as far as possible, be settled through diplomatic channels.
2. If the dispute can not be resolved through diplomatic channels within six (6) months after the date on which either of the Contracting Parties requested such negotiations, it shall be submitted, at the request of either of them, To an Arbitral Tribunal.
3. The Arbitral Tribunal shall be constituted for each individual case in the following manner. Within two (2) months of receipt of the request for arbitration, each Contracting Party shall designate a member of the Tribunal. Such members shall select a third-country national who, after approval by both Contracting Parties, shall be appointed President of the Court. The President shall be appointed within two (2) months from the date of the appointment of the other two members.
4. If, within the time limits specified in paragraph 3 of this Article, no designations have been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to proceed The corresponding designations. If the President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise

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The member of the International Court of Justice shall be invited to immediately follow him in the order of precedence and shall not be a national of either Contracting Party to make the nominations.

5. The Arbitral Tribunal shall take its decision by majority vote. The decisions of the Tribunal shall be final and binding on both Contracting Parties. The Arbitral Tribunal shall issue its decision on the basis of the provisions of this Convention, as well as based on the rules and principles of national and international law and equity. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation in arbitral proceedings. The expenses of the President, as well as other expenses, shall in principle be borne in equal parts by the Contracting Parties. However, the Arbitral Tribunal may determine in its decision that a greater proportion of the expenses shall be borne by one of the Contracting Parties, and this award shall be binding and unappealable for both Contracting Parties. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

## **Article 12. Application of other Rules**

If the legal provisions of one of the Contracting Parties or those agreed by the Contracting Parties, beyond what is agreed in this Convention, result in a general or special regulation by virtue of which it must be granted to investments of investors of The other Contracting Party more favorable treatment than that provided for in this Convention, such regulation shall prevail over it, insofar as it is more favorable.

## **Article 13. Application of the Convention**

1. This Convention shall apply to investments existing in the territories of the Contracting Parties at the date of their entry into force, as well as those which take place after that date.
2. This agreement shall not apply to claims or proceedings initiated prior to its entry into force.

## **Article 14. Entry Into Force, Duration and Termination**

1. This Convention shall enter into force thirty days after the date on which the Contracting Parties notify each other in writing of the fulfillment of their respective constitutional requirements for the entry into force of this Agreement, which shall be valid for ten years and shall be renewable Automatically for equal periods, unless one of the Contracting Parties denounces it by written notification one year before the date of completion of the period of validity.
2. The provisions of Articles 1 to 13 of this Agreement shall remain in force for an additional period of ten years from the date of notice of termination of the Convention for investments made prior to that date.

Signed in the city of San Francisco de Quito, Metropolitan District, on August 14, 2002, in two originals in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Ecuador

Pedro Pinto Rubianes, Vice-President

For the Government of the Republic of Guatemala

Juan Francisco Reyes López

Vice-President