

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Guatemala and the Government of the Kingdom of Sweden,

Desiring to intensify economic cooperation for mutual benefit of both countries and maintain fair and equal conditions for investments of investors of one Contracting Party in the territory of the other contracting party.

Recognizing that the promotion and protection of such investments encourage the expansion of economic relations between the two contracting parties and encourages investment initiatives;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) The term investment means every kind of asset whether owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the legislation of the other Contracting Party and shall include, in particular, though not exclusively: movable and immovable property as well as any other property rights such as mortgages, liens, pledges, usufruct and similar rights; a company or enterprise or shares, or any other form of participation in a company or enterprise; claims to money or to any other performance having an economic value; Intellectual Property Rights, technical processes, trade marks, know-how, prestige / goodwill and other similar rights; business concessions conferred by law, administrative decisions or under contract, including concessions to search for, extract, develop or exploit natural resources.

Goods under lease agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a landlord who is an investor of the other Contracting Party, shall be treated no less favourably than an investment.

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

(2) The term investor of a Contracting Party means: any natural person who is a national of that Contracting Party in accordance with its legislation; any legal person or other organisation constituted in accordance with the law applicable in that Contracting Party; and any legal person not organized under the law of that Contracting Party but controlled by an investor as defined in subparagraph (a) or (b) Any natural person who is a national of that Contracting Party in accordance with its legislation; any legal person or other organisation constituted in accordance with the law applicable in that Contracting Party; and any legal person not organized under the law of that Contracting Party but controlled by an investor as defined in subparagraph (a) or (b).

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

(4) The term territory means the territory of each Contracting Party including inland waters and exclusive economic zone, the seabed and subsoil, over which the contracting party exercises in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation and preservation of natural resources.

## **Article 2. Promotion and Protection of Investments**

- (1) Each Contracting Party according to its general policy in the field of foreign investment, promote investments in its territory by investors of the other Contracting Party and shall admit in accordance with its legislation.
- (2) Subject to the laws relating to the Entry and Sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter, stay in and leave the territory of the other contracting party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.
- (3) Each Contracting Party shall at all times ensure fair and equitable treatment to investments of investors of the other Contracting Party and shall not prejudice the management, maintenance, use, enjoyment or disposal nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.
- (4) The investments made in accordance with the legislation of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection of this Agreement and in no case a Contracting Party shall grant treatment less favourable than that required by international law. each Contracting Party shall observe any obligation with investors of the other contracting party as regards to their investments.
- (5) Income derived from an investment shall be given the same treatment and protection as an investment.
- (6) Each Contracting Party shall provide effective means of asserting claims of rights with respect to investments assets covered by this Agreement.
- (7) Each Contracting Party shall ensure that its laws, regulations, administrative practices and procedures of general application or rulings and decisions which pertain to or affect investments covered by this Agreement are promptly published or made publicly available.

### **Article 3. National Treatment and Most-favoured-nation Treatment to Investments**

- (1) Each Contracting Party shall apply to investments made in its territory by investors of the other contracting party treatment not less favourable than that accorded to investments made by its own investors to investors or of any third State, whichever is more favourable.
- (2) Notwithstanding paragraph (1) of this article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a customs union, a common market or a range of libre-comercio, shall be free to grant, by virtue of such agreements, more favourable treatment to investments by investors of the State or States which are parties to the aforesaid agreements, or by investors of some of these States.
- (3) The provisions of paragraph (1) of this article shall not be construed as to oblige one contracting party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

### **Article 4. Expropriation**

- (1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other contracting party of an investment unless the following conditions are met:
  - (a) Where the measures are in the public interest and under due process of law;
  - (b) Where the measures are distinct and not discriminatory; and
  - (c) Where the measures are accompanied by provisions for the payment of prompt, effective and adequate compensation, which shall be transferable without delay in a freely convertible currency.
- (2) Such compensation shall represent the real market value of the expropriated investment immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as "Valuation date").

The real market value, at the request of the investor, shall be expressed in a freely convertible currency at the existing market rate of exchange for that currency on the valuation date. the compensation shall also include interest at a rate established on the commercial market basis from the date of expropriation until the date of payment.
- (3) The provisions of paragraph (1) and (2) of this article shall also apply to an income from investment and, in the event of

liquidation, to the results of the liquidation.

(4) When a Contracting Party shall expropriate the assets of a company or an enterprise in its territory in which investors of the other contracting party have an investment, including through the ownership of shares, it shall ensure that the provisions of this article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other contracting party.

## **Article 5. Compensation**

Investors of either Contracting Party who suffer losses of their investments in the territory of the other contracting party owing to war or other armed conflict, a national state of emergency, revolt, riot or insurrection shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that accorded to its own investors to investors or of any third State.

## **Article 6. Transfers**

(1) Each Contracting Party shall allow the transfer without delay in a freely convertible currency of payments in connection with an investment, and shall include in particular though not exclusively:

- (a) The income;
- (b) Products from a total or partial sale or liquidation of any investment of an investor of the other contracting party;
- (c) Funds in repayment of loans;
- (d) Compensation pursuant to articles 4 and 5; or
- (e) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriate to cover expenses relating to the management of the investment.

(2) All transfers under this Agreement shall be effected at the market exchange rate prevailing on the day of transfer with regard to transactions in the currency to be transferred. In the absence of a market for foreign exchange, could be used as the most recent exchange rate for conversion of currencies into special drawing rights.

## **Article 7. Subrogation**

If a Contracting Party or its designated agency makes a payment to any of its investors on a guarantee with regard to an investment in the territory of the other contracting party, the latter Contracting Party, shall, without prejudice to the rights of the first contracting party according to article 9, recognize the transfer of any such right or title of the investor to former 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 predecessor holder.

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

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall as far as possible, be settled amicably.

(2) If any such dispute cannot be settled within six months from the date on which the dispute has been submitted by the investor and notified in writing to the Contracting Party, each contracting party consents to submit the dispute, at the choice of the investor, for resolution by international arbitration at the following:

- i) The International Centre for Settlement of Investment Disputes (ICSID) under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided that both contracting parties are attached to this Convention; or
- ii) The additional facility of the Centre), if the Centre is not available in accordance with the Convention, or
- iii) An ad hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). the designating authority in accordance with such rules shall be the Secretary General of ICSID.

If the parties to a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(3) For purposes of this article and article 25 (2) (b) Washington of the said Convention, any legal person constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other contracting party.

(4) Any arbitration under the Rules of the additional facilities or in accordance with the UNCITRAL Arbitration Rules of, at the request of any of the Parties to the dispute, be held in a State that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (the New York Convention).

(5) The consent given by each contracting party in paragraph (2) and the submission of the dispute by an investor under this paragraph, shall constitute the written consent and the agreement of the Parties to the dispute to its submission for settlement of disputes for purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre) and for purposes of the Additional Facility Rules, article I of the UNCITRAL Arbitration Rules and article II of the New York Convention.

(6) In any proceeding involving an investment dispute, a Contracting Party shall not rely on as a defence against demand, right to initiate or for any other reason, that other indemnification or compensation for all or part of the alleged damage has been received as a result of an insurance or guarantee contract.

(7) Any arbitral award rendered pursuant to this article shall be final and binding for the parties in dispute. each Contracting Party shall without delay the provisions of any award and provide in its territory for the enforcement of such award.

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

(1) Any dispute between the contracting parties concerning the interpretation or application of this agreement should, if possible, be settled through negotiations between the Governments of the two contracting parties.

(2) If the dispute cannot be settled within six months, following the date on which such negotiations were requested by either Contracting Party shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted case by case, each Contracting Party shall appoint one member. these two members shall agree to select a national of a third State as their Chairman who shall be appointed by the Governments of the two contracting parties. the members shall be appointed within two months and the Chairman within four months from the date on which either contracting party notifies the other contracting party of its wish to submit the dispute to an arbitral tribunal.

(4) If within the time limits referred to in paragraph (3) of this article have not been made, either Contracting Party may, in the absence of any other relevant settlement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function referred to in paragraph (4) of this article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. if the Vice-President is prevented from discharging the said function or is a national of either Contracting Party shall be invited to the most senior member of the Court who is incapacitated or not is not a national of either Contracting Party, to make the necessary appointments.

(6) The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on the contracting parties. each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the Chairman and any other costs shall be divided equally between the two contracting parties. however, the arbitral tribunal may decide that a higher proportion of the costs charged to be one of the Contracting Parties. in all other respects, the procedure of the arbitral tribunal shall be determined by the Council.

## **Article 10. Implementation of the Agreement**

(1) This Agreement shall apply to existing investments at the time of its Entry into Force, as well as to investments made thereafter. the Agreement shall not apply to any dispute or any claim concerning an investment which has been established before its Entry into Force.

(2) This Agreement shall in no way restrict the rights and benefits which an investor of one contracting party enjoys under national or international law in the territory of the other contracting party.

## **Article 11. Entry Into Force , Duration and Termination**

(1) The Contracting Parties shall notify each other when their constitutional requirements for the Entry into Force of this Agreement. the Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of twenty years. thereafter it shall remain in force until the expiration of twelve months from the date on which either contracting party notifies in writing the other contracting party of its decision to terminate this Agreement.

(3) With respect to investments made prior to the date when the termination of this Agreement, the provisions of articles 1 to 10 shall remain in force for a period of twenty years from that date.

In WITNESS WHEREOF the undersigned, duly authorized, to this effect, have signed this Agreement.

Done in duplicate at Guatemala City, twelve days of February two thousand and four in English, Spanish and Swedish languages, all texts being equally authentic. in case of divergence of interpretation the English text shall prevail.

The Government of the Republic of Guatemala

The Government of the Kingdom of Sweden