

AGREEMENT BETWEEN THE REPUBLIC OF ECUADOR AND THE REPUBLIC OF PARAGUAY ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Ecuador and the Government of the Republic of Paraguay (hereinafter referred to as "Contracting Parties"),

Desiring to intensify economic cooperation in the mutual benefit of both States.

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party.

Recognizing the need to promote and protect foreign investment in view of the economic prosperity of both States.

Have agreed as follows:

Article I. Definitions

For the purposes of this Convention shall apply the following definitions for the terms set out below:

1. **Investment:** means every kind of asset defined in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made in accordance with this Convention, this includes in particular, though not exclusively:

- a) Ownership of movable and immovable property and other property rights such as mortgages, liens and pledges;
- b) Shares or rights of participation in companies and other kinds of interests in companies or joint ventures;
- c) Monetary claims and rights to any provision of economic value;
- d) Intellectual Property Rights, such as copyrights, patents, industrial designs or models, trade names, trademarks, industrial and commercial secrets and know-how, procedures, patented or not arising under the form of physical assets, documents and technical instructions;
- e) Concessions granted by the States of the Contracting Parties or its public entities for the pursued of an economic activity.

2. **Investor** designates:

- a) Any natural person who is a national of one of the Contracting Parties, in accordance with its laws; and
- b) Any legal person made up in accordance with the laws and regulations of one Contracting Party and having its seat in the territory of that Contracting Party, regardless of whether or not its activities are non-profit-making.

3. **Profits:** designates the amounts obtained from an investment made in accordance with this Agreement, such as interests, profits, dividends, royalties and other income;

4. **Companies:** means all legal persons, including civil and commercial companies and other associations with legal personality, engaged in an economic activity within the scope of this Agreement.

5. **National** means: with respect to either Contracting Party:

- a) Natural persons having the nationality of that Contracting Party in accordance with its legislation;
- b) Societies established in accordance with the law of that Contracting Party or that are directly or indirectly controlled by nationals of that Contracting Party.

6. **Territory:** for Paraguay: refers to the territory of the State over which it may exercise its sovereign rights or jurisdiction in

accordance with international law.

7. **Territory:** For Ecuador: the territory over which the State exercises sovereignty and jurisdiction, in accordance with its Constitution and domestic law.

Article II. Scope

This Agreement shall apply to investments made in the territory of one of the Contracting Parties, in accordance with its legislation, as well as those that are made prior to the entry into force of this Agreement. However, it shall not apply to any differences or disputes arising before its entry into force.

Article III. Promotion - Admission

1. Each Contracting Party shall promote in its territory, as far as possible, investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. The Contracting Party which has admitted an investment in its territory, it shall grant, in accordance with its legislation, the necessary permits in connection with such an investment, in the same way as for implementation of licensing agreements and contracts for commercial, administrative or technical assistance. Each Contracting Party shall, where appropriate, the necessary permits for the activities of consultants and other qualified persons of foreign nationality.

Article IV. Protection - Most Favoured Nation Treatment and Area of Economic Integration

1. PROTECTION: Each Contracting Party shall protect in its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impede, by undue or discriminatory measures, the management, maintenance, use, enjoyment, expansion, sale and, where appropriate, liquidation of such investments. In particular, each Contracting Party shall grant the permits referred to in Article 3, paragraph 2 of this Convention.

2. MOST-FAVOURLED NATION TREATMENT:

Each Contracting Party shall ensure in its territory fair and equitable treatment for investments of investors of the other Contracting Party. Such treatment shall not be less favourable than that accorded by each Contracting Party to investments made in its territory by its own national investors or by investors of third States.

3. AREA OF ECONOMIC INTEGRATION:

The most-favoured-nation treatment shall not apply to privileges which either Contracting Party agrees to investors of a third State by virtue of its association or participation in a free trade area, customs union or common market.

4. The treatment accorded by this article shall not apply to advantages which either of the Contracting Parties grant to nationals or companies of third States as a result of an agreement for the avoidance of double taxation or other tax arrangements.

Article V. Free Transfer

1. Each Contracting Party in whose territory investors of the other Contracting Party, shall have an investment guarantee the free transfer of payments related to these investments, particularly:

- a. Profit;
- b. Repayment of loans;
- c. Amounts assigned to cover expenses relating to the management of the investment;
- d. Other income and royalties from rights enumerated in article 1, paragraph 1 (c), (d) and (e) of this Agreement.
- e. The additional contributions of capital necessary for the maintenance or development of the investments;
- f. The proceeds of the sale of or the partial or total liquidation of an investment, including capital gains.

2. The transfer shall be effected in a freely transferable currency without restriction or delay.

Article VI. Expropriation - Compensation

1. Neither Contracting Party shall, directly or indirectly, measures of expropriation, nationalization or any other measures of the same nature or effect against investments of investors of the other Contracting Party except for public purpose or social interest laid down in the laws, and provided that such measures are not discriminatory, that adhere to established legal procedures, including the regulation and payment of just compensation.

2. The compensation shall correspond to the market value of the investment expropriated or nationalized immediately before the date of expropriation, nationalization or public measure having equivalent. The compensation shall be paid without delay in a freely convertible currency and shall include interest until the date of actual payment, according to the usual bank interest and realizable; shall be freely transferable.

3. Nationals or companies of one Contracting Party who suffer losses of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, state of national emergency, revolt, riot or insurrection in the territory of the other Contracting Party, shall be treated no less favourably than by its own nationals or companies or to nationals or companies of any third State as regards restitution, indemnification, payments or other adjustments. Payments shall be transferable in accordance with Article 5.

Article VII. Subrogation

1. Where a Contracting Party has agreed to a guarantee to cover non-commercial risks in relation to an investment made by one of its investors in the territory of the other Contracting Party, the latter shall recognize the subrogation of the first Contracting Party to the same rights of the investor recognised by the law of the party receiving the investment, provided that the first Contracting Party has made a payment under such guarantee.

2. The provisions of the preceding subparagraph shall not prevent each Contracting Party from requiring, for the purposes of recognition of subrogation, the prior approval by the competent agency of each party of the issue and coverage of the respective insurance.

Article VIII. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. To settle disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to the provisions of Article 9 of this Agreement (Settlement of disputes between the Contracting Parties), the parties concerned shall enter into consultations to resolve the case, as far as possible, amicably.

2. If these consultations do not result in a settlement of the dispute within six months from the date of the request for settlement of the dispute, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter case, the investor has the following options:

a. The International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington DC on 18 March 1965;

b. An ad hoc tribunal which, unless otherwise agreed between the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. In case of recourse to national jurisdiction, the investor may not resort to international arbitration referred to in paragraph 2 of this Article, except in the event that after a period of 18 months from the date of the notification of the claim there is no judgment and the two Parties, by mutual agreement, desist from continuing the dispute in that judicial instance, to submit it to international arbitration.

4. The Contracting Party which is a party to a dispute may not, at any time during the proceedings, invoke in its defence its immunity or the fact that the investor has received compensation, by contract of insurance, for all or part of the damage or loss incurred.

5. The arbitral tribunal shall decide on the basis of the present Agreement and other relevant agreements between the contracting parties; based on the terms of any specific agreement which may be concluded with respect to the investment; to the Law of the Contracting Party which is a party to the dispute on the conflict including its rules of law and those principles and rules of international law as may be applicable.

6. The decisions of the Tribunal are final and binding for the parties in dispute.

Article IX. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of the provisions of this Agreement or shall be settled through diplomatic channels.

2. If the Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute shall be submitted, at the request of either party to an arbitral tribunal composed of three members. each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the Chairman of the Tribunal who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and in response to the invitation of the other Contracting Party to make that appointment within two months of the receipt of the request, the arbitrator shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.

4. If the arbitrators do not agree on the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out the said appointments, or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he too is a national of either Contracting Party, the appointment shall be made by the judge of the Court of Major next in seniority who is not a national of either of the Contracting Parties.

6. Unless the parties agree otherwise, the tribunal shall determine its own procedure.

7. The decisions of the Tribunal are final and binding on the contracting parties.

Article X. Observance of Obligations

Each Contracting Party shall observe and respected in accordance with its laws, the obligations assumed with regard to investments of investors of the other Contracting Party.

Article XI. Implementing Rules

1. This Agreement shall not preclude the application by either party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.

2. This Agreement shall not preclude either party may prescribe special formalities in connection with the establishment of investments, but such formalities shall not impair the essence of any of the rights that are announced in this Agreement.

3. Any expression that is not defined in this Agreement shall have the meaning is with that used in the legislation in force in each Contracting State.

Article XII. In Case of Suspension of Diplomatic or Consular Relations

The provisions of this Agreement shall continue to be fully applicable even in cases provided for in article 63 of the Vienna Convention on the Law of Treaties of 23 May 1969.

Article XIII. Duration of the Agreement

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that it has complied with the constitutional procedures for approval in their respective countries and shall remain in force for a period of 10 years.

2. Unless either of the Contracting Parties has denounced at least six months before the date of expiry of its validity, the present Agreement shall be tacitly for extended periods of 10 years, each contracting party reserving the right to terminate the agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. With respect to investments made prior to the date of termination of this agreement the foregoing articles thereof shall

continue in force for a period of ten years from that date.

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

DONE in the city of Quito, in the National Palace, on the twenty-eighth day of January, nineteen hundred and ninety-four, in the Spanish language, in two equally authentic copies.

FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

Diego Paredes Peña,

MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

Luis María Ramírez Boettner,

MINISTER OF FOREIGN AFFAIRS