

**LEGAL AND INSTITUTIONAL FRAMEWORK TO PROMOTE
PRIVATE PARTICIPATION IN THE TRANSPORTATION SECTOR**

COUNTRY: ECUADOR

EXECUTIVE SUMMARY

NAME OF PROJECT: Legal and institutional framework to promote private participation in the transportation sector (modernization of the port system, highway concessions plan, and modernization of the airport system)

PROJECT NUMBER: TC-94-10-14-3

EXECUTING AGENCY: Consejo Nacional de Modernización del Estado (CONAM)
[State Modernization Council]

AMOUNT:

Total:	US\$2,424,400
IDB nonreimbursable (MIF)	US\$1,620,400
Government:	US\$ 804,000

MIF FACILITY: Technical Cooperation (Facility I)

OBJECTIVE: This program will support execution of an ambitious modernization and privatization plan that the Government of Ecuador is carrying out in the transportation sector – specifically ports, airports, and highways – whose purpose is to facilitate private participation in the provision of infrastructure, attract private financing and capital for construction and operation, and promote competition and efficiency to the benefit of users.

DESCRIPTION: With regard to ports, MIF funds will be used to hire technical assistance to assist in the process of letting contracts and privatizing ship and cargo services in the ports of Guayaquil, Manta, Bolívar, and Esmeraldas, establishing competitive fees for each port, strengthening the regulatory and monitoring capacity of the Port Authorities, and helping to reorganize them to reflect the new operating model for the ports.

As for highways, the program will channel MIF funds into completing and applying the procedures for highway contracting, and strengthening the regulatory and supervisory functions of the government agencies that will be responsible for implementing and monitoring the system.

As for airports, MIF funds will be used to finance: the preparation of a plan of action to modernize airports; consulting services to draw up contracts for the concession and privatization of airport operations; the design of an appropriate fee structure for private participation and the effective use of infrastructure and services; and institutional and administrative strengthening of the Civil Aviation Directorate.

The program also includes a technical assistance component to prepare a proposal on the definitive regulatory functions and institutional structure and to support coordination and supervision of the privatization processes in the three areas.

**ENVIRONMENTAL
CLASSIFICATION:**

On October 25, 1994, the Environment Committee approved an environmental protection plan for the loan for a transportation services restructuring program, which had been classified as a Category III operation on August 10, 1993.

DISBURSEMENTS:

As conditions precedent to disbursement of the program funds, the executing agency will be required to submit evidence that: (i) the officials of the Guayaquil Port Authority (APG), the Ministry of Public Works (MOP), and the Civil Aviation Directorate (DAC) who will work with CONAM on the activities under subprograms A, B, and C, have been appointed; (ii) the three consultants who will staff the technical unit on concessions to be established within CONAM have been contracted; and (iii) a plan of work and execution schedule have been established (Annex I).

The following will be conditions precedent to the disbursements under each subprogram: (i) **Subprogram A - Port privatization and modernization:** the regulations governing the provision of port services have been approved and published; (ii) **Subprogram B - Execution of the highway concession plan:** the draft bid documents and model contracts for road maintenance projects have been approved, and a proposal has been submitted on the establishment, functions, and organization of the MOP's concessions operation and control unit; and (iii) **Subprogram C - Modernization of the airport system:** an agreement has been concluded between CONAM and the DAC containing a plan of work for the studies and activities in this subprogram.

**FEASIBILITY AND
RISKS:**

The political will to implement the program is apparent in the timely approval of the basic legal instruments. Capacity to execute the program on schedule has been boosted with the establishment of units in CONAM and the APG. After the MIF project has ended, the program will be sustained with the funds obtained from the concessions to be granted in the three subsectors.

The Ministry of Defense has promoted restructuring and privatization in the ports subsector and the agreements negotiated between the APG and the port syndicate bode well for cooperation. The government is confident that cooperative relations will continue in that subsector and it will support and cooperate closely with the agencies in the aeronautics subsector.

TYPE:

Donation

I. ELIGIBILITY

- 1.1 The Donors Committee declared Ecuador eligible for all types of MIF financing on September 7, 1994.

II. THE PROJECT

A. Introduction

- 2.1 The Government of Ecuador has launched an ambitious plan to modernize the State which includes a commitment to carry out the structural changes needed to boost investment productivity, thus improving the country's competitiveness and its potential for sustaining stable economic growth which will contribute to social development. One of the key elements in its strategy is to involve private capital in activities that have traditionally been carried out by the State in areas such as transportation, water supplies, and energy.
- 2.2 The Act with respect to Modernization of the State, Privatization, and the Provision of Public Services by Private Initiative, passed by Congress at the end of 1993, provides a framework for the plan for State modernization and gives the Executive Branch the authority to implement it with particular flexibility in delegating public activities and services to private operators, such as the provision of transportation infrastructure and services.
- 2.3 The Modernization Act established the State Modernization Council (CONAM) which is fully mandated to "coordinate and define strategies, rules, and procedures for modernization" and is even empowered to manage and execute them directly under certain conditions.

B. Context of the program

- 2.4 The Government has made major, if uneven, headway in modernizing ports, airports, and highways and involving the private sector in them. The progress made in ports and highways took place under the loan for a transportation services restructuring program (842/OC-EC), approved by the Bank in November 1994.
- 2.5 Significant progress has been made with regard to ports, and the program under consideration here seeks to ensure the continuity and success of the steps already taken. The provinces of Pichincha and Guayas have already initiated bidding on highways and the Ministry of Public Works (MOP) has a plan for highway rehabilitation contracts it wishes to proceed with. The present program will directly support the MOP's bid processes and consolidate the highway contracting system, by strengthening the regulatory

capacity of the Ministry. Little headway has been made with regard to airports, chiefly because no plan of action has been established in conjunction with the aeronautics authority. The proposed program will promote establishment of such a plan, including support for the privatization and concession of services and commercial operations.

C. Program objectives

- 2.6 The program is designed to support execution of the reforms launched by the government to restructure transportation services with the objectives of: (i) laying the groundwork for, promoting, and supporting the effective inclusion of private investment in projects with growth potential in the transportation sector; and (ii) strengthening the regulation of private and public operators and the government's capacity for medium- and long-range planning and development.

D. Program components

- 2.7 The program will be organized around three subprograms, whose successful execution requires support from a management, coordination, and supervisory component. The three subprograms are: privatization and modernization of port services, execution of the highway concession plan, and modernization of the airport system.

1. Subprogram A: Privatization and modernization of port services

- 2.8 Owing to shortcomings in the operation of Ecuador's ports, in mid-1993 the government began to implement a strategy to rationalize and modernize port administration and to privatize vessel and freight services. The modernization strategy is set out in the action plan for modernizing Ecuadorian ports, approved in May 1993, which established a unit to coordinate and execute the plan for modernization of Ecuadorian ports (UNCEMP), headquartered in Guayaquil, and composed of one representative from the National Merchant Marine and Ports Council (CNMMP), one from the Maritime Authority, one from the State Modernization Council (CONAM), one from the Federation of Production Associations, and one from the Guayaquil Port Authority (APG).
- 2.9 Considerable headway has been made since early 1993. The collective agreement with port workers has been improved; there has been a 40% cutback in the number of workers; several unnecessary divisions of the Guayaquil Port Authority have been closed; excellent progress has been made towards a port modernization plan, in concert with government agencies, port workers, and potential operators and users; and the charges for equipment rentals and dockage fees have been updated.

2.10 The port modernization plan sets out a series of actions involving administrative and operational reforms and privatization, which were first put into effect in the port of Guayaquil, owing to its size and the strife that existed in its operation and labor relations. Headway in implementing the plan is summarized below:

- a. Port operation system. The following have been approved: draft regulations governing port operations delegated to the private sector, preliminary division of the port into sectors, criteria for preparing a new rate structure, draft bid documents for concession of the so-called port units, and draft special regulations governing the different types of port services.
- b. An economic and financial model for the port and management information and cost accounting system (SIG-CC). An economic and financial model has been prepared for evaluating the impact of different operating and rate scenarios on the financial performance of the port, and installation of a management information and cost accounting system has been contracted to support the new administrative and organizational structures in areas of operations and management.
- c. Rationalization of human resource management. A workforce reduction strategy has been implemented, with significant results to date, and a future strategy has been defined to cut back on direct employees by close to 50%.
- d. Preliminary physical renovation and investment plan. A plan has been designed for investments in remodeling the port prior to privatizing the services, including appraisal of fixed assets and equipment, and is now being implemented.
- e. Actions at the other ports. The UNCEMP and the authorities of the other Ecuadorian ports (Manta, Bolívar, and Esmeraldas) have begun work and information is being compiled on their operations, workforce, administration, and infrastructure.

a. Objectives of subprogram A

2.11 The objectives of this subprogram are to help complete the port modernization process and make substantial headway in restructuring the country's maritime transportation services, promoting private participation, competition, and the optimization of operations, which will reduce costs and increase returns.

2.12 The steps to be taken to improve port services include: completion of the bid documents and calls for tenders on port services for vessels and freight; liberalization of the rates charged for those services; review of the organization and management of the port system in Ecuador, making whatever changes are called for; and modernization of the management and operations of the Guayaquil

Port Authority and the Port Authorities of Bolívar, Esmeraldas, and Manta.

b. Activities of subprogram A

- 2.13 **Activity 1 – Tenders for concessions and privatization of APG activities.** MIF funds will be used to hire an international consultant to assist in qualifying firms and evaluating bids. Local experts will be hired to assess the value and condition of the assets to be transferred.
- 2.14 **Activity 2 – Organizational adjustment and administrative reforms in the APG.** MIF funds will be used to hire an international consultant in port planning to assist the APG in setting up an organizational reform unit and an information systems unit which will report to the UNCEMP. The tasks will include designing an organizational framework and an overall strategy for making the necessary organizational and administrative adjustments. Counterpart resources will be used to hire local consultants to set up the information systems.
- 2.15 **Activity 3 – Definition of a master plan and investment program for the APG.** MIF funds will be used to hire an expert in port infrastructure to review the study by JICA, using it as the basis for preparing the final master plan. The plan will include the new model for port operations and will be based on projections for port traffic and conditions for future port efficiency.
- 2.16 **Activity 4 – Definition of a definitive rate structure for each port.** MIF funds will be used to hire a consultant to perform a study on port fees, establishing a competitive rate system for each of the ports that will promote service efficiency, private financing, and port development.
- 2.17 **Activity 5 – Plan of action for the ports of Manta, Bolívar, and Esmeraldas.** MIF and local funds (80%-20%) will be used to hire an international consultant to assist the UNCEMP in devising a master plan to privatize the ports of Manta, Bolívar, and Esmeraldas.
- 2.18 **Activity 6 – Bidding on concessions and privatization in the three other ports.** MIF resources will be used to hire an international consultant to assist in qualifying firms, selecting the winning bidders, and preparing and negotiating contracts.
- 2.19 **Activity 7 – Organizational adjustment and administrative reforms in the three ports.** MIF funds will be used to hire an international consultant specializing in port planning to support UNCEMP's Organizational Reform Unit, and counterpart funds will be used to hire consultants to develop and install management information and cost accounting systems.

- 2.20 **Activity 8 – Proposed amendments to the Ports Act.** MIF funds will be used to hire a consultant to review the legal framework and recommend adjustments in current port legislation.
- 2.21 **Activity 9 – Technical training.** MIF funds will be set aside for specialized workshops and seminars on port regulation and operations, which could be given in Ecuador by international experts. Counterpart funds will be used to enable executives and experts to study in countries with experience in port privatization and concessions, and to invite experts in selected areas, with special stress on regulatory aspects.

2. **Subprogram B: Execution of the highway concessions plan**

- 2.22 The government drafted and approved Regulations to the Modernization Act (including an extensive chapter on concessions), identified the principal areas in which highway contracts could potentially be used, and conducted a pilot study on the technical, economic, financial, and institutional prefeasibility of the highway concession system. The Ministry of Public Works has identified various highways and sections of highways that will require expansion, improvements, or new alignments, which could be built under contract, and in some cases it is in possession of detailed studies. It has also identified several sections of the principal highway network that will require major rehabilitation, which carry enough traffic to make it feasible to charge tolls.

a. **Objectives of subprogram B**

- 2.23 The objectives of this subprogram are to introduce and consolidate a system of concessions to rehabilitate and develop the interurban highway network. Active private participation in this area of transportation infrastructure will attract private funds into a sector in which investments are in short supply and will promote efficiency and competitiveness in transportation systems to the benefit of users.

b. **Activities of subprogram B**

- 2.24 **Activity 1 – Bid documents and model contracts.** MIF funds will be used to hire a specialized consulting team to assist the MOP in reviewing the bid documents and model contracts for the contracting out of previously-selected highway rehabilitation projects.
- 2.25 **Activity 2 – Execution of the bid process.** MIF funds will be used to hire a short-term consultant to assist in analyzing the bids, selecting the winning bidder, and negotiating the contracts.
- 2.26 **Activity 3 – Preparation of the MOP's concession plan.** MIF funds will be used to hire a consultant to prepare a plan for highway

concessions for the next five years, based on an economic and financial evaluation of projects in the MOP's portfolio.

3. Subprogram C: Modernization of the airport system

- 2.27 In Ecuador, as in most Latin American countries, civil and military air operations share the infrastructure of commercial airports. The Civil Aviation Directorate (DAC), an autonomous public agency that reports to the Air Force, is responsible for administering airports. The senior body in the sector is the National Civil Aviation Council (CNAC) which determines national aeronautics policy and regulates the commercial, aeronautical, and technical aspects of the activity. The DAC is responsible for applying and monitoring compliance with the rules and regulations established by the CNAC. It also provides services and meteorological information for air navigation.
- 2.28 Although no complete study has been made of the situation in the Ecuadorian airport system, the situation can tentatively be described in the following terms: (i) the physical infrastructure of the Guayaquil and Quito terminals is insufficient and inadequate in terms of service quality and coverage; (ii) cargo handling, aircraft servicing, and fuel distribution can be substantially improved, which will reduce costs; (iii) the fees for airport services and infrastructure do not permit self-financing or promote efficient airport operation; (iv) the commercial operation of airports is deficient, which means that activities are not as profitable as they could potentially be; and (v) the roles and functions of the aeronautical agencies do not provide an adequate framework for private investment.

a. Objectives of subprogram C

- 2.29 The objectives of this subprogram are to support the preparation, definition, and implementation of a series of actions to facilitate large-scale participation by private companies in aeronautical services and infrastructure development, establish suitable mechanisms for encouraging private participation, and restructure the sector's planning and regulatory agencies from the institutional, organizational, and administrative standpoints.

b. Scope of subprogram C

- 2.30 The priority areas of work for attaining the objectives for the airport system are:
- a. Modernization of the State agencies responsible for planning, regulating, and monitoring civil aeronautics. The CNAC should be structured to support dynamic and efficient development of aeronautical activities, taking a modern approach to air transport management. The DAC should possess the necessary

administrative capacity and its roles and functions should be geared to efficient airport management.

- b. **Inclusion of the private sector as operator of aeronautical services.** Most operations and services provided by airports could be privatized, establishing competition among operators when possible, or regulating through tariffs and services in the case of monopolies.
- c. **Modernization of legislation.** Current aeronautical legislation acts as a constraint on the use of modern civil aviation management criteria, which should encourage a large private sector presence in services and the provision of infrastructure.
- d. **Restructuring the rate system.** The rate structure for the use of airport installations must be revised. The charges for commercial concessions must be fully reviewed and optimized.
- e. **Mechanisms for private participation in the provision and management of airport infrastructure.** The large investments required and the assumption that private management of the subsector will be more efficient make it necessary to study and decide on how to include private capital and management in the construction of new installations and expansions at Quito and Guayaquil.

c. Activities of subprogram C

- 2.31 **Activity 1 - Preparation of a plan of action.** MIF and counterpart funds (75%-25%) will be used to hire a group of experts to perform a diagnostic study of the subsector and propose a strategy and a plan of action for private participation in the operation of services and the construction of infrastructure.
- 2.32 **Activity 2 - Rate study.** MIF funds will be used to hire a short-term consultant to determine criteria, rules, and tentative values, on the basis of existing information, for an efficient rate system for the use of airport services and infrastructure.
- 2.33 **Activity 3 - Preparation of contracts.** MIF and counterpart funds will be used to hire a group of consultants specializing in commercial air transport and a local attorney to draw up the model documents for bids, contracts, and registration of private operators.
- 2.34 **Activity 4 - Support for the privatization process.** MIF and counterpart funds (80%-20%) will be used to hire outside consultants to advise on bidding, qualification, selection, and negotiation of contracts.

- 2.35 **Activity 5 - Modernization of the Civil Aviation Directorate and legislation in the subsector.** MIF and counterpart funds will be used to hire a consulting firm which will utilize the results of the diagnostic study to prepare a proposal for administrative reorganization, procedures, and the design of information systems, on the profile level, including any necessary changes in legislation.

4. Regulatory and institutional framework, coordination, and supervision

- 2.36 Experience in other countries has shown that if a system of private concessions is to be successful, it is essential to establish specialized regulatory and executing agencies within the government bodies in charge of the system. Four levels must be defined: general policy, technical policy, licensing, and regulatory function.
- 2.37 The general policy level defines compulsory concession policies, coordinating the processes at the general level and taking responsibility for supervision and promotion, with extensive interaction with the private sector. Under the Modernization Act, CONAM bears this responsibility. The technical policy level is responsible for establishing technical and economic standards and for coordinating the process in specific spheres, such as the bidding system to be used. The MOP (highways), the National Merchant Marine Council (ports), and the National Civil Aviation Council (airports) are responsible for these activities. Licensing authority is exercised by public agencies with direct jurisdiction over highways, ports, and airports, which are empowered to delegate activities to private parties under the concession system. The MOP and the Provincial Councils (highways), the Port Authorities (ports), and the Civil Aviation Directorate (airports) are responsible on this level. The regulatory function, whose responsibility is to monitor compliance with the standards established by the senior and technical levels, is shared by different agencies and must be clearly defined. The proposed program will support the establishment of a regulatory function.
- 2.38 At the outset, CONAM will be heavily involved in all processes owing to the need to support and closely coordinate the work of the other agencies, although the latter will gradually begin playing a more independent role as specialized entities. Furthermore, the tasks are diverse, complex, and highly specialized and the plan is to carry them out in the very short time of 18 months. The success of the program in attaining the goals and expected results depends to a large extent on CONAM's execution and coordination capacity. For the foregoing reasons, CONAM must be in a position to provide flexible and dynamic leadership, which will be done by establishing a concessions technical unit in CONAM, which will receive specialized support throughout the program.

- 2.39 The concessions technical unit will be responsible for the technical and legal coordination, supervisory, and monitoring functions assigned under the Modernization Act to CONAM in the areas covered by this program. In ports, CONAM will support the activities of the UNCEMP and the Port Authorities, participating actively in supervising the concession process and sitting on the technical committees, in addition to representing the unit on the Council. In highways, according to the proposed institutional organization, CONAM will be responsible for approving or rejecting public and private ideas on concessions, reviewing the studies and bid documents for highway works, defining and updating the rules and procedures to be applied in consultation with MOP, and overseeing compliance with national policies and criteria governing the concession system. In airports, CONAM will act as counterpart in all the studies and proposed activities, and promote decision-making in this sphere, on the basis of the powers conferred by the Modernization Act and concerted action with the aeronautical agencies involved.
- 2.40 The technical unit will be composed of local advisors, including an economist specializing in transport, a civil engineer with experience in infrastructure, and an attorney with experience in public law and the transportation sector. MIF funds will be used to pay 12 months of the salaries of those advisors and the counterpart will pay the remaining six months and continue to employ them after the program has ended.
- 2.41 Support for the concessions technical unit. The Technical Unit must build up its capacity to deal with specific matters in the initial stages of implementing the system in the areas of financing, contract negotiations, supervision, regulation, privatization, and administrative reform, which will have to be resolved in a timely fashion on a senior level. The capacity will be obtained through consulting services, including experienced specialists on short-term contracts. A firm specializing in concessions in the three subsectors will be hired to provide this expertise, which will have fixed and variable components to respond to specific needs that arise during the program, and will be financed with MIF and counterpart resources (two thirds and one third).
- 2.42 The regulatory framework and the long-term institutional structure. The experience gained in the first contracts to be let by the APG, the MOP, and other agencies such as the Provincial Councils of Guayas and Pichincha will shed light on long-term organizational needs. In the first six months of the program, CONAM will prepare, through its concessions technical unit, the terms of reference for consulting services to prepare a proposal on the definitive institutional organization of the transportation sector and the principal subsectors. The proposal will include a review of the roles and functions of each agency, particularly with regard to

their procedures and mechanisms for regulation, supervision, and monitoring of the public and private operators active in their respective areas of jurisdiction. It will also cover the policies to be applied by CONAM, the Navy, the CNAC, and the MOP, each at its level, in their relations with licensors and licensees.

2.43 **Definition of a national concessions policy.** The coordination and supervision of concessions must be based on a national concessions policy, with the following minimum content:

- a. An indicative plan for concessions (based on the proposals of the licensing agencies).
- b. Criteria and basic rules for the design and preparation of the bid documents and contracts.
- c. Rules and criteria for carrying out the bid process and awarding the contracts.
- d. Rules regulating rates and services.
- e. Criteria governing the capital, goods, guarantees, subsidies, etc. conveyed by the licensor.
- f. Criteria for determining payments by the licensee to the licensor.
- g. Mechanisms for promoting the concession plan.
- h. Criteria for approving public and private proposals for concessions.

2.44 This policy will be compulsory for the licensing and regulatory agencies in the sector and will take the form of a presidential decree instructing CONAM to supervise its application.

E. Program cost and financing

2.45 The funds from this program will be used to hire the following main services:

- a. **Experts:** International and local consultants in the fields of finance, economics, and engineering, and specialists in strategic planning, highway concessions, port and airport operations and infrastructure, and in contracting procedures and the privatization of public services.
- b. **Consulting firms:** International consulting companies to support CONAM in designing mechanisms to regulate, supervise, and monitor the concession system, develop and introduce a management information and cost accounting system (SIG-CC) at

three ports, prepare studies on port and airport charges, and a plan of action to modernize airports.

1. General program budget

- 2.46 The MIF will provide US\$1,620,400 of the total direct cost of the program which will be US\$2,424,400. The counterpart will take the form of the resources provided by the APG, the DAC, and CONAM. The administrative costs, which are part of the government's contribution, will be partially covered with reimbursable funds from technical cooperation project 843/EC-OC which supports the loan for the transportation services restructuring program (842/EC-OC).

PROGRAM BUDGET (thousands of US\$)				
Activity		MIF	GOVERNMENT	TOTAL
A	Port System Modernization			
1	APG bids and privatizations	39.0		39.0
2	APG organizational adjustment	47.0	90.0	137.0
3	APG master plan and investment program	40.0		40.0
4	Rate structure for all ports	150.0		150.0
5	Plans of action for 3 ports	96.0	24.0	120.0
6	Bids and privatization at 3 ports	77.0		77.0
7	Organizational adjustment at 3 ports (SIG-CC)	200.0	250.0	450.0
8	Proposed amendments to the Ports Act	20.0		20.0
9	Training program	40.0	60.0	100.0
	Contingencies (10%)	71.0	42.0	113.0
	Subprogram total	780.0	466.0	1,246.0
B	Highway contracting plan			
1	Bid documents and contracts	42.0		42.0
2	Bidding	14.0		14.0
3	MOP concessions plan	30.0		30.0
	Contingencies (10%)	8.6		8.6
	Subprogram total	94.6		94.6
C	Airport modernization			
1	Preparation of a plan of action	60.0	20.0	80.0
2	Study on infrastructure rates	50.0		50.0
3	Preparation of the concession contracts	55.0	10.0	65.0
4	Support for the privatization process	50.0	10.0	60.0
5	DAC organizational adjustment	65.0	15.0	80.0
	Contingencies (10%)	28.0	5.5	33.5
	Subprogram total	308.0	60.5	368.5
	Coordination, regulation, and administration			
1	Establishment of the technical unit	120.0	70.0	190.0
2	Consulting services to support the technical unit	60.0	30.0	90.0
3	Regulatory framework and long-term institutional structure	204.0	70.0	274.0
4	National concessions policy	14.0		14.0
	Contingencies (10%)	39.8	17.0	56.8
	Program administration		90.0	90.0
	Subtotal	437.8	277.0	714.8
	TOTAL	1,620.4	804.0	2,424.4

F. Program organization, execution, and administration

- 2.47 CONAM will act as the program's executing agency and will be responsible for ensuring that the targets are met and expected results obtained. The program includes a technical assistance component to strengthen CONAM's capacity. The technical assistance will preferably be provided by Ecuadorians and the government will undertake to maintain the team after the program has been concluded. The team will learn through experience, with the support of the different consultants and experts hired with program funds.
- 2.48 The coordinating unit established within CONAM under technical cooperation project 843/OC-EC will be responsible for administering program funds and carrying out all program contracting, in consultation with the APG, the MOP, and the DAC, and keeping abreast of the activities carried out by those agencies under the program. The concessions technical unit will support the Coordinating Unit in technical aspects relating to the preparation of terms of reference, selection of consultants, and supervision of the activities carried out by the participating agencies and the consultants. The concessions technical unit will assist the Coordinating Unit in preparing progress reports on program activities and in evaluating the consultants' reports.
- 2.49 In ports, the UNCEMP, established in May 1993, will be responsible for direction, coordination, supervision, and technical support for subprogram A. The UNCEMP has a coordinator, a legal advisor, an economic advisor, and an expert in port organization and management. This capability will allow for timely implementation of the administrative and organizational reforms included in the program and the coordination and submission of progress reports on subprogram A to CONAM every two months.
- 2.50 In highways, an operating and control unit for the concession system will be established within the MOP, which will be responsible for performing the studies and carrying out the preparatory actions for the bids, and ensuring that the technical standards established in this regard are applied. The unit will be composed of senior professionals from the MOP who will receive support from consultants hired by the program and by MOP to carry out specific activities. This unit will submit progress reports on subprogram B to CONAM every two months.
- 2.51 In airports, the DAC will act as counterpart for all studies and activities in this area and CONAM will directly supervise the technical assistance, through the concessions technical unit. The two agencies will establish a working agreement to execute the plan of action to modernize the airport system. The DAC will submit progress reports to CONAM every two months.

1. Special conditions precedent to program disbursements

2.52 Disbursements of the technical-cooperation funding should begin **within ninety days after the contract has been signed** and their release will be subject to compliance with the following conditions:

- a. Appointment of the APG, MOP, and DAC employees who will answer to CONAM for execution of the activities described above for subprograms A, B, and C.
- b. Contracting of the three consultants who will form part of the concessions technical unit to be established within CONAM.
- c. Presentation of a work plan for program execution including a timetable of activities to achieve the expected results as set out in Annex I.

2.53 Disbursement of the funds for each of the subprograms will be subject to compliance with the following conditions:

- a. **Subprogram A - Privatization and modernization of the port system.** The special regulations governing the different types of port services have been approved and published.
- b. **Subprogram B - Plan of execution for highway concessions.** The draft bid documents and model contracts for the highway projects to be contracted out have been completed and a proposal has been submitted for the establishment, functions, and organization of the MOP's concessions operating and control unit.
- c. **Subprogram C - Modernization of the airport system.** An agreement has been concluded between CONAM and the DAC containing the plan of work for the studies and activities described for this subprogram.

2. Program monitoring

2.54 The Bank will review progress in activities and compliance with the targets and expected results semiannually. CONAM will prepare progress reports every six months after the agreement has been signed containing the following information as a minimum: the disbursements made by source of funds, a description of progress in the different program activities, a summary of the consultants' work and the conclusions of their reports, a narrative of difficulties encountered or factors that may require adjustments in the programming, and the percentage of progress towards the expected results.

G. Program feasibility and risks

- 2.55 The institutional and political feasibility of the program is solidly grounded. The legal instruments to carry out the program's activities have already been approved and the pertinent regulations are already in effect, and only the rules and criteria for the operation and provision of port services have yet to be approved. The commitment of the government and its agencies to the modernization and reform process is clearly evident in the timely approval of the necessary legal instruments and the decisions and actions already carried out in the areas of ports and highways.
- 2.56 The risks stemming from execution capacity - given the complexity of the program which involves several agencies and many consultants and consulting firms - have been taken into account in designing the technical assistance. A considerable portion of program funding has been earmarked for institution-building activities in the executing agencies and to consolidate the experience gained by their permanent staff under the program. The program has been designed to create a stable capacity that will permit the government to take charge of the supervision and regulation of activities that have been privatized or contracted out upon its completion, which is a key to the success of the government's ambitious restructuring program.

III. PROJECT ELIGIBILITY CRITERIA

A. General project eligibility criteria

- 3.1 Technical cooperation to support modernization and private sector participation in ports, highways, and airports, is fully compatible with the MIF's general objective of boosting investments and increasing private sector involvement as the foundation for spurring the country's economic growth and social development.

B. Eligibility criteria for the Technical Cooperation Facility

- 3.2 The proposal conforms to the financing criteria set out in Article 3, Section 2(c) of the Agreement Establishing the MIF, which permits funds to be provided to governments to obtain advisory services for regulatory agencies with the aims of lifting restrictions and regulations that hamper private investment, and creating a suitable climate for such investments.

IV. CONSISTENCY WITH THE BANK'S COUNTRY PROGRAM

- 4.1 The Bank's strategy for Ecuador is aimed at consolidating the government's structural reform program and stresses two key areas: private sector growth and poverty reduction. The reforms supported by the proposed program are intended to establish efficient mechanisms, an adequate institutional regulatory framework, and a series of appropriate instruments and incentives to promote and bring about private sector participation and to improve the management capability of the public agencies involved. Failure to reform and modernize these aspects would drain away scarce fiscal resources which could otherwise be channeled into programs with higher social priority, such as poverty alleviation and the recovery and conservation of the natural resource base.

V. AVAILABILITY OF MIF RESOURCES

A. Mode of financing

- 5.1 The project will be financed through a donation on the basis of the following considerations: (a) the Donors Committee declared Ecuador eligible for all types of MIF financing; (b) section III of the Country Eligibility Memorandum shows that Ecuador has complied with the eligibility criteria for obtaining national donations; (c) the proposed project will have a catalytic impact on investment flows, as required under Article 3, Section 5(a) of the Agreement Establishing the MIF, since its purpose is to lay the groundwork for the expansion of private investment. The validity of these criteria was confirmed by the Donors Committee at its meeting of March 30, 1994 (MIF/GN-23).
- 5.2 No contingent cost recovery is proposed for the project, even though it includes support for some activities directly linked to the privatization of services, because: (i) the funds that the licensors (APG, MOP, and DAC) will obtain from the concessions will not be significant since the concessions are not being offered for fiscal purposes but rather to attract private investment into the services under consideration, freeing up public investment for other priority sectors; (ii) the individual size of the service concessions in these subsectors will not be large, and therefore the cost of administering a contingent cost-recovery system would be high; (iii) the government has made a significant contribution to the feasibility of the project through the spending it has already made to rationalize personnel and modernize the ports, as mentioned in paragraphs 2.8 to 2.10; and (iv) the direct project costs to be paid by the counterpart - the APG, the DAC, and CONAM - will be over 30%.

VI. EX POST EVALUATION

- 6.1 The results of this technical cooperation project will be evaluated by the Project Team to establish the extent to which the objectives were attained and the different activities set out in the summary attached as Annex I were carried out. This analysis will form part of the Bank's Project Evaluation Report.

MIF - FACILITY I - ECUADOR - LEGAL AND INSTITUTIONAL FRAMEWORK TO PROMOTE PRIVATE INVESTMENT IN THE TRANSPORTATION SECTOR		
General project objective: To boost investments in the transportation sector through greater private participation.		
Specific project objectives: To implement the government's plan of action for ports, highways, and airports aimed at involving the private sector in the provision of infrastructure services.		
Subprogram	Activity	Expected results
A. Privatization and modernization of port services	1. Granting of concessions for cargo handling, crane services, container terminal, storage, and sale or rental of equipment at the port of Guayaquil.	Tenders for cargo handling called within six months and awarded within 12 months. For other services: tendered in 12 months and awarded in 18 months.
	2. Organizational adjustment and administrative reforms in the APG.	Adjustments and reforms in the APG initiated in six months and completed in 12 months.
	3. Definition of a master plan and investment program for the port of Guayaquil.	Implementation of the master plan begun and the investment program approved within 12 months.
	4. Determination of the definitive rate structure for all ports.	New rate structure defined in six months and in effect in 12 months.
	5. Modernization plan for the ports of Manta, Bolívar, and Esmeraldas.	Plan completed in eight months and implementation begun in 12 months.
	6. Conclusion of contracts and equipment rentals at three ports.	Tenders called in 12 months and awarded in 18 months.
	7. Organizational adjustment and administrative reforms at three ports.	Adjustment and administrative reforms completed in 12 months.
	8. Amendments to port legislation.	Proposal prepared in 12 months.
	9. Training program.	Completed in 18 months.
B. Execution of the highway concession plan	1. Conclusion of contracts for rehabilitation and maintenance of the MOP's highways.	Bid documents and model contracts for rehabilitation completed in six months.
	2. Execution of the bid process for highway rehabilitation.	Awards made within 12 months.
	3. Preparation of the MOP's five-year concession plan.	Concession plan completed in 12 months.
C. Modernization of the airport system	1. Preparation of a diagnostic study, a comprehensive development plan, and a plan of action to modernize the subsector.	Diagnostic study and development plan completed in six months, and the action plan approved and under way in 10 months.

MIF - FACILITY I - ECUADOR - LEGAL AND INSTITUTIONAL FRAMEWORK TO PROMOTE PRIVATE INVESTMENT IN THE TRANSPORTATION SECTOR		
	<p>2. Study on rates for services and infrastructure use.</p> <p>3. Preparation of the bid documents and model contracts for service concessions.</p> <p>4. Support for the privatization process.</p> <p>5. Administrative modernization of the Civil Aviation Directorate.</p>	<p>Study on rates completed in six months.</p> <p>Model concession contracts completed in 12 months.</p> <p>First new contracts awarded in 18 months.</p> <p>New organization of the DAC implemented in 12 months.</p>
D. Coordination, supervision, and regulation	<p>1. Establishment of a concessions technical unit within CONAM.</p> <p>2. Definition of a national concessions policy.</p> <p>3. Permanent institutional structure.</p>	<p>Requisite for initiating disbursements.</p> <p>Decree approving the policy in six months.</p> <p>Proposal completed in six months and approved in 12 months.</p>

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PROPOSED RESOLUTION

ECUADOR. TECHNICAL COOPERATION TO DEVELOP A LEGAL AND INSTITUTIONAL FRAMEWORK PROGRAM TO PROMOTE PRIVATE INVESTMENT IN THE TRANSPORT SECTOR.

The Donors Committee of the Multilateral Investment Fund

RESOLVES:

1. That the President of the Inter-American Development Bank, or such representative as he shall designate, is authorized, in the name and on behalf of the Multilateral Investment Fund, to enter into such agreements as may be necessary and to take such additional measures as may be pertinent for the execution of the project referred to in document MIF/AT- with respect to a technical cooperation with the Consejo Nacional de Modernización del Estado (CONAM) of Ecuador, to develop a Legal and Institutional Framework Program to Promote Private Investment in the Transport Sector.

2. That up to the amount of US\$ 1,620,400 is authorized for the purpose of this resolution, chargeable to the resources of the Technical Cooperation Facility of the Multilateral Investment Fund.

3. That the above-mentioned sum is to be provided on a nonreimbursable basis.