

# **AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ECUADOR AND THE GOVERNMENT OF THE DOMINICAN REPUBLIC**

The Government of the Republic of Ecuador and the Government of the Dominican Republic referred to hereinafter as the "Parties",

Desiring to intensify economic cooperation in their respective countries;

Aiming to create favourable conditions for investments made by companies and nationals of one party in the territory of the other, on the basis of a stable framework and fair and equitable treatment;

Recognizing that the reciprocal promotion and protection of investments under an international agreement the flow of capital and stimulate private initiatives in this field, increasing prosperity in both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investor" means, for each of the Contracting Parties,

- a) Natural or natural persons who, according to the law of that Contracting Party, are considered to be nationals of the same.
- b) Legal entities, including companies, corporations, societies registered persons or any other entity or otherwise constituted organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that Contracting Party;
- c) Legal persons constituted under the law of any country, which are directly or indirectly controlled by nationals of that Contracting Party or by legal entities headquartered in the territory of that same Contracting Party, where the legal person exercising their real economic activity.

2. The term "Investments" means, in accordance with the laws or regulations of the Contracting Party in whose territory the investment was made, all types of assets invested by investors of one Contracting Party in the territory of the other Contracting Party. It includes in particular, but is not limited to:

- a) Ownership of movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and real estate transactions, bonds and pledges;
- b) Shares and social quotas and any other kind of participation in companies;
- c) Claims or entitlements having an economic value: loans shall be included only when they are regularly contracted and documented according to the rules in force in the country where the investment made and is directly linked to a specific investment;
- d) Copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks of manufacture, trade or service marks, or trade names of origin (know-how), transfers of know-how and goodwill;
- e) Concessions, including research, extract concessions or exploit natural resources, as well as any other rights conferred by law or under contract awarded by an administrative decision in application of the law.

Any alteration of the form in which assets and capital have been invested or reinvested shall affect their qualification of

investments under this Agreement.

3. The term "territory" includes the maritime areas adjacent to the coastal State may exercise its sovereignty or jurisdiction over the same in accordance with international law.

4. The term "proceeds" means all amounts resulting from an investment interests, such as profits, dividends, royalties and other revenue streams.

## **Article 2. Promotion and Admission**

1. Each Party shall promote and encourage investments made in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2. Without prejudice to the law relating to the Entry and Sojourn of aliens, each Party shall allow investors of the Entry and Sojourn in the territory of the other party to establish, develop, administering or advising on an investment.

3. Companies which are legally constituted under the laws or regulations of a party and investments within that legal framework, shall be permitted to engage managerial and technical personnel that choice regardless of nationality.

4. Neither party shall establish compliance requirements as a condition for the establishment, expansion or maintenance of investments linked to specific commitments of export or local purchase of goods or services.

5. This Agreement shall also apply to investments made before its entry into force by investors of a Party in the territory of the other Party, provided they have been made in accordance with the laws of the other party.

## **Article 3. Protection**

1. Each Party shall protect investments made within its territory by nationals or companies of the other party, in accordance with its laws; and shall not hinder unreasonable or discriminatory measures by adopting the management, maintenance, use, enjoyment, extension and sale or disposal, where appropriate, the liquidation of such investments.

2. Each Party shall grant the necessary permits in connection with such investments and shall, within the framework of its laws, enforcement of labour contracts, licence manufacture, technical assistance, commercial, financial and administrative.

3. Each Party shall establish effective means of asserting claims and rights relating to investment agreements and investment authorizations.

## **Article 4. Expropriation and Compensation**

1. Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having the same effect against investments within its territory and belonging to investors of the other Contracting Party unless the measures are taken for a public purpose; on a non-discriminatory basis and under due process of law. The legality of the expropriation shall be subject to a regular judicial proceeding.

The measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. the amount of such compensation shall correspond to the market value of the expropriated investment was immediately before the expropriation or before the impending expropriation became public, whichever is earlier.

2. Investors of one Contracting Party who suffer losses of their investments or because of its benefits within the territory of the Contracting Party affected by armed conflict, national emergency or natural disaster in that territory, the latter Contracting Party will, 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 other State. such payments shall be freely transferable.

## **Article 5. Treatment , Directors and Entry of Personnel**

1. Neither Contracting Party may require that an enterprise of that Contracting Party that is an investment under this agreement to appoint senior management positions individuals of any particular nationality.

2. A Contracting Party may require that a majority of the members of the Board of Directors or of any of its committees, of a company that is an investment under this Agreement shall be of a particular nationality or resident in the territory of a Contracting Party provided that the requirement does not materially hinder the ability of the investor to exercise control

over its investment.

3. Subject to its domestic law relating to the Entry and Sojourn of aliens, each Contracting Party shall permit the Entry and Sojourn in its territory to investors of the other party and persons contracted by them under posts of senior management or by virtue of their expertise, with the aim of establishing and administering or developing, advising on the operation of the investment, such investors in the commitment of capital or other resources.

## **Article 6. Performance Requirements**

Neither Contracting Party may impose any of the following requirements with respect to permit for the establishment or acquisition of an investment or enforce any of the following requirements regarding the regulation of such investment:

- a) Export a given level or percentage of goods;
- b) To achieve a given level or percentage of domestic content;
- c) To purchase or use a accord preference to produced goods or services provided in its territory or to purchase goods or services from persons in its territory;
- d) Any relationship between the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows with such investments; or
- e) Technology transfer, a production process or other proprietary knowledge to a person in its territory not linked to the assignor, except when the requirement is imposed or the commitment or obligation required by a court, tribunal or administrative entity of control of competition, and to remedy an alleged violation of competition laws or to act in a manner that is not inconsistent with other provisions of this Agreement.

## **Article 7. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the unrestricted transfer of their investments and returns, provided that the capital is registered with the competent national body and upon payment of taxes, in particular, though not exclusively:

- a) The investment income as defined in Article 1;
- b) The compensation provided for in Article 4;
- c) The compensation provided for in Article 4;
- d) The proceeds from the sale or the total or partial liquidation of investments;
- e) Salaries, wages and other remunerations received by the nationals of one Party who have obtained in the other party the corresponding work contracts in connection with an investment.

2. Transfers shall be made in freely convertible currency at the rate of exchange prevailing on the date of transfer.

3. Transfers shall be made noting tax regulations in force in the host Party of the investment, particularly with regard to the submission of reports, withholding taxes on income or other similar. in addition, each Party shall protect the rights of creditors or ensuring compliance with the judgments in judicial proceedings through the equitable, impartial and in good faith to its laws.

## **Article 8. Consultations**

The parties agree to consult promptly on the request of either party to resolve any dispute arising under the present agreement, or to consider matters relating to the interpretation or application of the Agreement.

## **Article 9. Subrogation**

1. If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of such party agency or to any right or title held by the investor.

2. Any Contracting Party or an agency of the same which takes the rights of an investor in accordance with paragraph (1) of

this Article, is entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its benefits. such rights may be exercised by the party or any agency thereof by the investor or if the party or any agency thereof so authorizes.

## **Article 10. Application of other Standards**

If the provisions of the law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Convention or an agreement between an investor of one Contracting Party and the other Contracting Party contain rules whether general or specific accord to investments by investors of the other Contracting Party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail over this agreement to the extent that it is more favourable.

## **Article 11. Tax Measures**

1. Except where expressly referred to, nothing in this Agreement shall apply to tax measures. For greater certainty, nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any such agreement, the provisions of such agreement shall be applied to cure such inconsistency.

2. Any claim by an investor that a taxation measure of a Contracting Party violates the agreement between the central government authorities of a Contracting Party and the investor with respect to an investment shall be considered a claim for breach of this Agreement unless the taxation authorities of the Contracting Parties jointly determine, within a period not exceeding six months after being notified of the claim by the investor, that the measure does not contravene such agreement.

## **Article 12. Disputes of Interpretation of the Agreement between the Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall be settled through negotiations and settlement agreed otherwise.

2. If the Contracting Parties fail to reach agreement within six (6) months after the beginning of the dispute shall be submitted, at the request of either party to an arbitral tribunal composed of three (3) members.

3. Each Contracting Party shall appoint one arbitrator and the two arbitrators shall in turn appoint a third, who shall be the Chairman of the Tribunal who shall be a national of a third State.

4. If a Party has not appointed its arbitrator and in response to the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.

5. If the arbitrators appointed by the parties lograren cannot reach an agreement about the choice of the Chairman within three (3) months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

6. If in the cases specified in paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the judge of the Court next in seniority who is not a national of either of the Contracting Parties.

7. The arbitration tribunal shall deliver its opinion on the basis of respect for the law, to the rules contained in this Agreement or in other agreements in force between the parties; and on the universally recognized principles of International Law.

8. Unless the parties otherwise impact, the tribunal shall determine its own procedure.

9. The tribunal shall reach its decision by a majority of votes. such decision shall be final and binding on both parties.

10. Each Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. the other expenses, including the President, shall be borne equally by the parties.

## **Article 13. Settlement of Disputes between an Investor and a Party of the other Party**

1. For the settlement of investment disputes between a Contracting Party and an investor of the other Contracting Party, and without prejudice to Article 12 of this Agreement (Disputes between Contracting Parties), the Parties concerned shall consult.

2. If these consultations do not allow the dispute to be settled within six months, and if the investor involved so agrees in writing, the dispute shall be submitted to arbitration to the International Centre for Settlement of Investment Disputes (ICSID), established by the Washington Convention of March 18, 1965, on the Settlement of Investment Disputes between States and Nationals of Other States.

Each Party may introduce the procedure by submitting a request to that effect to the Secretary General of ICSID, as provided for in Articles 28 and 36 of the Convention. In the event that the Parties disagree as to whether conciliation or arbitration is the most appropriate procedure, the choice of procedure shall be made by the investor involved. The Contracting Party that is a party to the dispute may not, at any stage of the proceedings or of the enforcement of the arbitral award, invoke the fact that the investor received, by virtue of an insurance contract, compensation covering all or part of the damage incurred.

3. A company which has been incorporated or formed under the laws in force in the territory of the Contracting Party, and which was controlled, before the dispute arose, by nationals or companies of the other Contracting Party is considered, in the spirit of the Washington Convention and in accordance with Article 25(2)(b) thereof, as a company of the other Contracting Party.

4. Neither Contracting Party shall pursue the settlement through diplomatic channels of a dispute submitted to ICSID proceedings unless the Secretary-General of ICSID or a Conciliation Commission or an arbitral tribunal decides that the dispute does not fall within its competence, or unless the other Contracting Party does not accept the decision of an arbitral tribunal.

5. The provisions of this Article shall not apply to disputes, claims or differences which have arisen prior to the entry into force of this Agreement.

## **Article 14. Transparency**

1. Both Contracting Parties shall ensure, to the extent possible, that their laws, regulations, procedures and administrative decisions of general application relating to any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the Parties concerned and the other Contracting Party to become aware of them.

2. At the request of either of the Contracting Parties shall exchange information on the measures of the other Contracting Party that may have an impact on new investment or benefits under this Agreement.

## **Article 15. Entry Into Force, Extension and Denunciation**

1. This Agreement shall enter into force thirty days after the date on which the two Governments have notified each other of the completion of the respective constitutional formalities required for the Entry into Force of international agreements. It shall remain in force for an initial period of five years after its notification and, by tacit renewal, for consecutive periods of five years unless it is denounced.

2. Each Party may denounce this Convention by written notification, done at least six months before its expiration.

3. In the event of a complaint, the provisions of articles 1 to 14 of this Agreement shall continue to apply to investments made before the date of the complaint, for a period of five years.

Done at Santo Domingo de Guzmán, National District, capital of the Dominican Republic, in two originals in the Spanish language which are equally authentic, on the twenty-sixth day of the month of June of the year nineteen hundred and ninety-eight.

For the Government of the Republic of Ecuador

Diego Ribadeneira Espinosa

Secretary General of the Ministry of Foreign Affairs

For the Government of the Dominican Republic

Gloria Milán Lugo

Undersecretary of State for Foreign Affairs