

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE REPUBLIC OF ECUADOR ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Peru and the Government of the Republic of Ecuador, hereinafter referred to as the "Contracting Parties";

Desiring to intensify economic cooperation for mutual benefit of both contracting parties;

In the view to create and maintain a fair, just and favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party;

Recognizing that the conclusion of an agreement for the reciprocal promotion and protection of such investments will stimulate private economic initiative and to enhance the well-being of the peoples of both countries.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every kind of asset owned or controlled directly or indirectly by an investor of a Contracting Party, including, in particular, though not exclusively:

- (a) Rights of participation or shares in companies and any other risk sharing form of association;
- (b) Ownership of movable and immovable property and other property rights acquired or used with the purpose of economic benefit or other business purposes;
- (c) Claims to money, securities, rights and any other provision económica directamente value linked to a specific investment;
- (d) Intellectual Property Rights, such as copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs (topographies) of integrated circuits and rights in Plant-Breeders plant varieties;
- (e) Concessions conferred by law or under a contract for the exercise of a actividad económica concessions, including prospecting, exploration and exploitation of natural resources; and
- (f) Reinvestment of profits, provided such as investment in the company that generates.

Any alteration of the form of investment does not affect their character as investment.

2. The term "proceeds" means the amounts obtained or produced by an investment made in accordance with this Agreement, such as profits, dividends, royalties, interests.

3. The term "investor" designates:

- (a) Natural persons having the nationality of either Contracting Party, de conformidad with its laws; or
- (b) Legal entities, including companies, corporations business associations, enterprises, institutions or other entity established or constituted under the laws and regulations of one Contracting Party and having their registered office within either of the Contracting Parties.

3. The term "territory" means, in the areas within the land boundary, the maritime and airspace adjacent areas over which the contracting party exercises sovereignty and jurisdiction, in accordance with their respective laws.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall promote in its territory, investments of investors of the other Contracting Party and shall admit in accordance with its laws and regulations.
2. Investments made by investors of one Contracting Party in the territory of another Contracting Party, in accordance with its laws and regulations of the latter, shall enjoy full legal protection and security of this Agreement.
3. Each Contracting Party shall publicize and disseminate laws and regulations related to investments of investors of the other contracting party. Similarly, with the aim of increasing the flow of investment; to exchange information on investment opportunities in each Contracting Party.

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

1. Each Contracting Party shall ensure fair and equitable treatment for the investments of the investors of the other Contracting Party made in accordance with this Agreement and shall not prevent, with arbitrary or discriminatory measures, the free administration, use, use, enjoyment or disposition of the investments of the investors of that Contracting Party.
2. Each Contracting Party, specifically, to accord such investments treatment no less favorable than that accorded to investments of its own to investors or investments of investors of any third State, whichever is more favourable to the investments of investors of the other contracting party.
3. If the provisions of law of either contracting party or as agreed by the contracting parties beyond what was agreed in this Agreement is of a general or special rules under which must be accorded to investments of investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the same, as is more favourable.
4. The treatment accorded by the present article shall not extend to the benefits and advantages which either contracting parties grant to nationals or companies of third States as a result of the conclusion of agreements to avoid double taxation or other tax arrangements.
5. This treatment shall not extend to the privileges which one of the Contracting Parties to international accords or companies of third States as part of a customs union, economic or a common market or a free trade area, regional or bilateral agreements concluded with third States including conventions border integration and development.

## **Article 4. Expropriation**

1. Investments of investors of one Contracting Party in the territory of the other contracting party shall not be expropriated or nationalized, subject to any other measure having an effect equivalent to expropriation or nationalization (hereinafter referred to as expropriation) except for reasons of national or social security, public order, on a non-discriminatory basis and under due process of law.
2. Such measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. The amount of such compensation shall correspond to the fair value of the expropriated investment at the time immediately before the expropriation or in the same was announced or became public knowledge, which comes first. The fair value shall be expressed in a currency convertible on the basis of the market rate of exchange for that currency existing at that time. The compensation shall also include interest at the prevailing commercial rate market from the date of expropriation until the date of actual payment.
3. The investor whose investments are expropriated shall have the right to prompt review by a judicial or other competent authorities of the Contracting Party of its case and of the evaluation of the compensation in accordance with the principles set out in this article.

## **Article 5. Compensation for Losses**

Investors of one Contracting Party who suffer losses of their investments due to war or other armed conflict, revolution, state of national emergency, a state of siege, insurrection or other similar events in the territory of the other Contracting Party, shall be treated by the latter no less favourably than to its own investors as regards restitution, indemnification, compensation.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments relating to an investment registered with the competent national authority, in particular, though not exclusively:

(a) The capital of the investment and reinvestment is made in accordance with the laws and regulations of that Contracting Party;

(b) Returns;

(c) The repayment of loans and other benefits as defined in subparagraph (c) of paragraph 1 of Article 1 of this Agreement;

(d) The proceeds of the total or partial sale or liquidation of the investment;

(e) Compensation and compensation pursuant to articles 4 and 5 of this Agreement;

(f) Payments arising out of the settlement of a dispute under articles 8 and 9.

2. The transfer shall be effected in a freely convertible currency, without any restriction or delay.

## **Article 7. Subrogation**

1. If one contracting party or its authorized agent or or designated agency makes payments to susinversionistas under a guarantee given by an investment against non-commercial risks in the territory of the other contracting party, the latter, without prejudice to their rights under article 9 ° correspond to the first Contracting Party shall recognize the subrogation of the rights of such investors to the former Contracting Party or its authorized agent or agency or designated, either by law or by legal transaction.

2. Furthermore, the other Contracting Party shall recognize the scope of the case and primeraparte subrogation of the Contracting Party or its authorized agent or agency or designated in each of the previous holder conferred rights pursuant to this Agreement.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute arising between an investor and a contracting party of the contracting otraparte in connection with investments made in accordance with this Agreement shall, if possible, be settled amicably between the parties to the dispute.

2. If a dispute within the meaning of paragraph (1) cannot be settled within seis meses after the date on which either party to the dispute has been notified to the other, shall be submitted:

(a) The competent court of the Contracting Party in whose territory the investment has been made; or

(b) To international arbitration of the International Centre for Settlement of Investment Disputes), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, "signed in Washington on 18 March 1965.

3. Once it has submitted the dispute to the competent court of the Contracting Party in the cuyoterritorio investment has been made or to international arbitration, the choice of one or other of the procedure shall be final.

4. The arbitral award shall be final and binding.

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

1. Any dispute arising between the contracting parties concerning the interpretation or application del presente Convention shall, if possible, be settled by the Contracting Parties through diplomatic channels.

2. If a dispute cannot be settled in this way within six months, the contadodesde date in which one of the Contracting Parties to the dispute has been notified to the other party, be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. The arbitral tribunal shall be constituted ad hoc manner. Each Contracting Party shall appoint one member and these two members shall agree to choose as president is a national of a third State who shall be appointed by the contracting parties. The members shall be appointed within two months and the Chairman within three months after a Contracting Party has

notified the other that it wishes to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph (3) should not be observed, and in the absence of any other agreement, each State 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 such appointments shall be made by the Vice-President. If the Vice-President is also a national of one of the contracting parties or if he is found also prevented from carrying out the said appointments shall do so, the member of the Court next in seniority and is not a national of one of the Contracting Parties.

5. The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and binding. Each Contracting Party shall bear the costs incurred in the exercise of its arbitrator, as well as the costs for its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. The arbitral tribunal shall determine its own procedure.

## **Article 10. Interruption of Diplomatic or Consular Relations**

The provisions of this Agreement shall continue to be fully applicable, whether or not exist diplomatic or consular relations between the contracting parties.

## **Article 11. Implementation of the Agreement**

1. This Agreement shall apply to existing investments in the territories of the date of its entry into force, as well as those that are made after that date. However, this Agreement shall apply to disputes regarding acts which have arisen after its entry into force.

2. This Agreement shall not apply to disputes regarding acts that occurred upon its entry into force, even if its effects continue in operation after.

## **Article 12. Entry Into Force , Duration and Termination of the Agreement**

1. The Contracting Parties shall notify each other when their respective legislative formalities for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall enter into force thirty days after the date of the second notification. Its period of fifteen years and thereafter shall be extended indefinitely unless either contracting party notifies in writing the other contracting party of its intention to terminate six months before its expiration.

3. Within fifteen years, this Agreement may be denounced at any time with six months notice.

4. For investments made prior to the date of termination of this Agreement, it will remain in force for ten years after that date.

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

Done in the city of Lima on the seventh day of April 1999, in duplicate in the Spanish languages, both texts being equally authentic.

For the Government of the Republic of Ecuador

For the Government of the Republic of Peru