

A g r e e m e n t

between

the Swiss Confederation

and

the Republic of Guatemala

on the Promotion and Reciprocal Protection

of Investments

Preamble

The Swiss Federal Council and the Government of the Republic of Guatemala,
Hereinafter referred to as the Contracting Parties,

Intending to create and maintain favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the encouragement and reciprocal protection of such investments under international agreements will be conducive to the stimulation of business initiatives and will increase prosperity in both countries,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

(1) The term "investments" means any kind of asset and includes in particular but not exclusively:

- (a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges and usufructs;
- (b) shares, parts or any other kind of participation in companies;
- (c) claims to money, including bonds and debentures or to any performance having an economic value;
- (d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), technical processes, know-how and goodwill;
- (e) concessions or similar rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

(2) The term "investor" means with regard to either Contracting Party:

- (a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- (b) legal persons constituted under the law of that Contracting Party and having their seat on the territory thereof, or legal persons directly or indirectly controlled by nationals of that Contracting Party or by legal persons constituted under the law of that Contracting Party and having their seat on the territory thereof.

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

- (4) The term "territory" means the territory of the Contracting Parties and includes the adjacent maritime areas over which the Contracting Party concerned may exercise sovereign rights or jurisdiction in accordance with national and international law.

Article 2

Scope of application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It shall, however, not be applicable to claims arising out of events which occurred prior to its entry into force.

Article 3

Promotion, admission

- (1) Each Contracting Party shall in its territory encourage investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
- (2) Each Contracting Party shall facilitate, in accordance with its laws and regulations, the issuing of the necessary permits in connection with such an investment, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants and experts.

Article 4

Protection, treatment

- (1) Investments and returns 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 unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

- (2) Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.
- (3) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.
- (4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5

Free transfer

- (1) Each Contracting Party shall grant investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment; in particular but not exclusively of:
 - (a) returns;
 - (b) payments relating to loans incurred, or other contractual obligations undertaken, for the investment;
 - (c) proceeds of the partial or total sale or liquidation of the investment, including possible increment values;
 - (d) earnings and other remuneration of personnel engaged from abroad in connection with the investment;

- (e) the initial capital and additional amounts to maintain or increase the investment.
- (2) Unless otherwise agreed with the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 6

Dispossession

- (1) Neither of the Contracting Parties shall take measures of expropriation, nationalisation or any other measures, the effects of which would be tantamount to expropriation or nationalisation, against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, against prompt and adequate compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application. The legality of any such expropriation and the amount of compensation shall at the request of the investor be subject to review by due process of law.
- (2) The compensation referred to in paragraph (1) shall be equivalent to the fair market value of the investment, as determined in accordance with recognised principles of valuation such as, inter alia, the capital invested, replacement value, appreciation, current returns, goodwill and other relevant factors, immediately prior to or at the time when the decision for expropriation was announced or became publicly known, whichever is earlier. The amount of compensation shall carry the usual commercial interest from the date of dispossession until payment, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.
- (3) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment not less favourable than that granted to its own investors or those of any third State as regards restitution, indemnification, compensation or other settlement.

Article 7

Principle of subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 8

Disputes between a Contracting Party and an investor of the other Contracting Party

- (1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned.
- (2) If these consultations do not result in a solution within six months from the date of request for consultations, the investor may submit the dispute for settlement to:
 - (a) the competent courts of the Contracting Party in the territory of which the investment has been made; or
 - (b) the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965; or
 - (c) an ad hoc-arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).
- (3) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.
- (4) The Contracting Party which is party to the dispute shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received a

compensation, under an insurance contract, covering the whole or part of the incurred damage.

- (5) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.
- (6) The arbitral award shall be final and binding for the parties to the dispute and shall be executed according to national law.

Article 9

Disputes between Contracting Parties

- (1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If the dispute between the Contracting Parties cannot be settled within a period of six months from the date at which the issue was raised in writing by one of the Contracting Parties, it shall upon request of either Contracting Party be submitted 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. Those two members shall then within two months select the Chairman of the tribunal who shall be a national of a third-State with which both Contracting Parties maintain diplomatic relations.
- (4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise 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 Contracting Party or if he is also otherwise prevented from discharging the said function, the Member of the International Court next in seniority who is not a

national of either Contracting Party shall be invited to make the necessary appointments.

- (5) The arbitral tribunal shall determine its own procedures, unless the Contracting Parties agree otherwise. It shall reach its decisions by a majority of votes. The decisions by the tribunal shall be final and binding upon both Contracting Parties.
- (6) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

Article 10

Other commitments

- (1) If provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall be applicable to the extent that they are more favourable.
- (2) Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 11

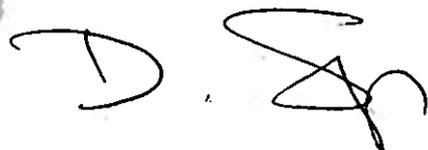
Final provisions

- (1) This Agreement shall enter into force on the day when both Contracting Parties have notified each other that their legal requirements for the entry into force of international agreements have been fulfilled and shall remain in force for a period of ten years. Unless written notice of termination is given twelve months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for successive periods of five years.
- (2) In case written notice of termination of this Agreement is given, the provisions of Articles 1 to 10 shall continue to be effective for a further period of ten years for investments made before said notice.

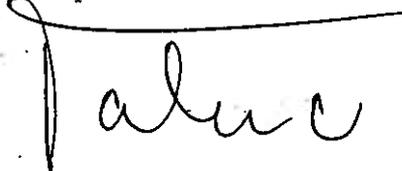
IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate, at *Guatemala City*, on *September 9th 2002*, in French, Spanish and English language, each text being equally authentic. In case of divergencies the English text shall prevail.

For the Swiss Federal Council

Handwritten signature consisting of two distinct parts: a stylized 'D' followed by a more complex, cursive signature.

For the Government of the
Republic of Guatemala

Handwritten signature starting with a large, sweeping horizontal stroke followed by the name 'Paluc' in cursive.