

# FOREIGN INVESTMENT LAW

March 3, 1998

## THE CONGRESS OF THE REPUBLIC OF GUATEMALA

### WHEREAS:

In accordance with the Constitution of the Republic of Guatemala, the State has the basic obligation to protect the formation of capital, savings, and investment, and to establish satisfactory conditions for promoting the investment of both Guatemalan and foreign capital.

Foreign investment must be developed and promoted so that it becomes a source for the transfer of technology, the creation of jobs, and the promotion of the country's economic growth and diversification, with a view to developing all of Guatemala's productive sectors and reinforcing national investment.

The Guatemalan State is known for maintaining a legal investment regime based principally on full equality of treatment between national and foreign investors, although the rules governing this regime are diffuse. For that reason, such rules should be organized and structured in a single legal instrument.

In addition to organizing the rules governing foreign investments in a single legal instrument, another objective of this Law is to establish a regime under which it will be easier to attract foreign capital that will effectively contribute to achieving the purposes set forth above, thus eliminating legal provisions containing limits or restrictions applicable solely to foreign investments and that are no longer considered necessary or justifiable.

### NOW THEREFORE,

In exercise of the powers conferred upon it under Article 17 (a) of the Constitution of the Republic of Guatemala, the Congress hereby decrees the following:

## FOREIGN INVESTMENT LAW

### Chapter I General Provisions

#### ARTICLE 1. Definitions

For purposes of this Law, the following definitions shall apply:

1. **Investment:** any activity undertaken with a view to the production, brokerage, or transformation of assets, as well as for the delivery and

intermediation of services involving any type of assets or rights, provided such activities have been carried out in accordance with the pertinent laws and regulations. Such investments shall include in particular, although not exclusively:

- a) Corporate shares and quotas, and any other form of ownership interest, in any proportion, in companies constituted and organized under Guatemalan law;
  - b) Credit rights or any other benefits having an economic value;
  - c) Movable and immovable property and any other rights in them;
  - d) Intellect and industrial property rights;
  - e) Concessions or similar rights granted by law or under a contract, to engage in economic or commercial activity.
2. **Foreign Investment:** any type of investment in which capital from abroad is transferred in any way to the Republic of Guatemala by a foreign investor. Any reinvestment by the foreign investor of any income or capital generated in Guatemala through his investment shall also be considered foreign investment.
  3. **Foreign Investor:** a foreign individual or legal entity, or a foreign entity without legal capacity, lawfully organized under the laws of the country in which it was constituted, which makes a foreign investment in Guatemala, either directly or through some form of association or contract with Guatemalan individuals or legal entities.
  4. **Capital:** Any type rights, property, and other assets having an economic value for the foreign investor.

## **Chapter II Treatment of Investment**

### **Article 2. Applicable Rules**

The Guatemalan State fosters and promotes foreign investment. The foreign investor and his investment are regulated primarily by the provisions of this Law. If the foreign investment is made in a sector of the Guatemalan economy that is governed by a special law, the foreign investor must also observe the provisions of that law. The foreign investor is also subject to all legal provisions of a general nature in the territory of the Republic of Guatemala, and shall enjoy the same rights and the means of exercising them as those granted by law to Guatemalan investors.

### **Article 3. Full Equality of Treatment**

The foreign investor shall be granted the same treatment in the exercise of his economic activities as that granted to Guatemalan investors, and shall therefore enjoy equal conditions vis-a-vis national investors. Any discrimination against a

foreign investor or his investment shall be prohibited. Furthermore, this law shall apply equally to all foreign investment, regardless of its country of origin. The only exception to the above are the limits established in the Constitution and in the laws that regulate certain economic activities in a specific way, and the treatment that certain foreign investments can receive when they derive from obligations acquired by the Guatemalan State under treaties or agreements that seek to establish customs and economic unions, common markets, or free trade areas.

#### **Article 4. Ownership Interest**

Foreign investors may have an ownership interest in any economic activity lawfully carried out in Guatemala, and may supply share capital in any proportion to profit-making companies constituted under the laws of the Republic of Guatemala. The only exception to this occurs when share capital must be supplied by Guatemalan individuals or legal entities under a law that applies specifically to the conduct of an economic activity. No officer or employee of the State may require compliance with any request, condition, or requirement that is not specifically provided for by law.

### **CHAPTER III Guarantees and Rights**

#### **Article 5. Private Ownership**

Foreign investors shall be allowed full rights, use, enjoyment, usufruct, and control with respect to ownership of their investment, and shall be subject only to the same obligations and limits as those imposed on Guatemalans by the Constitution and the laws of the Republic.

#### **Article 6. Expropriation**

The state may not expropriate, either directly or indirectly, an investment of a foreign investor, nor may it adopt any measure tantamount to the expropriation of said investment, other than for duly proven collective purposes, social benefit, or social interest.

Any measure directed towards the expropriation of an investment must be carried out in all cases on a non-discriminatory basis, in accordance with the principle of legality, and with prior and effective compensation, with the exception of certain cases involving prior compensation set forth in the Constitution of the Republic of Guatemala.

#### **Article 7. Free Trade**

Full protection shall be granted to the import and export of lawfully traded goods and services and of those needed to ensure that foreign investment activities in Guatemala are properly carried out, the laws and regulations applicable to Guatemalans in this regard shall be observed. In accordance with the international commitments legally adopted by the Guatemalan State, no investment-related measures may be imposed that might restrict or distort trade especially trade in

commodities. Similarly, no type of performance requirements may be imposed as a condition for making or maintaining a foreign investment, such as the compulsory transfer of technology or the creation of a specific number of jobs, with the exception of those cases provided in the labor laws with respect to the requirement to hire Guatemalan employees to fill positions other than on a company's senior management team.

#### **Article 8. Access to Foreign Exchange**

Foreign investors shall enjoy free access to the purchase and sale of available foreign currency and to the free convertibility of currency, in accordance with the provisions of special investors may freely engage in the following activities, among others:

- a) Transfers abroad that are related to their invested capital, or as a result of the voluntary dissolution and liquidation or sale of the foreign investment;
- b) Remittance of any profits or earnings generated in Guatemalan territory;
- c) Payment and remittance of dividends, debts contracted abroad and interests accrued thereon, royalties, income, and technical assistance;
- d) Payments derived from compensation for expropriation.

#### **Article 9. Investment Insurance**

Insurance against non-commercial foreign investment risks backed by bilateral or multilateral treaties or conventions duly signed, approved, and ratified by the Guatemalan State shall be governed by the rules or provisions contained in such international instruments and by such domestic laws or regulations as may be derived from those instruments.

#### **Article 10. Double Taxation**

In accordance with the Constitution of the Republic of Guatemala, confiscatory taxes and internal double or multiple taxation on foreign investment shall be prohibited. External double taxation shall be subject to the treaties and agreements on the subject signed by the Guatemalan State with other countries.

#### **Article 11. Settlement of Disputes**

If permitted under an international treaty or agreement duly signed, approved, and ratified by the Guatemalan State, any investment-related disputes that may arise between a foreign investor and the Guatemalan State, its agencies, or other state entities may be submitted to international arbitration or other alternate dispute-settlement mechanisms, as applicable, in accordance with the provisions of said treaty or convention and with applicable domestic laws.

## **CHAPTER IV**

### **Investment Office**

#### **Article 12. Appropriate Agency.**

The appropriate agency for ensuring compliance with the provisions of this law shall be the Investment Office (One Stop Window for Investment) of the Ministry of Economy. This Office was established by Government Decision No. 532-92, and has the powers and duties set forth in the corresponding implementing regulation.

All government institutions must cooperate with this office to centralize the investment-promotion effort that will contribute to the country's development. Such institutions must also inform the Office of any matter of which they have knowledge with regard to foreign investments.

#### **Article 13. Resources**

The Investment Office shall have the following resources to enable it to function properly and fulfill its obligations:

1. Its annual operating expenses shall be covered by the budget allocated to it as part of the General Income and Expenditure Budget of the State;
2. Donations and voluntary contributions from individuals or legal entities, either national or international;
3. Funds generated from fees collected for the services it renders.

## **CHAPTER V**

### **Final Provisions**

#### **Article 14. Implementing Regulations**

Within two months of the entry into force of this Law, the Executive Branch shall issue the corresponding implementing regulations.

#### **Article 15. Repeal of Specific Legal Provisions**

The following decrees and legal provisions are hereby repealed:

1. Law on External Private Investments for the Construction of Housing (Decree No. 388).
2. Article 11 of the Transportation Law (Congressional Decree No. 253 and its amendments)
3. Articles 5 of the Law Regulations of the Use and Acquisition of Signals Via Satellite and their Distribution by Cable (Congressional Decree No. 41-92).
4. Article 9 of the Radio communications Law (Decree No. 433 and its amendments). The legal validity of all rights acquired by any individual or legal entity while this law was in effect are hereby recognized.
5. Article 59 of the Law on Hydrocarbons (Decree No. 109-83 and its amendments, and consequently, Government Decision No. 9-86, regulating said article).

**Article 16.**

Article 13, fourth paragraph, of the Labor Code (Congressional Decree No. 1441 and its amendments) is hereby amended as follows:

The Provisions of this Article shall not apply to the general managers, directors, administrators, superintendents, and heads of the companies.

**Article 17.**

Article 10 of the Expropriation Law (Congressional Decree No. 529 and its amendments) shall be amended as follows:

**“ARTICLE 10.** Compensation must include payment to the owner of the value of the property and any damage, deterioration, and expenditures resulting from the expropriation, including, in the presence of any delay, payment of interest accrued from the date of expropriation or loss until the actual date on which compensation is paid. For purposes of the interest payments referred to in this Article, such interest shall be equal to the average bank lending rate of interest published by the banking system on the date before such rate is set. If such rate is not published or if there is any doubt or discrepancy with respect thereto, the Office of the Bank Examiner shall be requested to issue a report and said report shall be final.”

**Article 18.** Article 5 of Congressional Decree No. 14-70 shall be amended as follows: Livestock, and Food may be of three types:

1. Type A Fishing Licenses: For Guatemalan or foreign individuals or legal entities engaging in fishing or the transport of fishery products using Guatemalan-registered boats or ships, and off-loading the products in Guatemalan ports for processing and subsequent full or partial exportation;
2. Type B Fishing Licenses: For Guatemalan or Foreign individuals or legal entities engaging in fishing or the transport of fishery products using Guatemalan and foreign-registered boats or ships, and off-loading the products in Guatemalan ports for processing and subsequent full or partial exportation;
3. Type C Fishing Licenses: For Guatemalan or foreign individuals or legal entities engaging, with the use of foreign boats and ships, in fishing or the transport of the products of their fishing in Guatemalan territorial waters for the purposes of shipping these products, in their fresh state, directly and exclusively to foreign markets.

**Article 19.** Article 4 of Congressional Decree No. 253, the Transportation Law, shall be amended as follows:

**“ARTICLE 4.** Public transport of passengers or freight may be provided by both Guatemalan and foreign individuals. Such public service may also be provided by legal entities, provided that Guatemalan shareholders supply at least 51 percent of the share capital.

The above notwithstanding, foreign shareholders may supply or invest in the share capital of legal entities engaged in said activity as follows:

1. Beginning January 1,2001, a maximum of 51 percent of the respective capital.
2. Beginning January 1,2004, 100 percent of total share capital.”

#### **Article 20.**

Article 12 of Congressional Decree No. 117-97, the Law on the Elimination of Tax Waivers, Exemptions, and Deductions, which amended Article 22 of Congressional Decree No. 29-89, the Law on the Development and Promotion of Export and Drawback Activities, is amended to read as follows,

“**ARTICLE 22.** The Ministry of Economy shall, on the basis of the report, accept or reject the designation requested within no more than 15 days of the date of the report.”

#### **Article 21. Other Provisions**

No provision of this Law shall be construed in such a way as to affect the validity and application of the requirements or provisions pertaining to foreign investments contained in the following legal and regulatory texts:

1. Article 27 of the Forestry Law (Congressional Decree No. 101-96);
2. Articles 8, 213-221, 352, 354 and 355 of the Commercial Code (Congressional Decree No. 2-70, and its amendments);
3. The Law on Migration and Alien Status (Decree No. 22-86);
4. Article 12 of the Law on the Development and Promotion of Export and Drawback Activities (Congressional Decree No. 29-89, and its amendments);
5. Article 21 of the Law on Customs - Free Areas (Congressional Decree No. 65-89);
6. Regulations for the Authorization and Establishment of National Banks, Branches of Foreign Banks, and Branches and Agencies of Already Established Banks;
7. Final paragraph of Article 1 of the Insurance Law (Decree-Law No. 473);
8. Article 2 of the Law on Finance companies (Decree-Law No. 208 and its amendments);
9. Article 2 of the Law on Supplemental Property Titles (Congressional Decree No. 49-79); and
10. Article 1 and 2 of Congressional Decree No. 118-96, amending Congressional Decrees Nos. 38-71 and 48-72.

Any other limitation, requirement or condition applicable solely to foreign investors for the development of an economic activity or foreign investment that is not covered by this Law, especially on the above list, shall be repealed upon the entry into force of this Decree.

**Article 22.**

This Decree shall enter into force eight days after its publication in the Official Gazette.

**TO BE SUBMITTED TO THE EXECUTIVE BRANCH  
FOR APPROVAL, PROMULGATION,  
AND PUBLICATION.**

**DONE AT THE PALACE OF THE LEGISLATIVE BRANCH  
IN GUATEMALA CITY ON FEBRUARY 4, 1998.**

**RAFAEL EDUARDO BARRIOS FLORES  
PRESIDENT**

**RUBÉN DARÍO MORALES VÉLIZ  
SECRETARY**

**VÍCTOR RAMÍREZ HERNÁNDEZ  
SECRETARY**

PALACIO NACIONAL: Guatemala, February 20, 1998

PUBLISH AND COMPLY

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JUAN MAURICIO WURMSER  
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