

# Agreement on the reciprocal promotion and protection of investments between the Kingdom of Spain and the Republic of Ecuador

The Kingdom of Spain and the Republic of Ecuador, hereinafter referred to as "The Contracting Parties";

Desiring to intensify economic cooperation for the reciprocal benefit of both countries;

Desiring to create favorable conditions for investments made by investors of each of the Contracting Parties in the territory of the other, and

Recognizing that the promotion and protection of investments under this Agreement stimulates initiatives in this field,

Have agreed as follows:

## Article I. Definitions

For the purposes of this Agreement:

(1) "Investors" shall mean:

(a) Natural persons who, in the case of the Kingdom of Spain, are considered its nationals under its legislation and, with respect to the Republic of Ecuador, natural persons who, in accordance with Ecuadorian legislation, are considered nationals of Ecuador.

b) Legal persons, including companies, associations of companies, partnerships and other organizations that are incorporated or, in any case, duly organized under the law of that Contracting Party and have their headquarters in the territory of that same Contracting Party.

2. "Investments" means all kinds of assets, such as property and rights of every kind, acquired in accordance with the laws of the country receiving the investment, and in particular, but not exclusively, the following:

Shares and other forms of participation in companies:

Rights derived from all types of contributions made for the purpose of creating economic value; expressly included are all those loans granted for this purpose, whether or not they have been capitalized.

Movable or immovable property, as well as other rights in rem, such as mortgages, pledges, usufructs and similar rights.

All kinds of rights in the field of intellectual property, expressly including patents and trademarks, as well as manufacturing licenses and know-how.

Rights to carry out economic and commercial activities granted by law or by virtue of a contract, in particular those related to prospecting, cultivation, extraction or exploitation of natural resources.

3. The term "investment income" refers to income derived from an investment in accordance with the definition contained in the previous point, and expressly includes profits, dividends and interest.

4. The term "territory" means the national territory over which each of the Contracting Parties has jurisdiction or sovereignty in accordance with International Law and the Laws of each of the Contracting Parties.

## Article II. Promotion, Admission

1. Each Contracting Party shall, to the extent possible, promote investments made in its territory by investors of the other

Contracting Party and shall admit such investments in accordance with its legal provisions.

2. This Agreement shall also apply to investments made prior to the entry into force of this Agreement by investors of one Contracting Party in accordance with the legal provisions of the other Contracting Party in the territory of the latter.

### **Article III. Protection**

1. Each Contracting Party shall protect in its territory investments made, in accordance with its laws, by investors of the other Contracting Party and shall not hinder, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, extension, sale or, as the case may be, liquidation of such investments.

2. Each Contracting Party shall endeavor to grant the necessary authorizations in connection with such investments and shall permit, within the framework of its legislation, the execution of labor, manufacturing license, technical, commercial, financial and administrative assistance contracts.

3. Each Contracting Party shall also endeavor, whenever necessary, to grant the required authorizations in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

### **Article IV. Treatment**

1. Each Contracting Party shall ensure in its territory fair and equitable treatment of investments made by investors of the other Contracting Party.

2. Such treatment shall be no less favorable than that accorded by each Contracting Party to investments made in its territory by investors of a third country enjoying Most-Favored-Nation treatment.

3. This treatment shall not extend, however, to privileges which a Contracting Party grants to investors of a third State by virtue of its participation in:

A free trade area.

A customs union.

A common market.

A mutual economic assistance organization or by virtue of an agreement signed prior to the date of signature of this Convention which provides for provisions analogous to those granted by that Contracting Party to participants in such an organization.

4. The treatment accorded under this Article shall not extend to deductions, tax exemptions or other similar privileges granted by either Contracting Party to investors of third countries under an Agreement for the Avoidance of Double Taxation or under any other Agreement relating to taxation.

5. In addition to the provisions of paragraph 2 of this Article, each Contracting Party shall, in accordance with its National Legislation, apply to investments of investors of the other Contracting Party treatment no less favorable than that accorded to its own investors.

### **Article V. Expropriation and Nationalization**

Nationalization, expropriation or any other measure of similar character or effect which may be taken by the authorities of a Contracting Party against investments of investors of the other Contracting Party in its territory shall be applied exclusively for reasons of public utility in accordance with the provisions of law and shall in no case be discriminatory. The Contracting Party taking such measures shall pay to the investor or his successor in title, without undue delay, adequate compensation, in convertible and freely transferable currency.

### **Article VI. Compensation for Losses**

Investors of a Contracting Party whose investments or investment income in the territory of the other Contracting Party suffer losses due to war, other armed conflict, a state of national emergency or other similar circumstances in the territory of the latter Contracting Party shall be accorded, by way of restitution, indemnification, compensation or other settlement, treatment no less favorable than that accorded by the latter Contracting Party to investors of any third State. Any payment made pursuant to this Article shall be made promptly, adequately, effectively and freely transferable.

## **Article VII. Transfers**

Each Contracting Party shall grant to investors of the other Contracting Party, in respect of investments made in its territory, the possibility of freely transferring the income from such investments and other payments in connection therewith, and in particular, but not exclusively, the following:

Investment income, as defined in Article I.

The indemnities provided for in Article V.

The compensation provided for in Article VI.

The proceeds from the sale or liquidation, in whole or in part, of investments.

Wages, salaries and other remuneration received by nationals of a Contracting Party who have obtained in the other Contracting Party the corresponding work permits in connection with an investment.

Transfers shall be made in freely convertible currencies.

The Contracting Party receiving the investment shall provide the investor of the other Contracting Party or the company in which he participates with access to the official foreign exchange market on a non-discriminatory basis, for the purpose of acquiring the foreign exchange necessary to make the transfers covered by this Article.

In order to carry out the transfers, the tax obligations established by the legislation in force in the Contracting Party receiving the investment shall be observed.

The Contracting Parties undertake to facilitate the procedures necessary to effect such transfers without undue delay or restrictions. In particular, no more than two months shall elapse from the date on which the investor has duly submitted the applications necessary to effect the transfer until such time as the transfer is actually effected. Therefore, each Contracting Party undertakes to comply with the necessary formalities both for the purchase of the currency and for its actual transfer abroad before the aforementioned term.

## **Article VIII. More Favourable Conditions**

Conditions more favorable than those of this Agreement which have been agreed upon by one Contracting Party with investors of the other Contracting Party shall not be affected by this Agreement.

## **Article IX. Principle of Subrogation**

In the event that a Contracting Party has granted any financial guarantee for non-commercial risks in connection with an investment made by an investor of that Contracting Party in the territory of the other Contracting Party, the latter shall accept an application of the principle of subrogation of the former Contracting Party in the economic rights of the investor and not in the rights in rem, as soon as the latter has made a first payment under the guarantee granted.

Such subrogation shall make it possible for the first Contracting Party to be the direct beneficiary of all compensation payments to which the original investor may be entitled. In no case may there be a subrogation in rights of ownership, use, enjoyment or any other real right derived from the ownership of the investment without the prior obtaining of the pertinent authorizations in accordance with the legislation on foreign investments in force in the Contracting Party where the investment was made.

## **Article X. Disputes of Interpretation of the Agreement between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Convention shall be settled, to the extent possible, by the Governments of the two Contracting Parties.

2. If the dispute cannot be so settled within six months of the commencement of negotiations, it shall, at the request of either Contracting Party, be submitted to an Arbitral Tribunal.

3. The Arbitral Tribunal shall be constituted as follows: Each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a citizen of a third State as Chairman. The arbitrators shall be appointed within three months, and the Chairman within five months from the date on which either Contracting Party informed the other Contracting Party of an intention to submit the dispute to an Arbitral Tribunal.

4. If one of the Contracting Parties has not designated its arbitrator within the time limit fixed, the other Contracting Party may request the Secretary-General of the United Nations to make such designation. Should the two arbitrators fail to reach agreement on the appointment of the third arbitrator within the established period, either Contracting Party may request the Secretary General of the United Nations to make the relevant appointment.
5. The Arbitral Tribunal shall render its decision on the basis of respect for the Law, for the rules contained in this Convention or in other Agreements in force between the Contracting Parties, and for the universally recognized principles of International Law.
6. Unless otherwise decided by the Contracting Parties, the Tribunal shall establish its own procedure.
7. The Tribunal shall reach its decision by majority vote and its decision shall be final and binding on both Contracting Parties.
8. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those related to his representation in the arbitral proceedings. All other expenses, including those of the Chairman, shall be borne equally by both Contracting Parties.

## **Article XI. Disputes between a Contracting Party and Investors of the other Contracting Party**

1. Any investment dispute arising between a Contracting Party and an investor of the other Contracting Party with respect to matters governed by this Agreement shall be notified, in writing, including detailed information, by the investor to the Contracting Party receiving the investment. To the extent possible, the parties shall attempt to settle such disputes by amicable agreement.

2. If the dispute cannot be settled in this manner within six months from the date of the written notification referred to in paragraph 1, it shall be submitted to the investor at its option:

To the "ad hoc" Arbitral Tribunal established by the Arbitration Rules of the United Nations Commission on International Trade Law; or

To the International Centre for Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on March 18, 1965, when each State party to this Agreement has acceded thereto.

3. The arbitration shall be based on

The provisions of this Agreement.

The national law of the Contracting Party in whose territory the investment has been made, including the rules relating to conflicts of law.

The generally accepted rules and principles of international law.

4. Arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards in accordance with its national law.

## **Article XII. Entry Into Force, Extension and Denunciation**

1. This Agreement shall enter into force on the day on which the two Contracting Parties have notified each other that the respective constitutional formalities required for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and shall be tacitly renewed for consecutive periods of five years.

Each Contracting Party may denounce this Agreement by giving prior written notice six months before the date of its expiration.

2. In the event of denunciation, the provisions of Articles 1 to 11 of this Agreement shall continue to apply for a period of ten years to investments made prior to the denunciation.

Done in two originals in the Spanish language, which are equally authentic, in Quito on June 26, 1996.

For the Kingdom of Spain,

Julio Albi de la Cuesta,

Ambassador of Spain

For the Republic of Ecuador,

Marcelo Fernández de Córdova,

Minister of Foreign Affairs, in charge