

# **COOPERATION AND INVESTMENT FACILITATION AGREEMENT BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE REPUBLIC OF ECUADOR**

## **PREAMBLE**

The Federative Republic of Brazil and the Republic of Ecuador, hereinafter referred to as the "Parties" or individually as "Parties",

Desiring to strengthen and deepen the bonds of friendship and the spirit of cooperation continues between the Parties;

Seeking to create and maintain favorable conditions for the investments of investors of one Party in the territory of the other;

Trying to stimulate, streamline and support bilateral investments, opening new integration initiatives between the two countries;

Recognizing the fundamental role of investment in the promotion of sustainable development, economic growth, poverty reduction, job creation, the expansion of productive capacity and human development;

Understanding that the establishment of a strategic partnership between the Parties regarding investment will bring broad and mutual benefits;

Recognizing the importance of fostering a transparent, agile and friendly environment for the investment of the Parties; Reinsuring autonomy and regulatory space;

Desiring to foster and strengthen contacts between the private sector and the Governments of the two countries; and

Trying to create a mechanism for technical dialogue and government initiatives that contribute to a significant increase in mutual investment;

AGREE THE FOLLOWING:

## **Part I. Scope of the Agreement and Definitions**

### **Article 1. Objective**

The objective of this Agreement is to promote cooperation between the Parties in order to facilitate and promote mutual investment, through the establishment of an institutional framework for the management of an agenda for cooperation and investment facilitation, and mechanisms for the mitigation of risks and conflict prevention, among other instruments mutually agreed upon by the Parties.

### **Article 2. Scope and Coverage**

1. This Agreement covers all investments made before or after its entry into force.
2. The provisions of this Agreement shall not apply to investments covered in respect of existing measures before the date of entry into force of this Agreement. This does not prevent the parties from discussing issues of mutual interest related to such measures in the Joint Committee established by article 18.
3. This Agreement may in no way limit the rights and benefits that an investor of a Party has in accordance with national or international legislation in the territory of the other Party.

4. For greater certainty, the Parties reaffirm that this Agreement shall apply without prejudice to investment-related rights and obligations derived from the Agreements of the World Trade Organization.

5. This Agreement shall not prevent the adoption and implementation of new legal requirements or restrictions to investors and their investments, as long as they are consistent with this Agreement.

### **Article 3. Definitions**

1. For the purpose of this Agreement:

1.1. "Host State" means the Party where the investment is located.

1.2. "Enterprise" means any entity constituted or organized under the applicable domestic law, whether or not for profit, whether privately owned or State-owned.

1.3. "Investment" means a direct investment of an investor of one Party, established or acquired in accordance with the laws and regulations of the other Party, that directly or indirectly, allows the investor to exert control or significant degree of influence over the management of the production of goods or provision of services in the territory of the other Party, and that has the characteristics of an investment, which includes the commitment of capital, the objective of establishing a lasting interest, the expectation of profit or profit and the assumption of risks.

An investment can take the following forms:

a) An enterprise;

b) Shares, participations and other forms of equity in the capital of an enterprise;

c) Movable or immovable property and other property rights such as mortgages, liens, pledges, encumbrances or similar rights;

d) Concessions, licenses or authorizations, granted by the Host Party State to an investor of the other Party;

e) Instruments of debt or loans to an enterprise:

i) When the enterprise is a subsidiary of the investor; or

ii) When the original loan due date is at least three years;

f) Intellectual property rights as defined or referred to in the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (TRIPS).

1.3.1 For greater certainty, "Investment" does not include:

a) An order or judgment issued as a result of a lawsuit or an administrative process;

b) Debt securities issued by a Party or loans granted by a Party to the other Party, bonds, obligations (debentures), loans or other debt instruments of a State enterprise of a Party that this Party treats as public debt;

c) Portfolio investments, that do not allow the investor to exert a significant degree of influence in the management of the enterprise;

d) Claims to money that arise solely from commercial contracts for the sale of goods or services by a national or a company in the territory of a Party to a national or a company in the territory of another Party, or the granting of credit in connection with a commercial transaction, or any other financial claims that do not involve the types of interest provided in subsections (a) through (f) above.

1.4 "Investor" means a national, permanent resident or enterprise of a Party that has made an investment in the territory of the other Party provided that it is not ultimately controlled by a national of the Host State.

1.5 "National" means a natural person that has the nationality of a Party, according to its laws and regulations.

1.6 "Income" means the values obtained by an investment, including profit, interest, capital gains, dividends or "royalties."

1.7 "Measure" means any law, regulation, rule, procedure, decision, administrative provision, or any other provision adopted by a Party.

1.8 "Territory" means the territory, including its land and air spaces, the exclusive economic zone, the territorial sea, continental shelf, soil and subsoil, within which the Party exercises its sovereign or jurisdictional rights, in accordance with international law and with its internal legislation.

1.9 "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1 C of the Agreement Establishing the World Trade Organization.

## **Part II. Regulatory Measures and Risk Mitigation**

### **Article 4. Admission and Treatment**

1. Each Party shall grant the rights granted in this Agreement to the investments of the other Party established in its territory in accordance with its laws and regulations.
2. Each Party shall grant investors of the other Party and its investments a treatment adjusted to due process of law.
3. In accordance with the principles of this Agreement, each Party shall ensure that all measures affecting the investment are administered in a reasonable, objective and impartial manner, in accordance with its legal system.

### **Article 5. National Treatment**

1. Without prejudice to the measures in force under its legislation on the date of entry into force of this Agreement, each Party, subject to its laws and regulations, shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Without prejudice to the measures in force under its legislation on the date of entry into force of this Agreement, each Party, subject to its laws and regulations, shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. For greater certainty, whether treatment is accorded in 'like circumstances' depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public interest objectives.
4. Nothing in this Agreement shall be construed to prevent a Party from adopting new requirements affecting investors of the other Party or their investments, provided such requirements are not discriminatory according to this Agreement.
5. Nothing in this Agreement shall be construed to prohibit or restrict a Party from designating, maintaining or establishing a state monopoly or a state enterprise in accordance with its legislation.
6. This article does not apply to subsidies or donations granted by a Party, including loans, guarantees and insurance, with a State guarantee, notwithstanding that the matter may be dealt with in the Joint Committee for the administration of the Agreement provided for in Article 18.

### **Article 6. Most-favoured-nation Treatment**

1. Each Party, subject to its laws and regulations, shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party, subject to its laws and regulations, shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. This Article shall not be construed as:
  - (a) An obligation of a Party to give an investor of the other Party or its investments the benefit of any treatment, preference or privilege arising from:
    - (i) Provisions related to the resolution of investment disputes contained in an international investment agreement, including

an agreement that contains an investment chapter; or

(ii) Any international trade agreement, including agreements such as those that create a regional economic integration organization, free trade zone, customs union or common market of which a Party is a member before the Agreement enters into force.

(b) The possibility of invoking, in any dispute settlement mechanism, standards of treatment contained in an international investment agreement or in an agreement containing an investment chapter of which one of the Parties of this Agreement be a part before the Agreement enters into force.

4. For greater certainty, this Agreement does not apply to disciplines related to trade in services contained in any international agreement in force or signed before the entry into force of this Agreement.

5. For greater certainty, whether treatment is accorded in 'like circumstances' depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public interest objectives.

6. This Article does not apply to subsidies or donations granted by a Party, including loans, guarantees and insurance, with a State guarantee, notwithstanding that the matter may be dealt with in the Joint Committee provided for in Article 18.

## **Article 7. Direct Expropriation**

1. Neither Party shall nationalize or expropriate investments of investors of the other Party, except:

- a) For a public purpose or necessity or when justified as a social interest;
- b) In a non-discriminatory manner;
- c) On payment of compensation, according to paragraphs 2 to 4 of this Article; and
- d) In accordance with due process of law

2. The compensation shall:

- a) Be paid without undue delay, in accordance with the legal order of the Host State;
- b) Be equivalent to the fair market value of the expropriated investment, immediately before the expropriating measure has taken place ('expropriation date');
- c) Not reflect any change in the market value due to the knowledge of the intention to expropriate, before the expropriation date; and
- d) Be completely payable and transferable, according to Article 10 on transfers.

3. The compensation to be paid shall not be inferior to the fair market value on the expropriation date, plus interests at a rate determined according to market criteria accrued since the expropriation date until the date of payment, according to the legislation of the Host State.

4. The Parties shall cooperate to improve the knowledge of their respective national laws regarding the expropriation of investment.

5. For greater certainty, this Article only provides for direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or ownership rights, and does not cover indirect expropriation.

6. The affected investor shall have the right, in accordance with the law of the Party that performs the expropriation, to review his case, by the administrative, judicial or other competent and independent authorities of the Party, to determine whether the expropriation and The appraisal of your investment have been adopted in accordance with the provisions of this Article.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of such rights to the extent that such issuance, revocation, limitation or creation is compatible with the TRIPS Agreement. For greater certainty, the term "revocation" of intellectual property rights referred to in this paragraph includes the cancellation or nullity of such rights, and the term "limitation" of intellectual property rights also includes exceptions to such rights.

## **Article 8. Compensation for Losses**

1. The investors of a Party whose investments in the territory of the other Party suffer losses due to war or other armed conflict, revolution, state of emergency, insurrection, riot or any other similar events, shall enjoy, with regard to restitution, indemnity or other form of compensation, the same treatment as the latter Party accords to its own investors or the treatment accorded to investors of a third party, whichever is more favourable to the affected investor.

2. Each Party shall provide the investor restitution, compensation, or both, as appropriate, in accordance with Article 6 of this Agreement, in the event that investments suffer losses in its territory in any situation referred to in Paragraph 1 resulting from:

- a) Requisitioning of its investment or part thereof by the forces or authorities of the latter Party; or
- b) Destruction of its investment or any part thereof by the forces or authorities of the latter Party.

## **Article 9. Transparency**

1. Each Party shall ensure that its laws, regulations, procedures and administrative resolutions of general application relating to any matter covered by this Agreement, in particular with regard to qualification, licensing and certification, are published without delay and made available, as much as possible, in electronic format, so such that interested persons and the other Party are allowed to be aware of them.

2. Each Party shall endeavor to allow reasonable opportunities for those interested to express their opinion on the proposed measures.

3. Whenever possible, each Party shall disseminate this Agreement, after its ratification by both Parties, to their respective public and private financial agents, responsible for the technical evaluation of risks and the approval of loans, credits, guarantees and related insurances for investment in the territory of the other Party.

## **Article 10. Transfers**

1. The Parties will allow the transfer of funds related to an investment to be made freely, without undue delay and prior compliance with the requirements established in their internal legal system, from and to their territory. The transfers will be made in a freely convertible currency at the exchange rate prevailing in the market at the date of the transfer, once the rates and taxes are covered by law.

Such transfers include:

- a) The initial capital contribution or any addition thereto in relation to the maintenance or expansion of the investment;
- b) Income directly related to the investment;
- c) The proceeds of sale or total or partial liquidation of the investment;
- d) The repayments of any loan, including interests thereon, relating directly to the investment;
- e) The amount of a compensation

2. Without prejudice to the provisions of paragraph 1, a Party may avoid a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- a) Bankruptcy, insolvency or the protection of the rights of creditors;
- b) Criminal infractions;
- c) Financial reports or maintenance of transfers' registers when necessary to cooperate with law enforcement or with financial regulators; or
- d) The guarantee for the enforcement of decisions in judicial or administrative proceedings.

3. Nothing in this Agreement shall affect the right of a Party to adopt regulatory measures relating to the balance of payments during a balance of payments crisis, nor shall it affect the rights and obligations of the members of the International Monetary Fund contained in the Agreement Establishing the Fund, in particular the use of exchange rate measures that are in accordance with the provisions of the Convention.

4. The adoption of temporary restrictive measures to transfers if there are serious difficulties in the balance of payments, must be non-discriminatory and in accordance with the Articles of the Agreement of the International Monetary Fund.

## **Article 11. Tax Measures**

1. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax regulations. In the event of any conflict between the provisions of this Agreement and any type of tax regulations, the provisions of the tax regulations will prevail.

2. No provision of this Agreement shall be construed as an obligation of a Party to give an investor of the other Party, in relation to its investments, the benefit of any treatment, preference or privilege resulting from an agreement to avoid double taxation, current or future, of which one of the Parties to this Agreement is a party or becomes a part.

3. No provision of this Agreement shall be construed in a manner that avoids the adoption or execution of any measure intended to guarantee the imposition or fair or effective collection of taxes in accordance with the provisions of the legislation of the Parties, provided that such measure does not be applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination or a disguised restriction.

## **Article 12. Prudential Measures**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining prudential measures, such as:

- a) The protection of investors, depositors, financial market participants, policyholders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
- b) The maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
- c) Ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform to the provisions of this Agreement, they shall not be used as a means of circumventing the commitments or obligations of the Party under this Agreement.

## **Article 13. Security Exceptions**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures aimed at preserving its national security or public order, applying the provisions of its criminal laws or complying with its obligations with respect to the maintenance of international peace and security, in accordance with the provisions of the Charter of the United Nations.

2. The measures that a Party adopts pursuant to paragraph 1 of this Article, nor the decision based on its national security laws or public order that at any time prohibits or prohibits shall not be subject to the dispute resolution mechanism provided for in this Agreement. restrict the making of an investment in its territory by an investor from another Party.

3. Nothing in this Agreement shall be construed to require any of the Parties to provide information whose disclosure would, in their judgment, be contrary to the essential interests of their security.

## **Article 14. Corporate Social Responsibility**

1. Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the Host State and the local community, through the adoption of a high degree of socially responsible practices, based on the principles and voluntary norms set out in this Article.

2. The investors and their investment shall endeavour to comply with the following principles and norms for a responsible business conduct and consistent with the laws adopted by the Host State receiving the investment:

- a) Contribute to the economic, social and environmental progress, aiming at achieving sustainable development;
- b) Respect the internationally recognized human rights of those involved in the companies' activities;
- c) Encourage local capacity building through close cooperation with the local community;
- d) Encourage the creation of human capital, especially by creating employment opportunities and offering professional

training to workers;

- e) Refrain from seeking or accepting exemptions that are not established in the legal or regulatory framework relating to human rights, environment, health, security, work, tax system, financial incentives, or other issues;
- f) Support and advocate for good corporate governance principles, and develop and apply good practices of corporate governance;
- g) Develop and implement effective self-regulatory practices and management systems that foster a relationship of mutual trust between the companies and the societies in which its operations are conducted;
- h) Promote knowledge and compliance, by employees, of company policies by properly disseminating them, including through training programs;
- i) Refrain from taking discriminatory or disciplinary measures against workers who prepare, in good faith, management reports or, where appropriate, for the competent public authorities about practices contrary to the law or company policies;
- j) Encourage, whenever possible, business associates, including service providers and outsources, to apply the principles of business conduct consistent with the principles provided for in this Article; and
- k) Refrain from any undue interference in local political activities.

## **Article 15. Denial of Benefits**

1. One of the Contracting Parties may deny the benefits of this Agreement if the investor does not comply with the requirements established in Article 4.1.
2. Benefits may be denied at any time by the Host State of the investment, even once any claim has been initiated in accordance with the dispute resolution mechanism provided for in this Agreement and provided that any of the following conditions are met :
  - (a) A company is directly or indirectly controlled by, or under a significant degree of influence of, natural or legal persons of a non-Party country and that company does not have substantial commercial activities in the territory of the Host State;
  - (b) A company is directly or indirectly controlled by, or under a significant degree of influence of, natural or legal persons of the Party that denies and that company does not have substantial commercial activities in the territory of the other Party;
  - (c) It has been proven judicially or administratively according to the legal system of the Parties that the investor has incurred in acts of corruption with respect to the investment made.

## **Article 16. Investment Measures and Combating Corruption and Illegality**

1. Each Party shall ensure that measures and efforts are taken to prevent and combat corruption, money laundering and terrorist financing in relation to the matters covered by this Agreement in accordance with its laws and regulations.
2. Nothing in this Agreement shall require any Party to protect investments made with capital or assets of illicit origin or investments in the establishment or operation of which illegal acts have been demonstrated to occur and for which national legislation provides asset forfeiture.

## **Article 17. Provisions on Investment and Environment, Labour Affairs and Health**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure it deems appropriate to ensure that investment activity in its territory is undertaken in a manner according to labor, environmental and health legislation of that Party, provided that this measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction between investors.
2. The Parties recognize that it is inappropriate to encourage investment by lowering the standards of their labor and environmental legislation or measures of health. Therefore, each Party guarantees it shall not amend or repeal, nor offer the amendment or repeal of such legislation to encourage the establishment, maintenance or expansion of an investment in its territory, to the extent that such amendment or repeal involves decreasing their labor, environmental or health standards. If a Party considers that another Party has offered such an encouragement, the Parties will address the issue through consultations.

# **Part III. Institutional Governance and Dispute Prevention and Settlement**

## **Article 18. Joint Committee for the Administration of the Agreement**

1. For the purpose of this Agreement, the Parties hereby establish a Joint Committee for the administration of this Agreement (hereinafter referred as "Joint Committee").
2. This Joint Committee shall be composed of government representatives of both Parties designated by their respective Governments.
3. The Joint Committee shall meet at such times, in such places and through such means as the Parties may agree. Meetings shall be held at least once a year, with alternating chairmanships between the Parties.
4. The Joint Committee shall have the following functions and responsibilities:
  - a) Ensure the implementation of this Agreement;
  - b) Discuss and disseminate opportunities for the expansion of mutual investment;
  - c) Coordinate the implementation of mutually agreed cooperation and facilitation programs;
  - d) Consult with the private sector and civil society, when applicable, on their views on specific issues related to the work of the Joint Committee;
  - e) Address any issues concerning investments of investors of a Party in an amicable manner;
  - f) Interpret the provisions of this Agreement with general and binding effect for the Parties and dispute resolution bodies recognized in this Agreement; and
  - g) Supplement the rules for arbitral dispute settlement between the Parties, if necessary.
5. The Parties may establish ad hoc working groups, which shall meet jointly or separately from the Joint Committee.
6. The private sector may be invited to participate in the ad hoc working groups, whenever authorized by the Joint Committee.
7. The Joint Committee shall establish its own rules of procedure.

## **Article 19. National Focal Points or Ombudspersons**

1. Each Party shall designate a single agency or authority as a National Focal Point, or Ombudsperson, which shall have as its main responsibility the support for investors from the other Party in its territory.
  - (a) In the Federative Republic of Brazil, the National Focal Point or Ombudsperson shall be the Ombudsman of Direct Foreign Investment (OID) of the Foreign Trade Board (CAMEX).
  - (b) In the Republic of Ecuador, the National Focal Point or "Ombudsman" will be on the Strategic Committee for Investment Promotion and Attraction - CEPAL.
2. The National Focal Point/Ombudsperson shall:
  - a) Endeavour to follow the recommendations of the Joint Committee and interact with the National Focal Point of the other Party;
  - b) Follow up on requests and enquiries of the other Party or of investors of the other Party with the competent authorities of the Party and inform the stakeholders on the results of its actions;
  - c) Assess, in consultation with relevant government authorities, suggestions and complaints of the Party received from the other Party or investors of the other Party and recommend, as appropriate, actions to improve the investment environment;
  - d) Seek to prevent differences in investment matters, in collaboration with government authorities of the Party and relevant private entities;

e) Provide, when required, timely and useful information on regulatory issues, which could affect general investment or specific projects; and

f) Report its activities and actions to the Joint Committee, when appropriate.

3. Each Party shall establish an internal regulation for the operation of its National Focal Point, expressly stipulating, where appropriate, the deadlines for the execution of each of its functions and responsibilities.

4. Each Party shall designate a single agency or authority as its National Focal Point, which shall provide rapid responses to notifications and requests from the Government and investors of the other Party.

5. The Parties shall provide the means and resources for the National Focal Point to carry out its functions, as well as ensure its institutional access to other government agencies responsible for the terms of this Agreement.

## **Article 20. Exchange of Information between Parties**

1. The Parties shall exchange information, whenever possible and relevant to reciprocal investments, concerning business opportunities, procedures, and requirements for investment, particularly through the Joint Committee and its National Focal Points.

2. For this purpose, a Party shall provide, when requested, in a timely fashion and with respect for the applicable level of protection, the information referred to in Paragraph 1, in particular:

a) Regulatory conditions for investment;

b) Governmental programmes and possible related incentives;

c) Public policies and legal frameworks that may affect investment;

d) Legal framework for investment, including legislation on the establishment of companies and joint ventures;

e) Related international treaties;

f) Customs procedures and tax regimes;

g) Statistical information on the market for goods and services;

h) Available infrastructure and public services;

i) Governmental procurement and public concessions;

j) Social and labour requirements;

k) Immigration legislation;

l) Currency exchange legislation;

m) Legislation regarding specific economic sectors previously identified by the Parties; and

n) Regional projects and agreements related to an investment.

## **Article 21. Treatment of Protected Information**

1. The Parties shall respect the level of protection of information provided by the submitting Party, according to the Party's national legislation on the matter.

2. None of the provisions of the Agreement shall be construed to require any Party to disclose protected information, the disclosure of which would jeopardize law enforcement or otherwise be contrary to the public interest or would violate the privacy or harm legitimate business interests. For the purposes of this paragraph, protected information includes confidential business information, and information considered privileged or protected from disclosure under the applicable laws of a Party.

## **Article 22. Interaction with the Private Sector**

Recognizing the key role played by the private sector, the Parties shall as far as possible disseminate, among the relevant

business sectors, general information on investment, regulatory frameworks and business opportunities in the territory of the other Party.

## **Article 23. Cooperation between Agencies Responsible for Investment Promotion**

The Parties shall promote cooperation between their investment promotion agencies in order to facilitate investment in the territory of the other Party.

## **Article 24. Dispute Prevention**

1. The National Focal Points or "Ombudsmen" shall act in coordination with each other and with the Joint Committee in order to prevent, manage and resolve disputes between the Parties.
2. Before initiating an arbitration procedure referred to in Article 25 of this Agreement, any dispute between the Parties shall be assessed through consultations and negotiations between the Parties and shall be previously examined by the Joint Committee.
3. A Party may submit to the Joint Committee a specific issue that affects an investor, in accordance with the following rules:
  - a) To initiate the procedure, the interested Party shall submit a written request to the other Party, identifying the specific measure in question, and the grounds of fact and law that motivate the request. The Joint Committee shall be convened within sixty (60) days from the date of the request;
  - b) The Joint Committee shall have sixty (60) days from the date of the first meeting, extendable by mutual agreement, to evaluate the submission presented and to prepare a report. The report shall include:
    - i) Identification of the Party;
    - ii) Identification of the affected investors, as presented by the Party;
    - iii) Description of the measure being consulted; and
    - iv) Conclusions of the dialogue between the Parties.
  - c) In order to facilitate the search for a solution, whenever possible, the following will participate in meetings between the Parties:
    - (i) Representatives of the affected investors;
    - (ii) Representatives of governmental and non-governmental entities involved in the measure or situation under consultation.
  - d) The bilateral dialogue and consultation procedure shall be initiated at the initiative of any of the Parties involved, after the end of the sixty (60) days provided for in subsection (b). The Joint Committee will present its report at the subsequent meeting, which will be convened fifteen (15) days from the date on which a Party requests the end of the dialogue and consultation procedure.
  - e) The Joint Committee should, whenever possible, convene special meetings to review the issues that are submitted.
  - f) In the event that one of the Parties does not appear at the meeting of the Joint Committee of subsection (d) of this paragraph, the dispute may be submitted to arbitration by the other Party, in accordance with Article 25 of the Agreement.
4. The meeting of the Joint Committee and all documentation, as well as the measures taken in the framework of the mechanism established in this Article, shall be reserved, with the exception of the reports submitted.

## **Article 25. Settlement of Disputes between the Parties**

1. Once the procedure under paragraph 3 of Article 24 has been exhausted and the dispute has not been resolved, either Party may submit the dispute to an ad hoc Arbitral Tribunal, in accordance with the provisions of this Article. Alternatively, the Parties may choose, by mutual agreement, to submit the dispute to a permanent arbitration institution for settlement of investment disputes. Unless the Parties decide otherwise, such institution shall apply the provisions of this Article.
2. The purpose of arbitration is to determine the conformity with this Agreement of a measure that a Party claims to not be in conformity with the Agreement.

3. The following may not be subject to arbitration: Article 13 - Security Exceptions; Article 14 - Corporate Social Responsibility; Paragraph 1 of Article 16 - Investment Measures and Combating Corruption and Illegality; and paragraph 2 of Article 17 - Provisions on Investment and Environment, Labour Affairs and Health.
4. This Article shall not apply to any dispute concerning any facts which have occurred, nor any measures which have been adopted before the entry into force of this Agreement.
5. This Article shall not apply to any dispute if more than five (5) years have elapsed since the date on which the Party knew or should have known of the facts giving rise to the dispute.
6. The Arbitral Tribunal shall consist of three (3) arbitrators. Each Party shall appoint, within three (3) months after receiving the "notice of arbitration", a member of the Arbitral Tribunal. Within three (3) months of the appointment of the second arbitrator, the two members shall appoint a national of a third State with which both Parties maintain diplomatic relations, who, upon approval by both Parties, shall be appointed chairperson of the Arbitral Tribunal. The appointment of the Chairperson must be approved by both Parties within one (1) month from the date of his/her nomination.
7. If, within the periods specified in paragraph 6 of this Article, the necessary appointments are not concluded, either Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one Party or is prevented from fulfilling said function, the member of the International Court of Justice who has the most seniority who is not a national of a Party will be invited to make the necessary appointments.
8. Arbitrators must:
- a) Have the necessary experience or expertise in Public International Law, international investment rules or international trade, or the resolution of disputes arising in relation to international investment agreements;
  - b) Be independent of and not be affiliated, directly or indirectly, with any of the Parties or with the other arbitrators or potential witnesses nor take instructions from the Parties; and
  - c) Comply with the "Rules of conduct for the understanding on rules and procedures governing the settlement of disputes" of the World Trade Organization (WTO/DSB/RC/1, dated 11 December 1996), as applicable to the dispute, or any other standard of conduct established by the Joint Committee.
9. The "Notice of Arbitration" and other documents relating to the resolution of the dispute shall be presented at the location designated by each Party.
10. The Arbitral Tribunal shall determine its own procedure in accordance with this Article and, subsidiary, to the extent that it is not inconsistent with this Agreement, the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The Arbitral Tribunal will render its decision by majority vote and decide on the basis of the provisions of this Agreement and the applicable principles and rules of international law as recognized by both Parties. Unless otherwise agreed, the decision of the Arbitral Tribunal shall be rendered within six (6) months following the appointment of the Chairperson in accordance with paragraphs 6 and 7 of this article.
11. The decision of the Arbitral Tribunal shall be final and binding to the Parties, who shall comply with it without delay.
12. The Joint Committee shall approve the general rule for determining the arbitrators' fees, taking into account the practices of relevant international organizations. The Parties shall bear the expenses of the arbitrators as well as other costs of the proceedings equally, unless otherwise agreed.
13. Notwithstanding paragraph 2 of this Article, the Parties may, through a specific arbitration agreement, request the arbitrators to examine the existence of damages caused by the measure in question under the obligations of this Agreement and to establish compensation for such damages through an arbitration award. In this case, in addition to the provisions of the preceding paragraphs of this Article, the following shall be observed:
- a) The arbitration agreement to examine the existence of damages shall be taken as "notice of arbitration" within the meaning of paragraph 6;
  - b) This paragraph shall not be applied to a dispute concerning a particular investor which has been previously resolved and where protection of res judicata applies. If an investor had submitted claims regarding the measure at issue in the Joint Committee to local courts or an arbitration tribunal of the Host State, the arbitration to examine damages can only be initiated after the withdrawal of such claims by the investor in local courts or an arbitration tribunal of the Host State. If after the establishment of the arbitration, the existence of claims in local courts or arbitral tribunals over the contested measure is made known to the arbitrators or the Parties, the arbitration will be suspended.

- c) If the arbitration award provides monetary compensation, the Party receiving such compensation shall transfer to the holders of the rights of the investment in question, after deducting the costs of the dispute in accordance with the internal procedures of each Party. The Party to whom restitution was granted may request the Arbitral Tribunal to order the transfer of the compensation directly to the holders of rights of the affected investment and the payment of costs to whoever has assumed them.
- d) For the purpose of determining compensation, punitive or indirect damages, excessive earnings within market conditions, moral damage or good name of the investment or the investor should not be considered.
- e) The compensation must be made in a freely convertible and freely transferable currency.
- f) The Parties may agree, when the amount of compensation is significantly onerous, the mechanism and the terms through which will improve the payment of the agreed amount.

## **Part IV. Agenda for Further Investment Cooperation and Facilitation**

### **Article 26. Agenda for Further Investment Cooperation and Facilitation**

1. The Joint Committee shall develop and discuss an Agenda for Further Cooperation and Facilitation on relevant topics for the promotion and enhancement of bilateral investment. The issues that will be initially addressed and their objectives are listed in Annex 1 - "Agenda for Greater Investment Cooperation and Facilitation".
2. The agendas will be discussed between the competent government authorities of both Parties. The Joint Committee may, where applicable, invite additional governmental authorities of both Parties for agenda discussions.
3. The results of such negotiations shall constitute additional protocols to this Agreement or specific legal instruments.
4. The Joint Committee shall coordinate schedules of discussions for further cooperation and facilitation of investment and the negotiation of specific commitments.
5. The Parties shall submit to the Joint Committee the names of the government bodies and their official representatives involved in these negotiations.

## **Part V. General and Final Provisions**

### **Article 27. General Amendments and Final Provisions**

1. Neither the Joint Committee, nor the National Focal Points or "Ombudsmen" should replace or undermine, in any way, any other agreement or diplomatic channels existing between the Parties.
2. Without prejudice to its ordinary meetings, after ten (10) years of the entry into force of this Agreement, the Joint Committee shall carry out a general review of its application and make additional recommendations if necessary.
3. This Agreement shall enter into force ninety (90) days after the date of receipt of the second diplomatic note indicating that all necessary internal procedures regarding the conclusion and entry into force of international agreements have been completed by both Parts
4. This Agreement may be modified by mutual consent of the Parties and the agreed amendment shall enter into force, unless the Parties provide for another term, in accordance with the procedures set forth in paragraph 3 of this Article.
5. At any time, either Party may denounce this Agreement by written notification to the other Party. the denunciation shall take effect on the date that the Parties agree or, if the parties fail to reach an agreement, three hundred sixty-five (365) days after the date on which the notice of termination is received.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, sign this Agreement.

DONE in New York on September 25, 2019 in the Portuguese and Spanish languages, both texts being equally authentic.

FOR THE FEDERATIVE REPUBLIC OF BRAZIL

Ernesto Araújo

Minister of Foreign Affairs

FOR THE REPUBLIC OF ECUADOR

JOSÉ VALENCIA

Minister of Foreign Affairs and Human Mobility

## **Annex I. Agenda for further cooperation and investment facilitation**

The agenda below represents an initial effort to improve cooperation and investment facilitation between the Parties and may be extended and modified at any time by the Joint Committee.

### **a. Payments and transfers**

i. Cooperation between financial authorities shall be set in order to facilitate remittances of capital and currency between the Parties.

### **b. Visas**

i. Each Party shall facilitate, when possible and convenient, the free movement of managers, executives and qualified employees of the economic agents, entities, companies and investors of the other Party.

ii. Respecting national legislation, the immigration and labor authorities of each Party should seek a common understanding in order to reduce the time, requirements and costs to grant appropriate visas to investors of the other Party.

iii. The Parties will negotiate a mutually acceptable agreement to facilitate visas for investors in order to extend their duration and stay.

### **c. Technical and environmental regulations**

i. Subject to their national legislation, the Parties shall establish expeditious, transparent and agile procedures for the issuance of documents, licenses and certificates related to the prompt establishment and maintenance of the other Party's investment.

ii. Any inquiries from the Parties or their economic agents and investors about the commercial register, technical requirements and environmental standards will be treated diligently and on time by the other Party.

### **d. Cooperation for Institutional Regulation and Exchange**

i. The Parties shall promote institutional cooperation for the exchange of experiences on the development and management of regulatory frameworks.

ii. The Parties undertake to promote technological, scientific and cultural cooperation through the implementation of actions, programs and projects for the exchange of knowledge and experiences, based on their mutual interests and development strategies.

iii. The Parties agree that access and eventual transfer of technology will be carried out, whenever possible, directed to contribute to the effective trade of goods, services and related investment.

iv. The Parties undertake to promote, encourage, coordinate and execute cooperation for professional qualification through greater interaction between the relevant national institutions.

v. Cooperation forums and exchange of experiences on the solidarity economy, the evaluation of the mechanisms of promotion of cooperatives, family farms and other solidarity economic companies related to current and future investment will be created.

vi. The Parties will also promote institutional cooperation for greater integration of logistics and transport in order to open new air routes and increase, whenever possible and adequate, their connections and maritime merchant fleets.

vii. The Joint Committee may identify other sectors of mutual interest for cooperation in sectoral legislation and institutional exchange.

## **Annex II. Interpretative provisions**

### **A. On Article 19 (National Focal Points or "Ombudsmen")**

1. In the Federative Republic of Brazil, the National Focal Point or "Ombudsman" will be the Direct Investment Ombudsman (OJO) of the Executive Secretariat of the Chamber of Foreign Trade (CAMEX).
2. In the Republic of Ecuador, the National Focal Point or "Ombudsman" will be in the Strategic Committee for the Promotion and Attraction of Investments - CEPAI - or the Government instance that succeeds it.