

# Agreement between the Swiss Confederation and the Republic of Guatemala on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of the Republic of Guatemala

Hereinafter referred to as the Contracting Parties,

Intending to create and maintain favourable conditions for greater economic cooperation between the two States, particularly with regard to investments of investors of one Contracting Party in the territory of the other contracting party,

Recognising that the encouragement and reciprocal protection of such investments by international agreements are conducive to the initiative and to increase prosperity of both countries;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means all categories of assets and shall include in particular, though not exclusively:

(a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges, usufruits;

(b) The actions, and other forms of participation shares in companies;

(c) Monetary claims, including securities and obligations and rights to any performance having economic value;

(d) Copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indications of provenance), technical know-how, processes and goodwill;

(e) Concessions and similar rights conferred by law or under contract, including extract concessions to search for or exploit natural resources.

(2) The term refers investor with regard to either Contracting Party:

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal persons constituted in accordance with the law of that Contracting Party and having their headquarters in the territory of that Party; or juridical persons directly or indirectly controlled by nationals of that Contracting Party or by legal persons constituted in accordance with the law of that Contracting Party and having their headquarters in the territory of the latter.

(3) The term means the returns derived from an investment amounts and includes in particular, though not exclusively, interests, capital gains, profits, dividends, royalties and fees.

(4) The term territory means the Territory of the Contracting Parties and includes the adjacent maritime areas over which the Contracting Party concerned may exercise sovereign rights or jurisdiction in accordance with its legislation and international law.

## Article 2. Scope

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and

regulations by investors of the other contracting party, before or after its entry into force. it shall not apply to claims arising out of events which occurred prior to its entry into force.

### **Article 3. Encouragement , Admission**

(1) Each Contracting Party shall encourage investments of investors of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall facilitate, in accordance with its laws and regulations the necessary permits in connection with such investments and with the carrying out of licensing agreements, technical assistance, commercial or administrative authorizations and for the activities of consultants and experts.

### **Article 4. Protection , Treatment**

(1) Returns of investments and investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy protection and security in the territory of the other contracting party. no Contracting Party shall in any way hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increased or disposal of such investments.

(2) Each Contracting Party shall accord in its territory to returns of investments and investors of the other contracting party treatment no less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State, more favourable treatment to the investor concerned is crucial.

(3) Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that it accords to its own investors to investors or of any third State, more favourable treatment to the investor concerned is crucial.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a Free Trade Area (libreéchange, customs union or common market or by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other contracting party.

### **Article 5. Free Transfer**

(1) Each Contracting Party shall accord to investors of the other contracting party without delay the transfer in a freely convertible currency of the amounts relating to an investment in particular, though not exclusively:

- (a) Income;
- (b) Payments or other obligations relating to loans for investment;
- (c) Proceeds from the sale or the total or partial liquidation of an investment including the appreciation thereof;
- (d) Other earnings and remuneration of personnel engaged from abroad in connection with the investment;
- (e) The initial capital and additional amounts for the maintenance or development of the investment.

(2) Unless otherwise agreed with the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment has been made.

### **Article 6. Dispossession**

(1) Contracting Party shall take any measures of expropriation, nationalization or any other measures having effect equivalent to expropriation against nationalisation of investments or investors of the other contracting party except for reasons of public interest and provided that such measures are subject to payment of prompt and adequate compensation, they are not discriminatory and are in accordance with the national laws of general application. the legality of any such expropriation and the amount of compensation may, at the request of the investor, be subject to review in accordance with the legal requirements.

(2) The compensation referred to in paragraph (1) would be equivalent to the fair market value of the investment in conformity with recognized principles of valuation, such as, inter alia, the capital invested, replacement value added value,

the current income, goodwill and other relevant factors, immediately before the expropriation was announced or they are known to the public, the first of those events in determining. the amount of compensation shall include interest calculated at the normal commercial rate from the date of dispossession until the date of payment, there shall be set out in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or its headquarters.

(3) Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, rebellion or state of emergency, which took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own investors or those of any third State as regards restitution, indemnification, compensation or other settlement.

## **Article 7. Principle of Subrogation**

Where a Contracting Party has provided any financial guarantee against non-commercial risks to an investment by one of its investors in the territory of the other contracting party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation to the rights of the investor if payment has been made under this first guaranteed by the contracting party.

## **Article 8. Disputes between a Contracting Party and an Investor of the other Contracting Party**

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned.

(2) If these consultations do not resolve within six months of the request from the start, the investor may submit the dispute for settlement to:

(a) The competent courts of the Contracting Party in whose territory the investment has been made; or

(b) 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 etats<sup>1</sup>, opened for signature at Washington on 18 March 1965; ou<sup>1</sup>, opened for signature at Washington on 18 March 1965; or

(c) To an ad hoc arbitral tribunal which unless the parties to the dispute otherwise agree, is to be established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party consents to submit a procedure to international conciliation or arbitration any dispute concerning an investment.

(4) The Contracting Party which is a party to the dispute may, at any stage of the proceedings, assert its immunity or the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage incurred.

(5) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other contracting party does not comply with the arbitral award.

(6) The arbitral award shall be final and binding upon the parties to the dispute and shall be executed according to the national legislation.

## **Article 9. Disputes between the Contracting Parties**

(1) Disputes between the contracting parties relating to the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If the dispute between the contracting parties cannot be settled within six months from the time at which it was raised in writing by either contracting party, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. these two members shall agree within two months the Chairman of the Tribunal who shall be a national of a third State with which both contracting parties maintain diplomatic relations.

(4) If the necessary appointments have not been made within the periods specified in the AI (3) of this article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the appointments. If the President is a national of either Contracting Party or if he is unable to perform this function for another reason, the Vice-President shall be invited to make the appointments. If the Vice-President is a national of either Contracting Party or if he is also prevented from carrying out this function for another reason, the most senior member of the Court who is not a national of either Contracting Party shall be invited to make the appointments.

(5) The arbitral tribunal shall determine its own rules of procedure, unless the Contracting Parties decide otherwise. It shall reach its decisions by a majority of votes. The decisions of the Tribunal shall be final and binding on both contracting parties.

(6) Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

## **Article 10. Other Commitments**

(1) If the provisions of the legislation of a Contracting Party or rules of International Law accord to investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement, they shall apply to the extent that they are more favourable.

(2) Each Contracting Party shall comply with all its obligations in respect of investments made in its territory by investors of the other contracting party.

## **Article 11. Final Provisions**

(1) This Agreement shall enter into force on the day on which the contracting parties have notified each other that the legal requirements for the entry into force of international agreements have been completed; it shall remain valid for a period of ten years. If it is not denounced with 12 months notice in writing before the expiry of this period, it shall be considered on the same terms as renewed for successive periods of five years.

(2) In the event of termination, the provisions of articles 1 to 10 of this Agreement shall continue to apply for a further period of ten years for investments made prior to the termination of the Agreement.

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

9 September 2002

Enter into force by exchange of notes on 3 May 2005

On 30 May 2006 (State)