

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF PERU FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Italian Republic and the Government of the Republic of Peru, hereafter referred to as the Contracting Parties,

Wishing to create favorable conditions for greater economic cooperation between the two countries, and in particular with regard to capital investments by investors of a Contracting Party in the territory of the other Contracting Party, and aware that the promotion and mutual protection of Such investments will contribute to stimulate entrepreneurial initiatives that are conducive to the prosperity of the two Contracting Parties, have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investment" means any asset invested before or after the entry into force of this Agreement by natural or legal persons of a Contracting Party in the territory of the other Party, in accordance with the laws and regulations of that Party, irrespective of The legal form chosen and the legal framework of reference.

Without prejudice to the general scope of the foregoing, the term "investments" means in particular but not exclusively:

- a) Movable and immovable property, as well as any right to property in rem, including the right to a third party's property rights, to the extent that they may be the object of investment, including remuneration on third party property, The extent to which they may be the subject of investment;
- b) Equity securities and bonds, shareholdings and any other credit, as well as government securities and public funds, in accordance with the national law of each of the Contracting Parties;
- c) Financial claims, or any other right for the service of economic value, relating to investments, as well as reinvested earnings and capital gains;
- d) Copyright, registered trademarks, patents, industrial designs and other intellectual and industrial property rights, know-how, industrial secrets, trade names and start-ups;
- e) Any law of economic nature deriving from law or contract, and any license and concession issued in accordance with the applicable provisions relating to the pursuit of economic activities, including prospecting, extraction and exploitation of natural resources;
- f) Any increase in value of the original investment.

Any change in the form of the investment does not involve a change in its nature.

2. "Investor" means any natural or legal person of a Contracting Party which invests in the territory of the other Contracting Party as well as foreign branches, affiliates and affiliates in any way controlled by such natural or legal persons.

3. "Natural person" means, with reference to both Contracting Parties, any natural person having the nationality of that Party, in accordance with the laws in force there.

4. For a "legal person", with reference to both Contracting Parties, any entity which has its registered office in the territory of one of them and is recognized by it, such as public or private institutions, capital companies, partnerships, Foundations and associations, regardless of whether liability is limited or not.

5. "Income" means the sums resulting from an investment, including, in particular, profits or interest earned on interest,

capital gains, dividends, royalties, fees for technical assistance and services and any other form of payment, such as Example by means of raw materials, agricultural products, livestock and industrial products.

6. This Agreement shall apply to the territory of each Contracting Party and territorial waters of each Contracting Party up to a limit of two hundred miles.

7. "Investment Agreement" means an agreement between a Party (or its Agencies) and an investor of the other Party, for which an investment is involved.

8. "Non-discriminatory treatment" means treatment that is favorable to at least as much the best of national treatment or as the one of the most favored nation.

9. "Access right" means the right to have an investment in the territory of the other Contracting Party.

## **Article 2. Promotion and Investment Protection**

1. Both Contracting Parties shall encourage investors from the other Contracting Party to invest in their territory.

2. Subject to the exceptions provided for in point 2 of the Protocol, investors of a Contracting Party shall have the right to access to investment activities in the territory of the other Contracting Party, under no less favorable conditions than those laid down in Art. Point 2 of the Protocol, investors of a Contracting Party shall have the right to access to investment activities in the territory of the other Contracting Party, under no less favorable conditions than those laid down in Art. 3.1.

3. Both Contracting Parties shall always ensure fair and equitable treatment of investors' investments of the other Party. Both Contracting Parties shall ensure that the management, processing, use, processing, enjoyment or transfer of investments made on their territory by investors of the other Contracting Party, as well as the companies and undertakings in which such investments are Are in no way subject to unjustified or discriminatory measures.

4. Each Contracting Party shall maintain in its territory a legal framework capable of guaranteeing investors the continuity of legal treatment, including the fulfillment, in good faith, of all commitments made towards each specific investor.

## **Article 3. National Treatment and Most Favoured-nation**

1. Both Contracting Parties shall, within the limits of their territory, grant investments made by investors of the other Contracting Party, as well as to the activities of these associates and the profits resulting therefrom, no less favorable treatment than that accorded to the investments made by the Its own investors or third-country investors, as well as their associates and the profits outlined therein.

2. Where the legislation of one of the Contracting Parties provides for a regulatory framework under which investors of the other Contracting Party should be granted more favorable treatment than those provided for in this Agreement, the treatment granted to investors of the other Party shall be applied to investors Of the Contracting Party concerned also in the ongoing relations.

3. The provisions of paragraphs 1 and 2 of this Article shall not relate to the advantages and privileges which one of the Contracting Parties may grant to third-country investors on account of their membership of an economic or customs union, a common market, A Free-Trade Area, a Regional or Sub-Regional Agreement, a Multilateral Economic Agreement, or an Agreement to avoid double taxation or to promote cross-border trade. Paragraphs 1 and 2 of this Article shall not relate to the benefits And the privileges that one of the Contracting Parties may accord to third-country investors on account of their membership of an Economic or Customs Union, a Common Market, a Free Trade Area, a Regional or Sub-Regional Agreement, to a Multilateral economic agreement, or an agreement to avoid double taxation, or to encourage cross-border trade.

## **Article 4. Compensation for Damages and Losses**

If investors in one of the Contracting Parties suffer losses or damage to their investments in the territory of the other Party due to war or other forms of armed conflict, state of emergency, civil war or other similar events, the Party The contractor in which the investment was made must provide adequate compensation for such losses or damages, irrespective of whether they were caused by governmental forces or other persons. Compensation payments will be freely transferable and will take place without undue delay.

The investors concerned will receive the same treatment as the investors of the other Contracting Party and in any event not less favorable than those accorded to third-country investors.

## **Article 5. Nationalizations, Expropriations and Equivalent Measures**

1. Investments referred to in this Agreement shall not be subject to any measure that may restrict, permanently or temporarily, the right of ownership, possession, control or enjoyment, except as specifically provided for by the applicable national or local legislative provisions, Regulations or measures laid down by the competent authorities.
2. Investment by investors of one of the Contracting Parties shall not be "de jure or de facto", directly or indirectly nationalized, expropriated or subject to any measure having an equivalent effect on the territory of the other Contracting Party, except for the purposes of Public or national interest and in exchange for immediate, full and effective compensation and provided that these measures are taken on a non-discriminatory basis and in accordance with all legal provisions and procedures.
3. The right amount of compensation will be calculated on the basis of the real investment market values immediately prior to the date on which nationalization or expropriation decisions have been announced or made public. In the absence of an agreement between the Contracting Party hosting the investment and the investor during nationalization or expropriation proceedings, the compensation shall be determined on the basis of the same benchmarks and the same exchange rates as are taken into account in the documentation relating to the Constitution of the investment.  
  
The exchange rate applicable to such compensation shall be that prevailing on the date immediately preceding the date on which nationalization or expropriation is announced or disclosed.
4. Compensation will be considered effective if it has been paid in the same currency as the investment was made by the foreign investor, to the extent that that currency is or remains convertible, or vice versa, in any other currency accepted by the investor.
5. Compensation will be considered punctual if it happens without undue delay.
6. Compensation will include interest calculated at the LIBOR rate on a semi-annual basis from the date of nationalization or expiration until the date of payment.
7. A citizen or an enterprise of one of the Contracting Parties claiming that some or all of his or her investments have been expropriated shall have the right to an urgent review of the measure by the judicial or administrative authorities of the other Party with a view to determining all Issues relevant to it.
8. In the absence of an agreement between the investor and the competent authority, the amount of compensation shall be determined in accordance with the dispute settlement procedures referred to in Article 4 of this Agreement. Compensation will be freely transferable. Article 4 of this Agreement. Compensation will be freely transferable.
9. The provisions referred to in paragraph 2 of this Article shall also apply to profits deriving from an investment and, in the case of liquidation, the proceeds arising from it. Paragraph 2 of this Article shall also apply to profits deriving from an investment, In the event of liquidation, to the proceeds arising therefrom.
10. If, as a result of expropriation or equivalent measure, the property in question has not been wholly or partially used for public purposes, the owner or his assignees are entitled to repurchase the goods at market price, provided that such provision is provided for by the law of both The Contracting Parties.

## **Article 6. Repatriation of Capital, Profits and Income**

1. Each Contracting Party shall guarantee to investors of the other Party the transfer abroad, without undue delay and in any convertible currency, of:
  - a) Capital and additional capital, including reinvested earnings used to maintain and increase investment;
  - b) Net income, dividends, royalties, fees for assistance and technical services, interests and any other type of profit;
  - c) Sums deriving from the total or partial sale, or the total or partial liquidation of an investment;
  - d) Sums for the repayment of loans relating to an investment and the payment of interest thereon;
  - e) Remuneration and benefits received by citizens of the other Contracting Party arising from activities and services rendered in connection with investments made in the territory of the other Contracting Party, to the extent and in accordance with the procedures laid down in the laws and regulations in force in force.
2. Subject to the provisions of Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred

to in paragraph 1 of this Article the same preferential treatment reserved for investments made by third-country investors, whichever is the more favorable. Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same preferential treatment reserved for investments made by investors from third countries, if any, more favorable.

## **Article 7. Subrogation**

In the event that a Contracting Party or its authorized agency has granted a guarantee against non-commercial risks for investments made by its investor in the territory of the other Contracting Party and has made payments to that investor on the basis of the guarantee granted, the latter Part will recognize the surrogate of the investor's rights to the first Contracting Party. In relation to the transfer of payments to the Contracting Party or its agency authorized by that transfer, Articles 4, 5 and 6 of this Agreement shall respectively be applied.

## **Article 8. Transfers**

1. The transfers referred to in Articles 4, 5, 6 and 7 shall take place without undue delay, and in any case within six months after all tax obligations have been met and shall be made in convertible currency. All transfers shall be made at the official exchange rate applicable on the date on which the investor requests it, subject to the provisions of Article 5 (3) on the exchange rate applicable in the case of nationalization or expropriation. Articles 4, 5, 6 and 7 shall take place without undue delay, and in any case within six months after all tax obligations have been met, and shall be made in convertible currency. All transfers shall be made at the official exchange rate applicable on the date on which the investor requests it, subject to the provisions of Article 5 (3) on the exchange rate applicable in the event of nationalization or expropriation.

2. The tax obligations referred to in the preceding paragraph shall be deemed to have been fulfilled when the investor has complied with the procedures laid down by the law of the Contracting Party in whose territory the investment was made.

## **Article 9. Composition of Disputes between Investors and Contracting Parties**

1. Disputes between a Contracting Party and investors of the other Party regarding investments, including those on the amount of compensation, shall, as far as possible, be resolved in a friendly manner.

2. Where an Investor and an Entity of a Contracting Party have entered into an Investment Agreement, the procedure provided for in this Agreement shall apply.

3. If such disputes can not be resolved amicably within six months of the date of a written request for settlement, the interested investor may, at his option, submit:

a) To the courts of the Contracting Party competent for the territory;

b) To the "International Settlement of Investment Disputes" for the application of the arbitration procedures provided for in the Washington Convention of 18 March 1965 on the "Composition of Controversies concerning Investments between States and Citizens of Other States", if or not As soon as the Contracting Parties have acceded to you;

c) To an "ad hoc" arbitration tribunal, in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, to which the host Contracting Party agrees to submit.

4. Both Contracting Parties shall refrain from dealing diplomatically with matters relating to an arbitration or ongoing proceedings until such proceedings have been concluded and one of the Contracting Parties has failed to comply with the judgment of the Arbitral Tribunal or the judgment of the Court of First Instance Within the time-limits prescribed by the award or judgment or within the limits otherwise determined by the rules of international or domestic law applicable to the case.

## **Article 10. Composition of Contracts between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be, as far as possible, amicably composed through diplomatic channels.

2. In the event that such disputes can not be made amicably in the six months following the date on which one of the Contracting Parties has made a written request to the other Party, they shall, on the initiative of one of the Parties, be submitted to an ad hoc arbitration tribunal In accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: within two months from the date of receipt of the request for arbitration, each of the Parties shall appoint a member of the tribunal. These two members will then choose in quality. Of President, a national of a third State. The Chairman shall be appointed within three months from the date of the appointment of the other two members.

4. If, within the time limit referred to in paragraph 3 of this Article, appointments have not yet been made, each Contracting Party may, in the absence of any other agreement, request that you provide it with the President of the International Court of Justice. If they have the citizenship of one of the Contracting Parties, or for whatever reason it is impossible to proceed with the nomination, the request will be addressed to the Vice President of the Court. Should the Vice President be a citizen of one of the Contracting Parties, or for whatever reason it is impossible for him to do the appointments, the senior member of the International Court of Justice will be provided by him who is not a citizen of one of the Contracting Parties. Paragraph 3 of this Article Appointments have not yet been made, either of the two Contracting Parties may, in the absence of any other agreement, request that you provide the President of the International Court of Justice. If they have the citizenship of one of the Contracting Parties, or for whatever reason it is impossible to proceed with the nomination, the request will be addressed to the Vice President of the Court. If the Vice President were a citizen of one of the Contracting Parties, or for whatever reason it was impossible for him to do the appointments, the senior member of the International Court of Justice will be provided by him who is not a citizen of one of the Contracting Parties.

5. The arbitral tribunal will decide by majority vote and its decisions will be binding. Both Contracting Parties shall bear the costs of their arbitrator and those of their representatives in the arbitration proceedings. The expenses for the President and the remaining expenses shall be borne by the Contracting Parties in. Equal measure. The arbitral tribunal will establish the proper procedural rules.

## **Article 11. Relations between Governments**

The provisions of this Agreement shall apply irrespective of the existence or not of diplomatic or consular relations between the Contracting Parties.

## **Article 12. Applying Miscellaneous Provisions**

1. If a matter is governed both by this Agreement and by any other international agreement to which both Contracting Parties are signing, or by general rules of international law, the most favorable provisions will be applied to the Contracting Parties and their investors.

2. Where, by virtue of laws and regulations or other provisions or specific contracts, such as authorizations or agreements on investment, a Contracting Party has reserved to investors of the other Contracting Party a more favorable treatment than that provided for in this Agreement, the most favorable treatment shall be applied .

3. If, after the date on which the investment was made, a change in the law of the country in which the investment took place, the rights acquired by the investor under the previous legislation will not be altered.

## **Article 13. Entry Into Force**

This Agreement shall enter into force on the date on which the Contracting Parties have been notified of the completion of their respective legal procedures.

## **Article 14. Duration and Expiration**

1. This Agreement shall have a duration of 15 years from the date of the notification provided for in Article 13 and shall remain in force for a further 10-year period, unless one of the Parties denies it in writing with a one-year notice of Expiry date. Article 13 and shall remain in force for a further 10-year period, unless one of the Parties denies it in writing at the earliest notice of one year from the date of expiry.

2. For investments made prior to the expiry dates referred to in paragraph 1 of this Article, the provisions of Articles 1 to 12 shall remain in force for a further period of 10 years from the dates mentioned in paragraph 1 of this Article, Of Articles 1 to 12 will remain in force for a further period of 10 years from the above mentioned dates.

Done at Rome, five in May of the year one thousand nine hundred and forty four, in two copies in Italian and Castilian, both

texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC