

# **Treaty between the Federal Republic of Germany and the Republic of Ecuador on the Encouragement and Reciprocal Protection of Capital Investments**

The Federal Republic of Germany and the Republic of Ecuador

DESIRING to deepen economic cooperation between the two countries,

DECLARING to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State;

RECOGNIZING that the promotion and the contractual protection of these investments constitute a valuable incentive for private and economic initiatives and can increase the prosperity of the two peoples,

HAVE AGREED AS FOLLOWS:

## **Article I.**

Each Contracting Party shall, in accordance with its applicable legislation, permit the investment of nationals or companies of the other Contracting Parties in its territory; It will promote it and treat it fairly and cheaply.

## **Article II.**

(1) Each Contracting Party shall, in its territory, treat investment schemes owned or controlled by nationals or companies of the other Contracting Parties no less favorably than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall, in its territory, treat nationals or companies of the other Contracting Parties with regard to their activities in connection with investments no less favorably than their own nationals and companies or nationals and companies of third States.

## **Article III.**

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only on grounds of general or social well-being and against indemnity. The compensation must correspond to the value of the expropriated investment, be actually usable and freely transferable, and be made immediately. At the latest at the time of expropriation, appropriate provisions must be made for the setting and performance of the compensation. The legality of the expropriation and the amount of the compensation may be re-examined in the ordinary court proceedings of the state concerned.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article IV.**

Each Contracting Party guarantees to the nationals or companies of the other Contracting Parties the free and immediate transfer of capital, its income (income, dividends, interest, etc.) and, in the case of liquidation, compensation or expropriation, the corresponding amount.

## **Article V.**

If one of the Contracting Parties makes payments to its nationals or companies by virtue of a guarantee granted for a capital investment in the territory of the other Contracting Party, the latter shall recognize the transfer of all rights of these nationals or companies to the first Contracting Party either by operation of law or by legal act, as well as the succession of the first Contracting Party in all rights (transferred rights) which the latter may exercise to the same extent as their former holder. For the transfer of payments to be made to the Contracting Party by virtue of the transferred rights, Article IV of this Treaty shall apply mutatis mutandis.

## **Article VI.**

(1) Unless the parties concerned has made a derogation from the competent authorities of the Contracting Party in whose territory the investment is situated, transfers shall be made in accordance with Article IV at the rate determined in accordance with applicable law, taking into account paragraph 2 for day-to-day transactions Of the transfer.

(2) This rate is based on the par value (par value) agreed with the International Monetary Fund and must be parity within the range of fluctuation permitted under Article IV (3) of the Agreement on the International Monetary Fund.

(3) If there is no conversion rate for a Contracting Party at the time of transfer, as defined in paragraph 2, the official rate determined by that Contracting Party for its currency in relation to the US dollar or any other freely convertible currency or gold shall be applied.

(4) Where such a price is not fixed, the competent authorities of the Contracting Party in whose territory the capital is invested shall allow a conversion rate which is fair and fair.

## **Article VII.**

(1) If, under the legislation of one of the Contracting Parties or under international obligations which exist or are established in the future between the Contracting Parties, a general or special rule which makes the investments of the nationals or companies of the other Contracting Parties more favorable than under this Treaty Of the Treaty, that provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article VIII.**

(1) The term "investments" includes all assets, in particular but not exclusively:

- a) Ownership of movable and immovable property and other rights in rem;
- b) Share rights in companies and other types of participations;
- c) Claims for money or services having an economic value;
- d) Copyright, industrial property rights, technical procedures, trade names and market value;
- e) Concessions granted by public authorities, including concessions for concessions and concessions.

A change in the form in which assets are invested does not affect their property as an investment.

(2) The income from capital is the amount that is attributable to an investment as income or interest for a certain period of time.

(3) "Nationals" are to be understood

- a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) With regard to the Republic of Ecuador:

Ecuadorian according to the political constitution and laws of the Republic of Ecuador.

(4) The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person, any trading company or other company or association with or without legal personality who is domiciled in the territory of the Federal Republic of Germany and who is entitled under the laws to impose unlimited or unlimited liability on the part of its members, is aimed at profit or not;

b) With regard to the Republic of Ecuador:

Any legal person, trading company and other company or association which has its registered office in the territory of the Republic of Ecuador and is justified in determining whether the liability of its members or members is restricted or unrestricted and whether its activity is directed at profit or not.

## **Article IX.**

This Treaty shall also be subject to investments made by nationals or companies of one Contracting Party in accordance with the laws of the other Contracting Party in its territory before the entry into force of this Treaty.

## **Article X.**

Each Contracting Party grants national treatment under this Treaty on account of the fact that, in the same matters, treatment by the other Contracting Party is granted by the other Contracting Party.

## **Article XI.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If such differences of opinion can not be made in this way, they shall be submitted to an arbitrator appointed by common accord at the request of one of the two Contracting Parties. If no agreement is reached on the appointment of the arbitrator within three months after the other Contracting Party has informed the other Contracting Party of its intention to avail itself of arbitration, the matter shall be referred to an arbitration tribunal at the request of either Contracting Party. Each Contracting Party shall appoint an arbitrator, and these two arbitrators shall appoint, by common accord, a chairman of the arbitral tribunal who shall be a national of a third State. The two arbitrators shall be appointed within a period of two months and the chairman shall be appointed within a period of three months from the expiry of the deadline for the appointment of the individual judge.

(3) If the appointments provided for in the preceding paragraph are not made within the time limits laid down therein, unless otherwise agreed, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President of the Court shall make the appointments. If the Vice-President also has the nationality of one of the Contracting Parties or if he is prevented from doing so for other reasons, the next member of the International Court of Justice who is not a national of either Contracting Party shall make the appointments.

(4) The arbitral tribunal shall decide by a majority of votes. The decisions of the individual judge and those of the arbitral tribunal are binding. Each Contracting Party shall bear the costs of the arbitrator designated by it and its representation in the proceedings. The costs of the chairman, the individual judge and the other costs are borne equally by the two Contracting Parties. The individual judge or the arbitration authority may adopt a different cost arrangement. They also regulate the procedure itself.

(5) The jurisdiction of the courts of the Contracting Party in whose territory the investment has been effected shall in no way be affected by the arbitrariness set out in this Article.

## **Article XII.**

The provisions of this Treaty shall remain in force even in the event of a conflict between the Contracting Party and without prejudice to the right to take temporary measures which are permitted by virtue of the general rules of international law including the defense agreements to which the Contracting Parties are members. Measures of this kind will be lifted no later than the time of the end of the war.

### **Article XIII.**

With the exception of the provisions of Paragraph 8 of the Protocol, which relate to aviation, this Treaty shall apply in writing to the "Land of Berlin", unless the Government of the Federal Republic of Germany has made a contrary declaration to the Government of the Republic of Ecuador within three months after the entry into force of this Treaty.

### **Article XIV.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended indefinitely unless terminated in writing by one of the two Contracting Parties a year before its expiry. After ten years, the Treaty may be terminated at any time but remains in force for one year after termination.

(3) Investments which have complied with the provisions of this Treaty and have been made up to the date of the expiry of the Treaty shall be subject to Articles 20 to XIII for a further twenty years from the date of termination of this Treaty.

DONE at Quito, this twenty-eighth day of June, one thousand nine hundred and sixty-five, in four originals, two in German and two in Spanish, each text being equally valid.

For the Federal Republic of Germany

Georg Graf zu Pappenheim

Ambassador of the Federal Republic of Germany

Dr. Bruno Toepfer

Chairman of the German Delegation

For the Republic of Ecuador,

Dr. Rafael Garcia Velasco,

Acting Minister of Foreign Affairs.

### **Protocol**

In the act of signing the Treaty on the Promotion and Reciprocal Protection of Capital Investments between the Federal Republic of Germany and the Republic of Ecuador the undersigned plenipotentiaries have further agreed upon the following provisions which are to be considered as an integral part of the Treaty:

#### **1. Ad Article I**

Capital investments which, in accordance with the legal provisions of one of the Contracting Parties, have been made in its territory either by nationals or companies of the other Contracting Party, shall enjoy the full protection of this Treaty.

#### **2. Ad Article II**

(a) As an activity within the meaning of Article II, paragraph 2, is considered especially, but not exclusively, the administration, utilization and development of a capital investment. Less favorable treatment within the meaning of Article II, paragraph 2, shall be considered to include in particular

limitations on the acquisition of raw and auxiliary materials, energy and fuels as well as means of production and exploitation of all kinds, hindrances to the sale of products at home and abroad, and all measures having similar effects. Measures to be taken for reasons of public safety, public order, public health or morality shall not be considered as less favorable treatment within the meaning of Article II.

(b) Article II, paragraph 2, shall not apply to entry, sojourn and employment as a worker, which are governed by the laws and regulations of each State.

### **3. Ad Article III**

The provisions of Article II, paragraph 2, also apply to the transfer of a capital investment into public ownership, its subjection to public control or similar interference by the public authorities. The concept of expropriation includes the deprivation or limitation of any right to an asset which alone or with other rights constitutes a capital investment.

### **4. Ad Article IV**

(a) "Liquidation" within the meaning of Article IV shall also be deemed to be a disposition which is made for the purpose of abandoning the capital investment in whole or in part.

b) Within the meaning of Article IV, a transfer shall be deemed to have been effected "without delay" if it has been effected within a period of time normally necessary for the completion of the formalities connected with the transfer. The time limit, which in no case may exceed six months, begins to run at the moment when the corresponding request, accompanied by the pertinent documentation, is submitted.

c) The term "free" transfer does not exclude the application of the legal provisions in force in each of the Contracting Parties on taxes and charges.

(d) Transfers shall be made in compliance with the provisions of this Treaty and otherwise in accordance with the legal provisions in force at the time of transfer in the respective Contracting Party.

### **5. Ad Article VI**

(a) To the extent that, in accordance with the legal provisions in force, the application of the contribution under Article VI, paragraphs 1 to 3, depends on the fact that the capital investment is registered with the competent centers of the Contracting Party in whose territory the investment is located, Article VI, paragraphs 1 to 3, shall only apply when the registration has been effected. The same shall apply in the case of capital increase or reinvestment of profits.

b) It is understood that the listing rule contained in Article VI, paragraph 3, shall apply only if there is only one official listing.

### **6. Ad Article VIII**

(a) The benefit of a capital investment and, in the case of its reinvestment, the profit therefrom shall enjoy the same protection as the capital investment.

(b) Without prejudice to other procedures for determining nationality, any person who possesses a national passport issued by the competent authority of the Contracting Party concerned shall be deemed to be a national of one of the Contracting Parties.

### **7. Ad Article IX**

The obligations of the Federal Republic of Germany arising out of the London Agreement of February 27, 1953 on the German External Debt are not affected by the present Treaty.

### **8.**

The Contracting Parties shall ensure the free choice of means of transport for goods and persons connected with the purposes of the present Treaty.

### **9.**

The most favored nation treatment contemplated in the present Treaty shall not be applicable to the advantages, privileges, favors, deductions or exemptions that one of the Contracting Parties has granted or grants to its Bordering States (including by treaties, conventions or border agreements), nor to those arising from commitments of regional economic integration or participation in customs unions.

SIGNED at Quito, this twenty-eighth day of June, one thousand nine hundred and sixty-five, in four originals, two in German and two in Spanish, each text being equally valid.

For the Federal Republic of Germany,

Georg Graf zu Pappenheim,

Ambassador of the Federal Republic of Germany.

Dr. Bruno Toepfer,

Chairman of the German Delegation.

For the Republic of Ecuador,

Dr. Rafael García Velasco,

Acting Minister of Foreign Affairs.

## **Exchange of Letters**

Quito, June 28, 1965.

Mr. President:

For the purpose of facilitating and encouraging the realization and development of capital investments of German nationals or companies, the Republic of Ecuador will grant to German nationals who, in connection with capital investments of German nationals or companies wish to enter the Republic of Ecuador and remain and work therein, such permits as may be necessary provided that reasons of public order and safety, public health and morality are not opposed.

Please accept, Mr. President, the assurances of my highest consideration.

Dr Rafael Garcia Velasco,

Acting Minister of Foreign Affairs of the Republic of Ecuador.

To Dr. Bruno Toepfer,

President of the German Delegation.

The President of the German Delegation.

Quito, June 28, 1965.

Mr. Minister:

I have the honor to acknowledge receipt of your communication dated today, which reads as follows:

"For the purpose of facilitating and encouraging the realization and development of capital investments of German nationals or companies, the Republic of Ecuador will grant to German nationals who, in connection with capital investments of German nationals or companies wish to enter the Republic of Ecuador and remain and work therein, such permits as may be necessary provided that reasons of public order and safety, public health and morality are not opposed."

Please accept, Mr. Minister, the assurances of my highest consideration.

Dr. Bruno Toepfer,

President of the German Delegation.

To Dr. Rafael García Velasco,

Acting Minister of Foreign Affairs of the Republic of Ecuador.