

# AGREEMENT BETWEEN THE REPUBLIC OF PERU AND THE REPUBLIC OF PARAGUAY ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Peru and the Government of the Republic of Paraguay, hereinafter referred to as "" contracting parties;

Desiring to intensify economic cooperation in the mutual benefit of both States;

Intending to create and maintain favourable conditions for investments by nationals of one Contracting Party in the territory of the other contracting party;

Recognizing the need to promote and protect foreign investments with the aim of promoting economic prosperity in both States;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means every kind of asset defined in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made in accordance with this Agreement. this includes in particular, though not exclusively:
  - a) Ownership of movable and immovable property and other property rights such as mortgages, liens and pledges;
  - b) Actions or rights of participation in companies and other kinds of interests in companies or joint ventures;
  - c) The acreencias money and rights to any provision of economic value;
  - d) Intellectual Property Rights, including copyrights, patents, utility models, industrial designs, trademarks, trade names, industrial and commercial secrets, technical know-how, processes and key value;
  - e) Concessions conferred by law or contract, by the contracting party or its public entities for the exercise of an economic activity, including concessions prospecting, exploration and exploitation of natural resources.
2. "proceeds" means the amounts obtained from an investment made in accordance with this Agreement, such as interests, profits, dividends, royalties and other income.
3. "company" means all legal entities, including companies, business associations and other civil and legal personality with having an economic activity within the scope of this Agreement.
4. National "" refers with regard to either Contracting Party:
  - a) Natural persons having the nationality of that Contracting Party in accordance with its legislation;
  - b) Companies constituted in accordance with the law of that Contracting Party or that are directly or indirectly controlled by nationals of that Contracting Party.
5. "territory for the Republic of Peru designates the terrestrial domain area within its limits maritime and air space, in which Peru exercises sovereignty and jurisdiction in accordance with its legislation and international law.
6. "territory for the Republic of Paraguay, refers to the territory of the State over which it exercises its sovereign rights and jurisdiction in accordance with international law.

## **Article 2. Scope**

This Agreement shall apply to investments in the territory of one of the Contracting Parties, made in accordance with its legislation, including the procedures for the temporary admission of nationals of the other contracting party, before or after the entry into force of this Agreement. however, it shall not be applied to any differences or disputes which have arisen prior to its entry into force.

## **Article 3. Promotion Admission**

1. Each Contracting Party shall promote, in its territory to the extent possible, denacionales investments of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.
2. The Contracting Party which has admitted an investment in its territory, it shall grant the permisosnecesarios in relation to such investment, including the implementation of licensing agreements and contracts for commercial, administrative or technical assistance. each Contracting Party shall provide the necessary permits when required, for the activities of consultants and other qualified persons of foreign nationality.

## **Article 4. Treatment and Protection of Economic Integration Zone**

1. Protection: each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by nationals of the other Contracting Party and shall not hinder unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, growth, sale and, if the case. the liquidation of such investments. in particular, each Contracting Party shall grant the necessary permits referred to in article 3, paragraph 2 of this Agreement.
2. Treatment: each Contracting Party shall in its territory a fair and equitable treatment to nationals of the Investments of the other contracting party. this treatment shall not be less favourable than that accorded by each contracting party to investments made within its territory by its own nationals or granted by each contracting party to investments made in its territory by nationals of the most favoured nation, provided that this latter is more favourable treatment.
3. Areas of economic integration: the Most-favored-nation treatment shall not apply to privileges which either Contracting Party agrees to nationals of a third State by virtue of its association or participation in a free trade area, customs union or common market.
4. The treatment accorded by this article shall not apply to advantages which either partescontratante grant to nationals or companies of third States as a result of an agreement for the avoidance of double taxation or other tax arrangements.

## **Article 5. Free Transfer**

1. Each Contracting Party in whose territory the nationals of other Contracting Party shall have efectuadoinversiones, guarantee the free transfer of payments related to these investments, particularly:
  - a) Profit;
  - b) Repayments of loans;
  - c) Amounts assigned to cover expenses relating to the management of the investment;
  - d) Other income and royalties from rights enumerated in article 1, paragraph 1 (c), (d) and (e) of this Agreement;
  - e) The additional contributions of capital necessary for the maintenance or development of the investments;
  - f) The proceeds of the total or partial sale or liquidation of the investment, including possible capital gains.
2. The transfer shall be effected in a freely convertible currency, without any restriction or delay.

## **Article 6. Expropriation Compensation**

1. Neither Contracting Party shall, directly or indirectly, measures of expropriation, nationalization or any other measures of the same nature or effect of investments against nationals of the other Contracting Party, except for cases expressly laid down in national constitutions and provided that such measures are not discriminatory and giving rise to fair and timely payment of compensation.

2. The compensation shall correspond to the value of the expropriated investment or nacionalizadainmediatamente before the date of expropriation, nationalization or public measure having equivalent. the compensation shall be paid without delay in a freely convertible currency and shall include interest until the date of actual payment, according to the usual bank interest and shall be freely transferable and realizable.

3. Nationals or companies of one Contracting Party who suffer losses in susinversiones capital in the territory of the other contracting party owing to war or other armed conflict, revolution, state of national emergency, revolt, riot or insurrection in the territory of the other Contracting Party, shall be treated no less favourably than by its own nationals and companies or companies and nationals of any third State as regards restitution, indemnification, payments or other adjustments. payments shall be transferable in accordance with article 5.

## **Article 7. Subrogation**

If a Contracting Party has decided a guarantee to cover non-commercial risks with regard to an investment by one of its nationals in the territory of the latter Contracting Party shall recognize the subrogation of the first Contracting Party in the same rights recognized by the national law of the receiving Party, provided that the first Contracting Party has made a payment under such security.

## **Article 8. Disputes between a Contracting Party and a National of the other Contracting Party**

1. To resolve disputes with respect to investments between a Contracting Party and an nacionalde the other contracting party and without prejudice to article 9 of this Agreement (settlement of disputes between the contracting parties), the parties concerned shall enter into consultations to resolve the dispute, as far as possible, amicably.

2. If the consultations fail to resolve the dispute within a period of six months from lafecha of request for the settlement of dispute, the National may either submit the dispute to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration. in the latter case the national has the following options:

a) 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, opened for signature at Washington DC on 18 March 1965;

b) An ad hoc tribunal be which, unless otherwise agreed between the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (c.n.u.d.m.i.).

3. In the event of recourse to national jurisdiction, the National internacionalmencionado cannot appeal to arbitration under paragraph 2 of this article except in the event that after a period of 18 months from the summons with demand has not final judgement and final and the two sides agree to desist from that judicial body, to submit the dispute to international arbitration.

4. The Contracting Party which is a party to a dispute at any time during losprocedimientos may, in its defence used their immunity or the fact that the country has received compensation under an insurance contract, compensation all or part of the incurred damage or loss.

5. The arbitral tribunal shall decide on the basis of the present Agreement and other relevant agreements between the contracting parties; under the terms of a specific agreement to be concluded in relation to the investment; to the Law of the Contracting Party which is a party to the dispute including its rules on the conflict of laws and those principles and rules of international law as may be applicable.

6. The decisions of the Tribunal are final and binding for the parties in dispute.

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

1. Disputes between the contracting parties concerning the interpretation or application of the present Convention lasdisposiciones, shall be settled through diplomatic channels.

2. If the contracting parties cannot reach an agreement within six months of the inicie the dispute shall be submitted, at the request of either party to an arbitral tribunal composed of three members. each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the Chairman of the Tribunal who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and does not reply to the invitation of the other contracting party to make that appointment within two months, the arbitrator shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.
4. If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
5. If in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the judge of the Court of greater seniority who is not a national of either of the Contracting Parties.
6. Unless the parties agree otherwise, the Tribunal determines the procedure.
7. The decisions of the Tribunal are final and binding on the contracting parties.

## **Article 10. Obligations**

Each Contracting Party shall at all times fulfill its obligations with regard to investments of nationals of the other contracting party.

## **Article 11. Supplementary Provisions**

1. This Agreement shall not preclude the application by either party of measures as are necessary for the maintenance of public order or national security, in the framework of the general principles of international law.
2. Any term not defined in this Agreement shall have the meaning in the legislation prevailing on each contracting party.

## **Article 12. In Case of Suspension of Diplomatic or Consular Relations**

The provisions of this Agreement shall continue to be fully applicable even in cases provided for in article 63 of the Vienna Convention on the Law of Treaties of 23 May 1969.

## **Article 13. Agreement**

1. This Agreement shall enter into force on the thirtieth day following the date on which the contracting parties have notified each other of the accomplishment of its internal procedures necessary for its approval and shall remain in force for a period of fifteen years.
2. Unless either of the Contracting Parties has denounced at least six months before the date of expiry of its validity, the present Agreement shall be tacitly extended for periods of ten years. Each Contracting Party reserving the right to terminate the agreement upon notice of at least six months before the date of expiry of the period of validity.
3. With respect to investments made prior to the date of termination of this Agreement, the same articles preceding shall remain in force for a period of ten years from that date.

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

Done in the city of Lima, within thirty days of the month of January 1994, in duplicate in the Spanish languages, both texts being equally authentic.