

# AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF GUATEMALA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Agreement between the Kingdom of Spain and the Republic of Guatemala for the Promotion and Reciprocal Protection of Investments

The Kingdom of Spain and the Republic of Guatemala referred to hereinafter as the contracting parties, "

Desiring to intensify economic cooperation in the mutual benefit of both countries;

Aiming to create favourable conditions for investments by investors of either Contracting Party in the territory of the other party,

And

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

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement,

1 "investor" or "investor means any national or company of a contracting party to make investments in the territory of the other Contracting Party:

- a) National "" shall mean any natural person having the nationality of a Contracting Party in accordance with its legislation;
- b) "company" means any legal person or any other legal entity duly constituted or organized under the laws of that Contracting Party and having its registered office in the territory of that same Contracting Party, including companies, business associations or collective.

2 "investment" shall mean every kind of assets that have been invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter shall include, in particular, though not exclusively, the following:

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages, pledge, usufructs and similar rights;
- b) Titles, stocks, debentures and any other form of participation in companies;
- c) Rights to money and to any other provision under contract having an economic value associated with an investment; and
- d) Industrial and intellectual property rights, processes, know-how, technical know-how and goodwill or key of right;
- e) Rights to undertake economic and commercial activities conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit natural resources.

The investments made in the territory of one Contracting Party by a company of that same Contracting Party, which is owned or controlled effectively by investors of the other Contracting Party, shall also be considered investments by investors provided that they have been made con-forme the legal provisions of the first contracting party.

Any change in the form in which assets are invested or reinvested shall not affect their character as investments.

3 Investment income "" means the amounts yielded by an investment and in particular, though not exclusively, dividends, interests, capital gains, dividends, royalties or fees.

4 The term "" territory means the land territory, internal waters and the territorial sea and the airspace of each Contracting Party as well as the contiguous zone, the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties on which they are or may have jurisdiction or sovereign rights in accordance with international law.

## **Article 2. Promotion and Admit Investments**

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.

2 If a Contracting Party has admitted an investment in its territory it shall in accordance with its laws, the necessary permits in connection with such an investment and with the carrying out of licensing agreements, technical assistance, commercial or administrative. each Contracting Party shall endeavour, whenever necessary, to grant the necessary authorizations concerning the activities of qualified consultants or staff, whatever their nationality.

## **Article 3. Protection**

1 Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security. neither Contracting Party shall in no case accord to such investments treatment less favourable than that required by international law.

2 Neither Contracting Party shall in any way Arbitrary Discriminatory Measures or through the management, maintenance, enjoyment and use, sale or liquidation of such investments. each Contracting Party shall observe any written obligation it has assumed with regard to investments of investors of the other contracting party.

## **Article 4. National Treatment and Most-favoured-nation Clause**

1 Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party A treatment no less favourable than that accorded to investments of its own to investors or investments of investors of any third State, whichever is more favourable to the investor.

2 Each Contracting Party shall accord to investors of the other contracting party, as regards the management, maintenance, enjoyment and use, sale or liquidation of investments in its territory treatment no less favourable than that accorded to its own investors to investors or of any third State, whichever is more favourable to the investor.

3 The treatment granted under the present article shall not be construed as to oblige either contracting party to extend to the investors of the other party contratanteyasus investments the benefit of any treatment, preference or privilege resulting from:

a) Any association or its participation in existing or future Free Trade Area, Common Market, monetary or customs union or in any other form of regional economic organization or similar international agreement, or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

4 The measures to be taken for reasons of public policy, security or public health shall not be considered as "less favourable treatment within the meaning of this article.

## **Article 5. Expropriation and Nationalization**

1 Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be subjected to any expropriation or nationalization or any other measures having similar effects (hereinafter expropriation) except that any such measures are taken for reasons of public interest or social purpose, under due process of law, on a non-discriminatory basis and shall be accompanied by the payment of prompt, effective and adequate compensation.

2 The compensation shall be equivalent to the market value of the expropriated investment immediately before it shall take the measure of expropriation or before the impending the same public notice, whichever comes first (hereinafter referred to as the valuation date). the compensation shall be paid without delay, be effectively realizable and freely transferable.

3 The market value shall be expressed in a freely convertible currency at the rate of exchange prevailing for that currency on the valuation date. the compensation shall include at a commercial interest rate according to market criteria established for that currency from the date of expropriation until the date of payment.

4 The Investor affected shall have a right under the law of the contracting party making the expropriation, to prompt review of their case by a judicial authority or other competent authority of that Contracting Party to determine whether such expropriation and the valuation of its investment have been adopted in accordance with the principles set out in this article.

5 If a Contracting Party expropriate the assets of a company which is constituted in its territory in accordance with its applicable laws and in which there is participation of investors of the other contracting party, the first Contracting Party shall ensure that the provisions of this article are applied so as to guarantee such investors to prompt, effective and adequate compensation.

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

Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, riot or any other similar event, shall be accorded to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which the latter Contracting Party accords to its own investors to investors of any third State, whichever is more favourable to the investor concerned. resulting payments shall be freely transferable.

## **Article 7. Transfers**

1 Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments and in particular, though not exclusively, the following:

- a) The initial capital and additional amounts needed for the maintenance, expansion and development of the investment;
- b) The investment income as defined in article 1; article 1;
- c) The necessary funds in repayment of loans related to an investment;
- d) Compensation and compensation under articles 5 and 6; articles 5 and 6;
- e) The proceeds of the total or partial sale or liquidation of an investment;
- f) Wages and remuneration of other personnel engaged from abroad in connection with an investment;
- g) Payments arising from the settlement of disputes.

2 The transfers referred to in the present Agreement shall be made without delay in freely convertible currency at the market rate of exchange applicable on the date of transfer.

## **Article 8. Other Provisions**

1 If the provisions of law of either Contracting Party or obligations under international law than this agreement, current or future between the contracting parties result in a general or specific regulations under which must be accorded to investments of investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the present Agreement, as is more favourable.

2 More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

3 Nothing in this Agreement shall affect provided for in international treaties dealing with intellectual property rights / industrial in force at the time of signature.

## **Article 9. Subrogation**

If a Contracting Party or its designated agency by a payment under a contract of guarantee or insurance against non-commercial risks given in respect of an investment of any of its investors in the territory of the other contracting party, the latter Contracting Party shall recognize the subrogation of any right or title in respect of the first such investor of contracting party or its designated agency and the right of the former Contracting Party or its designated agency to exercise subrogation

by virtue of any such right or title to the same extent as its previous holder. the subrogation will ensure that the first Contracting Party or its designated agency by it are direct beneficiaries of any payments of compensation to the investor might be initial creditor.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1 Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2 If the dispute cannot be settled in this way within six months from the beginning of negotiations, the dispute shall be submitted, at the request of either of the two contracting parties to an arbitration tribunal.

3 The arbitration tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national 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 has informed the other contracting party of its intention to submit the dispute to an arbitration tribunal.

4 If within the periods specified in paragraph 3 of this article have not been completed the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. if the President of the International Court of Justice cannot discharge the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. if the Vice-President cannot discharge the said function or is a national of either Contracting Party the appointment shall be made by the member of the International Court of Justice to continue in seniority who is not a national of any of the Parties contratantes.apartado 3 of this article have not been completed the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. if the President of the International Court of Justice cannot discharge the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. if the Vice-President cannot discharge the said function or is a national of either Contracting Party the appointment shall be made by the member of the International Court of Justice to continue in seniority who is not a national of either of the Contracting Parties.

5 The arbitration tribunal shall decide on the basis of respect for the Law, the provisions of this Agreement and the generally accepted principles of International Law.

6 Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

7 The tribunal shall reach its decision by a majority of votes and it shall be final and binding on both contracting parties.

8 Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. the other expenses including the chairman shall be borne in equal parts by both contracting parties.

## **Article 11. Disputes between Investors and a Contracting Party of the other Contracting Party**

1 Any dispute concerning an investment which may arise 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 Contracting Party to the recipient of the investment. to the extent possible, the parties to the dispute seek to settle the dispute by means of a friendly settlement.

2 If the dispute cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, the dispute may, at the choice of the investor, be submitted:

- a) The competent courts of the Contracting Party in whose territory the investment was made; or
- b) To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law; or
- c) 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 on 18 March 1965, when each State Party to this Agreement has acceded to it. if one of the contracting parties is not a Contracting State to the said Convention, the dispute may be settled under the additional facility for the administration of conciliation or arbitration proceedings and Fact-Finding by the secretariat of the c.i.a.d.i.

3 The arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law, as well as the rules and principles of international law as may be applicable.

4 The Contracting Party which is a party to the dispute may not assert that the investor as a defence under a contract of insurance or guarantee, has received or will receive indemnification or other compensation for all or part of its losses.

5 The arbitral decisions shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

## **Article 12. Scope**

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter. however, this Agreement shall not apply to claims or disputes that have arisen prior to its Entry into Force.

## **Article 13. Entry Into Force , Duration and Termination**

1 This Agreement shall enter into force on the date on which the contracting parties have notified each other of the completion of their respective constitutional formalities required for the Entry into Force of international agreements. it shall remain in force for an initial period of ten years. thereafter it shall continue in force indefinitely until the expiry of six months from the date on which either contracting party notifies in writing the other contracting party of its decision to terminate the agreement.

2 With respect to investments made prior to the date of termination of this Agreement, the provisions contained in the other articles of this Agreement shall remain in force for a further period of ten years from the date of denunciation.

Done in two originals in English, which are equally authentic Guatemala in the 2002.

For the Kingdom of Spain,

Ramón Gandarias Alonso of Celis,

Spain

The Republic of Guatemala

Aurelia Patricia

Ceberg Ramirez,

Ministry of Economy