

# Agreement between the Republic of Honduras and the Republic of Ecuador for the reciprocal promotion and protection of investments

The Republic of Honduras and Ecuador hereinafter referred to as the "contracting parties",

Desiring to intensify economic cooperation for mutual benefit of both countries and maintain a fair, just and favourable conditions for investments by investors of one Contracting Party in the territory of the other contracting party; recognizing that the promotion and protection of such investment based on an agreement will stimulate economic initiative individually and increase prosperity in both States; recognizing the need to establish an appropriate legal framework regulating and ensure the reciprocal promotion and protection of investments between the two countries; have agreed as follows:

## Article I. Definitions

For the purposes of this Agreement:

(1) The term "investment" means every kind of asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation. includes in particular, though not exclusively:

(a) Ownership of movable and immovable property and property rights such as mortgages, leases and similar, usufruct rights:

(b) Shares in companies or rights of participation in any other form of joint venture associations:

(c) Right of credit and 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 related to an investment specifies:

(d) Intellectual and industrial property rights, such as copyrights and related rights, trademarks, trade in manufactures or geographical indications, industrial designs, layout designs (topographies) of integrated circuits and rights in Plant-Breeders plant varieties:

(e) Rights conferred by law, by an administrative act or under contract, including rights or concessions to prospecting, exploration, extraction and exploitation of natural resources; and (f) the reinvestment of profits as defined in the investment that generates company. any alteration of the form in which assets and capital have been invested or reinvested shall affect their qualification of investments in accordance with this Agreement,

(2) The term investor "refers to each of the Contracting Parties, the following subjects who effected or investments in the territory of the other Contracting Party in accordance with this Agreement:

(a) Any natural person who is a national of one of the Contracting Parties, in accordance with its laws, and:

(b) Legal entities, including companies, corporations, business associations, enterprises, institutions or other entity constituted or established in accordance with the laws and regulations of one Contracting Party and having their registered office within either of the contracting parties; and who has made investments in the territory of the other Contracting Party:

(3) The term "proceeds" means all yielded returns by an investment interests, such as profits, dividends, royalties and other revenue streams.

(4) The term territory means:

(a) With respect to the Republic of Ecuador, the term national is constituted in the manner and under the territorial elements identified in its Constitution and laws.

(b) With respect to the Republic of Honduras, the national territory, the land, sea and air space of the Republic of Honduras

as well as the exclusive economic zone and the continental shelf over which it exercises sovereign rights and jurisdiction in accordance with its legislation and under international law.

## **Article II. Scope**

This Agreement shall apply to investments in the territory of a Contracting Party in accordance with its legislation made before or after the date of Entry into Force of this acuerdo. by investors of the other contracting party. however, it shall not apply to disputes or differences arising prior to its entry into force.

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

(1) Each Contracting Party shall promote and create favourable conditions for investments in its territory by investors of the other Contracting Party and shall admit in accordance with its laws and regulations.

(2) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy full protection "in accordance with the laws and regulations of the latter, including those established by this Agreement.

(3) Neither Contracting Party shall by arbitrary, unreasonable or discriminatory measures the management, maintenance, use, enjoyment, acquisition or disposal of investments in its territory by investors of the other contracting party.

(4) Each of the Contracting Parties shall, within the framework of its laws, give positive consideration to applications for obtaining the necessary permits in connection with investments in its territory, including authorizations for engaging top managerial and technical personnel of their choice regardless of nationality.

(5) Each Contracting Party shall promptly publish or otherwise make publicly available their laws, regulations, procedures and administrative rulings of general application as well as international agreements which may affect the investments made by investors of one Contracting Party in the territory of the other contracting party. Similarly, with the aim of increasing the flow of investment; to exchange information on investment opportunities in each Contracting Party.

## **Article IV. Exceptions**

Nothing in this Agreement shall not be construed as to oblige one contracting party to extend to investors of the other Contracting Party the treatment of any benefit or privilege, preference by virtue of:

(a) Any free trade area, customs union or common market of existing or future which is one of the contracting parties or may become a member;

(b) Any international agreement relating wholly or partially to taxation matters; or

(c) Any multilateral convention or treaty relating to investments of which one of the contracting parties is or may become a party.

## **Article V. Expropriation**

(1) Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having the same effect against investments in its territory and belonging to investors of the other Contracting Party unless measures are taken by the public interest or need, on a non-discriminatory basis and under due process of law. The legality of the expropriation shall be subject to judicial proceedings.

(2) The measures will be accompanied by provisions for the payment of prompt, adequate and effective compensation. The amount of said compensation will correspond to the commercial market value that the expropriated investment had immediately before the expropriation or before the imminent expropriation became public. The compensation will include interest at the current bank rate in the market, from the date of expropriation to the date of payment. The compensation and, if applicable, the interest will be paid without delay, effectively realizable and freely transferable.

## **Article VI. Compensation for Losses**

1) Investors of one of the Contracting Parties, who suffer losses in their investments in the territory of the other Contracting Party due to war or other armed conflict, national emergency, revolt, insurrection or riot, will receive, as regards restitution, compensation, indemnification or other compensation, a treatment no less favorable than that accorded to its own investors or to investors of a more favored nation, whichever is more favorable for the investor.

2) Without prejudice to paragraph (1) of this article, if an investor of a Contracting Party who in any of the situations referred to in the same suffers a loss in the territory of the other party (E) "contracting party owing to:

(a) Requisitioning of its investment or a part from the same by the authorities of the said Contracting Party; or.

(b) Destruction of its investment or part thereof by the authorities of the said Contracting Party, which was not required by the necessity of the situation, shall receive a refund or prompt, effective and adequate compensation.

## **Article VII. Transfers**

(1) Each Contracting Party shall guarantee to the investor of the other contracting party, the unrestricted transfer of investments and benefits, provided that the capital is registered with the competent national body and upon payment of the respective taxes, in particular, though not exclusively:

(a) The principal and additional amounts necessary for the maintenance and development of the investment;

(b) Profits, dividends, interest, royalties and other current income;

(c) Amortisation of loans related to an external investment, as defined in Article I. paragraph (l); (c).

(d) The proceeds of the total or partial sale or liquidation of an investment; and.

(e) Payments arising out of the settlement of a dispute under article X and compensation pursuant to Article V.

(2) Transfers shall be made in a freely convertible currency according to the banking rate of exchange prevailing on the date of transfer and under the law and regulations of the Contracting Party which has admitted the investment.

(3) Notwithstanding the provisions of the first paragraph of this article, each Contracting Party shall be entitled in circumstances of exceptional or serious balance of payments difficulties, to temporarily limit transfers, in an equitable and non-discriminatory manner, in accordance with internationally accepted criteria. The limitations adopted or maintained by a Contracting Party in accordance with this paragraph, as well as its elimination, shall be notified promptly to the other Contracting Party.

## **Article VIII. Subrogation**

1) If a Contracting Party or one of its agencies makes a payment to an investor by virtue of a guarantee or insurance that it has contracted in relation to an investment, the other Contracting Party will recognize the validity of the subrogation in favor of that Contracting Party or one of its agencies regarding any right or title of the investor. The Contracting Party or one of its agencies shall be authorized, within the limits of subrogation, to exercise the same rights that the investor would have been authorized to exercise, provided that those rights remain in force or are legally recognized by the other Contracting Party.

2) In the case of subrogation as defined in paragraph (1) of this article; the investor shall not pursue a claim unless he is authorized to do so by the contracting party or its agency.

## **Article IX. Implementation of other Rules**

If the legislation of either Contracting Party or the provisions of International Law existing or future between the Contracting Parties in addition to this Agreement; or whether an agreement between an investor of one Contracting Party and the other contracting party contain rules whether general or specific granted to investments made by investors of the other contracting party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail in the Office which are more favourable.

## **Article X. Settlement of Disputes between the Contracting Parties**

(1) Any dispute arising between the contracting parties concerning the interpretation or application of this Agreement shall, as possible settled through diplomatic channels.

(2) If a dispute between the contracting parties cannot be settled in this way within six months after the beginning of negotiations, it shall be submitted upon request of either contracting party to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members

shall select a national of a third State who on approval of the two contracting parties, shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this article shall not make the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to proceed with the necessary appointments. If the President is a national of one of the contracting parties or, if for any reason, is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either of the contracting parties or if he is found also prevented from discharging the function, the said member of the International Court of Justice who is next in order of precedence and is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding by both contracting parties. Each Contracting Party shall bear the costs of the member of the Tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in principle in equal parts by the contracting parties. However, the arbitral tribunal shall determine its decision that a higher proportion of costs be borne by one of the two contracting parties, and this award shall be final and binding on both contracting parties. The tribunal shall determine its own procedure.

## **Article XI. Settlement of Disputes between an Investor and the Host Contracting Party of the Investment**

(1) Any dispute concerning the provisions of this Agreement between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled by friendly consultations, which also includes the Conciliation and Arbitration Center of the Chambers of Commerce, if applicable,

(2) If the dispute has not been settled within a period of six months from the date on which it was raised by one or other party, it may be submitted at the request of the investor:

(a) The competent courts of the Contracting Party in whose territory the investment was made. If this is not possible to settle the dispute within six months from the date on which it was raised in its courts, the investor may discontinue this request and submit the dispute.

(b) The International Centre International Centre for Settlement of Investment Disputes between States and Nationals of Other States, under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965; or

(c) An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) The arbitral tribunal shall decide on the basis of the provisions of this Agreement, the Law of the Contracting Party which is a party to the dispute including its rules on the Conflict of Laws, to the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

(4) The judgments of the courts in the matter and the arbitration awards shall be final and binding on the Contracting Parties in dispute. Each Contracting Party shall execute them in accordance with its respective legislation.

(5) The contracting parties may not interfere by means of diplomatic actions disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes are included, except where the other party in the dispute has not complied with the judgment of the decision of the arbitral tribunal, under the terms established in the respective decision or award.

## **Article XII. Consultations**

The Contracting Parties at the request of any of them, shall consult on any matter relating to the application or interpretation of this Agreement.

## **Article XIII. Final Provisions**

Entry into Force, duration and termination.

1) This Agreement shall enter into force thirty days after the date of the last notification by the Contracting Parties shall notify in writing the fulfilment of their constitutional requirements for the Entry into Force of this Agreement, which shall be

valid for a period of ten years. unless one of the Contracting Parties denounces by written notification twelve months before the date of expiry of the period of validity of this Agreement shall be considered as renewed on the terms for periods of ten years.

2) With respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of articles I to XI of this Agreement and will remain in force for a further period of ten years from that date.

Done in Tegucigalpa, the Republic of Honduras, 26th days of the month of June in the year two thousand, in two originals in Spanish both texts being equally authentic.

In WITNESS WHEREOF, the representatives of the two Governments, duly authorized to this effect, have signed this Agreement.

FOR THE REPUBLIC OF HONDURAS

(F) OSCAR KAFATI KAFATI, Secretary of State in the Dispatch of Industry and Commerce.

FOR THE REPUBLIC OF ECUADOR

(F) JOSE JJON FLEILE, Ambassador Extraordinary and Plenipotentiary of the Republic of Ecuador.