

# **Agreement between the Swiss Confederation and the Republic of Ecuador on the protection and encouragement of investments**

The Government of the Swiss Confederation and the Government of the Republic of Ecuador,

Wishing to strengthen economic cooperation between the two States,

Willing to create favorable conditions for the investment of nationals and companies of one of the two States in the territory of the other State,

Recognizing the need to protect these investments in order to stimulate private economic initiative,

Have decided to conclude this Agreement and have designated for this purpose their plenipotentiaries, namely:

(Follow the names of the plenipotentiaries)

Which have agreed as follows.

## **Article 1.**

Each High Contracting Parties undertakes to protect the assets invested in its territory of nationals or companies of the other Contracting Party and shall not impair unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, increasing and, where appropriate, the clearance of such goods. each Party shall issue the required authorisations, particularly with regard to investment as well as the conclusion and implementation of contracts, commercial or administrative assistance.

In particular, the companies or nationals of one of the High Contracting Parties shall enjoy, as regards their property in the territory of the other party fair and equitable treatment, at least equal to that is recognised by that party to its nationals or, if it is more favourable treatment accorded to nationals or companies of the most favoured nation.

## **Article 2.**

Each High Contracting Parties, and in which nationals or companies of the other party or have invested assets operate, to grant such nationals or companies the free transfer of:

- a. Profits, dividends, interests and other income;
- b. Royalties and other payments deriving from licence fees and commercial, administrative or technical assistance;
- c. Depreciation allowances and repayments of contracts;
- d. Of monies or to cover expenses relating to the management of the investment;
- e. Additional contributions of capital necessary for the maintenance or development of assets invested;
- f. The proceeds of the partial or total liquidation of the investment, including possible gains;
- g. The product of the work or activity.

## **Article 3.**

None of the High Contracting Parties shall not take any measures of expropriation, nationalization or dispossession, other direct or indirect, with respect to assets owned by nationals or companies of the other party, except for reasons of public interest and provided that such measures are subject to the payment of adequate and effective compensation in

accordance with international law. The amount of such compensation, which shall be fixed at the time of expropriation, nationalization or dispossession, other shall be settled in a currency transferable and shall be paid without delay to the entitled person, irrespective of his place of residence or its headquarters.

#### **Article 4.**

The investments made prior to the entry into force of the Agreement, by nationals or companies of one of the High Contracting Parties in the territory of the other Party in accordance with its legal provisions shall also be subject to this Agreement.

#### **Article 5.**

The provisions more favourable than those of this Agreement which have been agreed to by one of the High Contracting Parties with nationals or companies of the other party are reserved.

#### **Article 6.**

For the purposes of this Agreement:

a. The "nationals" are natural persons who, according to the legislation of each of the Contracting States, shall be regarded as nationals of that State.

b. The "companies" are:

(I) As regards Switzerland, communities, schools or foundations with legal personality, as well as partnerships or limited and other communities of persons without legal personality, which are constituted or organized under Swiss law or in which nationals of Switzerland, directly or indirectly, a preponderant interest;

(II) In the case of Ecuador, legal persons or firms, business associations and other companies which have their principal place of business in the territory of the Republic of Ecuador and exist in law in accordance with the law, irrespective of whether the liability of its members or is limited or unlimited and that their activity whether or not for profit.

c. The term "investment," "assets invested" or "investment" include all categories of goods and in particular, though not exclusively:

(I) The ownership of movable and immovable property as well as any other rights in rem;

(II) Shares and other forms of equity participation;

(III) Claims to money or to any performance rights having an economic value;

(IV) Copyrights, industrial property rights, trademarks technical processes, and commercial value;

(V) Concessions under public law, including concessions to search and exploitation.

#### **Article 7.**

If a dispute arises between the contracting parties concerning the interpretation or the implementation of the provisions of this Agreement and that this diffé-rend cannot be settled within a period of six months in a satisfactory manner through diplomatic channels, the dispute shall be submitted, at the request of either party to an arbitral tribunal composed of three members. Each Party shall appoint an arbitrator. The two arbitrators appointed shall appoint a third arbitrator (umpire) who shall be a national of a third State.

If a Party has not appointed its arbitrator and has not followed the invitation of the other party within two months of such appointment, the arbitrator shall be appointed upon the request of the latter party, by the Chairman of the International Court of Justice.

If the two arbitrators cannot reach an agreement within two months after their appointment, at the choice of the third arbitrator (umpire), the latter shall be appointed upon the request of either party by the President of the International Court of Justice.

If in the cases specified in paragraphs 2 and 3 of this article, the President of the International Court of Justice is prevented or if he is a national of either party, the appointment shall be made by the Vice-President. if the latter is prevented or if he is

a national of either party, the appointment shall be made by the most senior member of the Court who is not a national of either party.

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

The decisions of the Tribunal shall be binding on the parties.

## **Article 8.**

This Agreement shall enter into force when each High Contracting Party has notified the other that it has complied with the requirements constitutionnelles relating to the conclusion and entry into force of the international agreements.

This agreement is concluded for a period of five years. If it is not denounced six months before the expiry of this period, there shall be considered as renewed for a period of two years, and so on.

In the event of termination, the provisions of articles 1 to 7 above shall apply for a period of ten years for investments made prior to the termination of the Agreement.

Done at Berne on 2 May 1968, in duplicate, in the French and Spanish languages, both texts being equally authentic.

For the Government of the Swiss Confederation:

Paul R. Jolles

For the Government of the Republic of Ecuador:

F. A. Rivera