

# Agreement between the Government of the Republic of Peru and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investment

The Government of the Republic of Peru and the Government of the Kingdom of Sweden;

Desiring to intensify economic cooperation for mutual benefit of both countries and maintain fair and equal conditions for investments made by investors of one Contracting Party in the territory of the other contracting party;

Recognizing that the reciprocal promotion and protection of such investments encourage expansion of economic relations between the two contracting parties and encourages investment initiatives;

Have agreed as follows:

## Article 1 . Definitions

For the purposes of this Agreement:

(1) The term "investment" shall mean any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party and shall include, in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as mortgages, liens, pledges, leases and similar, usufruct rights;

(b) Participation shares, stocks or drawback certificates and other forms of participation or joint ventures;

(c) Rights to money or to any provision having an economic value;

(d) Intellectual Property Rights, technical processes, trade names, technological know-how, rights of key and other similar rights; and

(e) Concessions conferred by law, administrative decisions or under contract, including concessions for extraction, exploration, development or exploitation of natural resources.

A change in the form in which assets are invested does not affect their character as investments.

(2) The term shall mean the amounts yielded returns by an investment and in particular, though not exclusively, includes interests, capital gains, profits, dividends, royalties or fees.

(3) The term investor shall mean:

(a) Any natural person who is a national of a Contracting Party in accordance with its laws; and

(b) Any legal person having its seat in the territory of either of the contracting parties or in a third country with a predominant interest of an investor of either of the Contracting Parties.

(4) The term "territory" shall mean the territory of each Contracting Party as well as those maritime areas adjacent to the coast of the Contracting Party in question, to the extent that this may exercise sovereign rights or jurisdiction in those areas in accordance with its legal system and international law.

## Article 2 . Promotion and Protection of Investments

(1) Each Contracting Party shall promote in its territory, subject to its general policy in the field of foreign investment,

investments of investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Each Contracting Party shall at all times fair and equitable treatment of las inversiones made by investors of the other Contracting Party and shall, through Arbitrary or Discriminatory Measures The management, maintenance, use, enjoyment or disposal thereof, as well as the acquisition of goods and services or the sale of their production.

(3) Subject to its laws and regulations relating to the entry and sojourn of aliens, los individuos who are allowed to work towards an investor of one Contracting Party, as well as members of their household, enter, stay in and leave the territory of the other contracting party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(4) Investments made in accordance with the laws and regulations of the Contracting Party encuyo territory are undertaken, shall enjoy the full protection of this Agreement.

### **Article 3 . Treatment of Investments**

(1) Neither Contracting Party shall subject in its territory returns of investments or investors of the other Contracting Party to treatment less favourable than that it accords to returns of investments or investors of any third State.

(2) Neither Contracting Party shall subject investors in its territory of the other States, as regards the management, use, enjoyment or disposal of their investments to treatment less favourable than that it accords to its own investors to investors or of any third State.

(3) For the avoidance of doubt it is confirmed that the treatment referred to in paragraphs (1) and (2) se aplicará above to the provisions of articles 1 to 10 of this Agreement.

### **Article 4 . Exceptions**

The provisions of this Agreement relating to the grant of not less favourable treatment than that accorded to investors of either Contracting Party or of any third State shall not be construed as to oblige one contracting party to extend to investors of the other the treatment of any benefit or privilege, preference resulting from:

(a) Any existing or future customs union or common market, free trade area to cualesquiera of the contracting parties or may become a party; or

(b) Any international agreement or arrangement relating wholly or mainly to cuestiones tributarias, or any domestic legislation relating wholly or mainly to taxation.

### **Article 5 . Expropriation and Compensation**

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, to un inversionista of the other contracting party of an investment unless the following conditions are complied with:

(a) Measures taken in the public interest and under due process;

(b) Clear and non-discriminatory measures; and

(c) Measures are accompanied by provisions for the payment of prompt, adequate compensation y efectiva, which shall be transferable without delay in a freely convertible currency.

(2) The provisions of paragraph (1) of this article shall also apply to the returns of un inversión and, in the event of liquidation, to the proceeds from the liquidation.

(3) Investors of either Contracting Party who suffer losses of their inversiones en the territory of the other contracting party owing to war or other armed conflict, a national state of emergency, revolt, insurrection or disturbance, shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that accorded to its own investors to investors or of any third State. resulting payments shall be transferable without delay in a freely convertible currency.

### **Article 6 . Transfers**

(1) Each Contracting Party shall allow the transfer without delay in a freely convertible currency, of:

(a) Returns;

(b) The proceeds from a total or partial sale or liquidation of any investment made by an inversionist to the other contracting party;

(c) Funds in repayment of loans; and

(d) The income of individuals who are not nationals, who are allowed to work in connection with an investment in its territory and any amount fit for the coverage of expenses connected with the management of the investment.

(2) Any transfer referred to in this Agreement shall be effected at the market rate of exchange prevailing in each case.

## **Article 7 . Subrogation**

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has accorded in respect of an investment in the territory of the other contracting party, the latter Contracting Party, without prejudice to the rights of the first contracting party under article 9, shall recognize the transfer of any right or title to the former investor of that Contracting Party or its designated agency and the first subrogation of the Contracting Party or its designated agency in any of the rights or securities.

## **Article 8 . Disputes between an Investor and a Contracting Party**

(1) Any legal dispute arising between an investor and a contracting party of the other States concerning an investment of the latter in the territory of the first shall, as far as possible, be settled amicably between the two parties concerned.

(2) If any such dispute cannot be settled within a period of three months between the parties in dispute by means of a friendly settlement, the implementation of local resources or otherwise, each contracting party consents to hereby submit to the International Centre for the Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965, provided that, if the investor has concerned the dispute brought before the courts of the Contracting Party which is party in the dispute has not been issued a final decision within the period of three months.

(3) A company which is incorporated or constituted under the laws in force in the territory of the States and before which such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall, in accordance with article 25 (2) (b) of the Convention, be considered for the purposes of the Convention as a company of the other contracting party.

(4) In case of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the inversionist affected shall have the right to choose. The Contracting Party which is a party to the dispute must not file an objection at any stage of the proceedings or enforcement of an award the fact that the investor who is the other party to the dispute has received pursuant to an insurance contract, compensation with respect to some or all of its losses.

(5) The arbitral awards shall be final and binding on both parties to the dispute. The contracting party shall execute in accordance with its legislation.

## **Article 9 . Disputes between the Contracting Parties**

(1) Disputes between the contracting parties concerning the interpretation or application of the present Convention shall, as far as possible, be settled through the diplomatic channel.

(2) If a dispute cannot be settled in this way within a period of six months beyond the date on which such negotiations were requested by either contracting party, the dispute shall, upon the request of either Contracting Party, be referred to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted ad hoc. Each Contracting Party shall appoint one member and the members shall choose a national of a third State who, on approval shall be chairman appointed by both contracting parties. The members shall be appointed within two months and the Chairman within a period of three months, after which either Contracting Party has informed the other party to the dispute, be submitted to an arbitral tribunal.

(4) Any time limit referred to in paragraph (3) is not fulfilled and in the absence of an agreement to the contrary, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or otherwise prevented from making appointments, the Vice-President

shall be invited to make such appointments. If the Vice-President is also a national of either Contracting Party or if he is also prevented from carrying out the appointments, the member of the Court next in seniority and is not a national of either Contracting Party shall be invited to make the appointments.

(5) The arbitral tribunal shall reach a decision by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be paid in equal parts by the two contracting parties unless the arbitral tribunal decides otherwise. The arbitral tribunal shall determine its own procedure.

## **Article 10 . Implementation of the Agreement**

(1) This Agreement shall not restrict in any way the rights and benefits which uninversionista of one contracting party enjoys under national or international law in the territory of the other contracting party.

(2) This Agreement shall apply to all investments, whether made before or after the coming into force. However, it shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before the entry into force of this Agreement.

## **Article 11 . Final Provisions**

(1) The Contracting Parties shall notify each other when their respective constitucionalespara requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force until the expiration of twelve months from the date on which either contracting party notifies in writing the other contracting party of its decision to terminate the present Agreement.

(3) With respect to investments made prior to the date when the notice detérmino of this Agreement becomes effective, the provisions of articles 1 to 10 shall remain in force for a further period of fifteen years from that date.

In WITNESS WHEREOF the undersigned, duly authorized, to this effect, have signed this Agreement.

Done at Lima on 10 November nineteen ninety-four in two originals in Spanish, both texts being equally authentic.