

TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA AND THE GOVERNMENT OF THE REPUBLIC OF FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

Treaty Between the Government of the Republic of Guatemala and the Government of the Republic of for the Promotion and Protection of Investments

The Government of the Republic of Guatemala and the Government of the Republic of hereinafter referred to as the Contracting Parties;

Encouraged by the desire to create favorable conditions for investors of one Contracting Party to make greater investments in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement and protection through international agreements of such capital investments may serve to stimulate individual economic initiative and increase the prosperity of both Contracting Parties;

Have agreed as follows:

Article 1.. DEFINITIONS

For the purposes of this Convention

(a) The term "investment" means all kinds of assets such as property, rights and interests of every nature, and in particular, but not exclusively, includes.

(i) real and personal property and rights in rem, such as mortgages and pledges;

(ii) shares, securities and debentures of companies and other forms of participation in the property of companies and legal entities incorporated in one of the Contracting Parties under the laws of each Party;

(iii) credit rights or any benefit having a financial value;

(iv) intellectual property rights, key rights, processes and know-how;

(v) concessions of a commercial nature granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources.

No modification to the original form in which the investment was made shall affect its character as such, provided that such modification is not contrary to the law of the Contracting Party where the investment is made.

(b) The term "income" means the amounts yielded by an investment and in particular, but not exclusively, includes profits, interest, capital gains, dividends, royalties and fees.

Income, whether from the original investment or from reinvestment, enjoys the same protection.

(c) The term "investor "means, for each Contracting Party:

(i) Individual persons who, under the law of that Contracting Party, are considered to be nationals of that Contracting Party;

(ii) juridical persons incorporated in one of the Contracting Parties under the laws of that Contracting Party and having their principal place of business there, or controlled directly or indirectly by nationals of one of the Contracting Parties or by juridical persons having their principal place of business in one of the Contracting Parties and incorporated under the laws of that Contracting Party.

(d) The term "territory" means:

In relation to the Republic of Guatemala: the land, maritime and air space, and the marine and submarine areas including internal waters over which the State exercises sovereignty in accordance with the Political Constitution of the Republic of Guatemala and International Law.

In relation to [].

Article 2.. PROMOTION AND PROTECTION OF INVESTMENTS

(1) Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest capital in its territory, in accordance with its legislation.

(2) Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair, by immoderate or discriminatory measures, the management, maintenance, use, enjoyment or disposal in its territory of investments of investors of the other Contracting Party. Each Contracting Party shall comply with any commitment it may have entered into with respect to the investments of the investor of the other Contracting Party.

Article 3.. NATIONAL TREATMENT AND MOST-FAVORED-NATION TREATMENT

(1) Neither Contracting Party shall subject in its territory the investments and income of the investor of the other Contracting Party to treatment less favorable than that which it accords to the investments or income of its own investors or to the investments and income of investors of any third State.

(2) Neither Contracting Party shall subject in its territory investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors, or to investors of any third State.

(3) It is understood that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 12 of this Convention.

Article 4.. COMPENSATION IN CASE OF LOSSES

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses as a result of war or other armed conflict, revolution, state of national emergency, rebellion, insurrection or riot in the territory of the other Contracting Party shall not receive from the other Contracting Party treatment less favorable than that which it accords to its own investors or to investors of any third State in respect of - restitution, indemnification, compensation or other settlement. The corresponding payments shall be freely transferable.

Article 5.. EXPROPRIATION

(1) Investments of investors of one Contracting Party shall not, in the territory of the other Contracting Party, be nationalized, expropriated or subjected to measures which in their effects amount to nationalization or expropriation (hereinafter referred to as "expropriation") except for reasons of public utility related to the domestic needs of that Contracting Party on a non-discriminatory basis and in return for prompt, adequate and effective compensation. Such compensation shall be equal to the actual value of the expropriated investment immediately before it was expropriated or before the impending expropriation became public knowledge, whichever is earlier, and shall include interest at the normal commercial rate up to the date on which payment is made. Such payment shall be made without delay, shall be effectively realizable and freely transferable. The investor shall be entitled, under the laws of the Contracting Party effecting such expropriation, to a prompt review by a judicial or other independent authority of that Contracting Party of its cause and of the evaluation of its investments in accordance with the principles set forth in this paragraph.

(2) In the event that a Contracting Party expropriates the property of a company incorporated or constituted under the laws in force in any part of its territory and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are complied with to the extent necessary to ensure prompt, adequate and effective compensation in respect of the investments of the investors of the other Contracting Party owning such shares.

Article 6.. FREE TRANSFER

Each Contracting Party shall, with respect to investments, guarantee to investors of the other Contracting Party the free transfer of their investments and income. Transfers shall be

made without delay in the convertible currency in which the capital investment was originally made or in any other convertible currency agreed upon by the investor and the Contracting Party concerned. Unless otherwise provided by the investor, transfers shall be made at the rate of exchange

transfers shall be made at the rate of exchange applicable on the date of transfer, in accordance with the exchange legislation in force.

Article 7.. EXCEPTIONS

The provisions of Article 3 of this Agreement shall not be construed to require a Contracting Party to accord to investors of the other Contracting Party the benefits of any treatment, preference or privilege arising from:

(a) any existing or future customs union, free trade area, common market, economic union or any other form of regional economic organization or any similar international convention, to which either Contracting Party is or becomes a party; or,

(b) any convention, international agreement or domestic legislation relating wholly or mainly to taxation.

Article 8.. SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND a HOST STATE

Disputes between an investor of a Contracting Party and the other Contracting Party concerning an obligation of the latter under this Convention and relating to an investment of the former which have not been settled amicably shall, after a period of three months from the date of written notification of the claim, be submitted to:

(a) the competent national courts or to the national arbitration of the Contracting Party; or,

(b) the International Centre for Settlement of Investment Disputes (ICSID) established by the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, D.C., on March 18, 1965, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, D.C., on March 18, 1965, and the Additional Facility for the Administration of Conciliation, Arbitration and Survey Proceedings); or,

(c) to the Court of Arbitration of the International Chamber of Commerce; or,

(d) to an international arbitrator or ad hoc arbitral tribunal to be appointed by special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If, after a period of three months from the written notification of the claim, the parties fail to agree on one of the above alternative procedures, the dispute shall, at the written request of the investor concerned, be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) then in force. The Parties may agree in writing to modify the arbitration procedures.

Article 9.. SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) Disputes arising between the Contracting Parties concerning the interpretation or application of this Convention shall, as far as possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot be settled in this way "within six months", it shall be submitted to an Arbitral Tribunal at the request of one or other of the Contracting Parties.

(3) The Arbitral Tribunal shall be composed of three members and shall be constituted as follows: within two months from the date of notification of the request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within one month of the appointment of the last of them, select by common agreement a third member who shall preside over the tribunal and who must be a national of a third State with which both Contracting Parties maintain diplomatic relations.

(4) If the necessary appointments have not been made within the time limits provided for in paragraph (3) of this Article, either Contracting Party may, in the absence of other arrangements, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the two Contracting Parties or is otherwise unable to perform this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-Chairman is a national of one of the two Contracting Parties or if he is also unable to perform this function, the member of the International Court of Justice next in rank to him who is not a national of one of the two Contracting Parties shall be invited to make the necessary appointments.

(5) The Arbitral Tribunal shall decide on the basis of the provisions of this Convention and the principles of international law. The tribunal shall decide by majority vote and shall determine its own rules of procedure. Each Contracting Party shall bear the expenses of the respective arbitrator as well as those relating to his representation in the arbitral proceedings.

The expenses of the Chairman and the other costs of the proceedings shall be borne equally by the Contracting Parties, unless they agree otherwise.

The decisions of the Tribunal shall be final and binding on both Contracting Parties.

Article 10. SUBROGATION

Where a Contracting Party or an agency authorized by it has granted an insurance contract or other financial guarantee against non-commercial risks in respect of an investment of one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the former Contracting Party to be subrogated to the rights of the investor when it has made a payment under such contract or guarantee.

2. Where a Contracting Party has paid its investor and has thereby assumed its rights, such investor may not claim such rights from the other Contracting Party, unless expressly authorized by the first Contracting Party.

Article 11.. SCOPE OF APPLICATION

This Agreement shall apply to investments established as from its entry into force, by investors of one Contracting Party, in accordance with the legal provisions of the other Contracting Party, in the territory of the latter.

However, this Agreement shall not apply to differences or disputes which have arisen prior to or are directly related to events occurring prior to its entry into force.

Article 12. APPLICATION OF OTHER RULES

If provisions of the law of any Contracting Party or obligations under international law already existing or to be established in the future between the Contracting Parties, in addition to this Convention, contain rules, whether general or specific, which accord to investments made by investors of the other Contracting Party more favorable treatment than is provided for under this Convention, such rules shall apply to the extent that they are more favorable.

Article 13.. ENTRY INTO FORCE

Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Convention. This Convention shall enter into force on the date of the last of the two notifications.

Article 14.. DURATION AND DENUNCIATION

This Convention shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of a period of twelve months from the date on which one of the two Contracting Parties has notified the other in writing of its denunciation. However, in respect of investments made at any time prior to the termination of the Convention, its provisions shall continue in force in respect of such investments for a period of twenty years from the date of termination of the Convention and without prejudice to the subsequent application of the rules of general international law.

In witness whereof the undersigned, being duly authorized to that effect by their respective Governments, have signed this Agreement.

Done at the city of on this day of the month of 200... in duplicate, in the English and Spanish languages, both texts being equally authentic.

For the Government of the Republic of Guatemala For the Government of the Republic of