

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

The Government of the Republic of Peru and the Government of ..... , hereinafter designated as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties,

For the purpose of creating and keep fair, equitable and favorable conditions for the investment made by investors of one of the Contracting Parties within the territory of the other Contracting Party, and

Recognizing that the subscription of an Agreement for the Promotion and Reciprocal Protection of Investments may encourage private economic initiative and increase the welfare of both peoples,

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investment" designates any kind of assets owned by an investor of one of the Contracting Parties, in the territory of the other Contracting Party and, in particular, though not exclusively, includes:

- a. Shares, stocks and any other forms of equity participation in a company and in joint ventures; in accordance with domestic legislation;
- b. Movable and immovable property as well as any other rights in rem, acquired or used to obtain economic benefits or other business purposes;
- c. Loans, securities, rights to money or any other performance having an economic value directly related to an specific investment;
- d. Intellectual and industrial property rights, such as copyrights and related rights, trademarks or trade brands, geographical indications, designs and industrial models, patents, layout designs (topographies) of integrated circuits and plant breeder rights.
- e. Concessions granted by law or under contract for the exercise of an economic activity, including concessions to prospect, search or exploit natural resources.
- f. Reinvestments of profits, understood as investment of the profits in the same company where they were generated.

Any change in the form of an investment does not affect its character as an investment.

Investment does not mean:

- a. a payment obligation, or granting of a loan to the State or to a State-owned company; b. Loans to a company, when the due date thereof is under three years ; c. claims to money exclusively derived from:

commercial contracts for the sale of goods or services by a national or company in the territory of one Party to a company in the territory of the other Party; or

any type of trade financing.

"Investor" designates:

- a. individuals who have the citizenship of any of the Contracting Parties, according to their legislation; or
- b. corporate bodies, including civil and commercial companies and other associations, which are incorporated or duly

constituted in accordance with the applicable laws and regulations of one Contracting Party.

2. "Earnings" designates the sums obtained or produced from an investment made in accordance with this Agreement, such as profits, interests, dividends and royalties.

3. "Territory" designates, in addition to the areas contained within the land boundaries, the adjacent maritime zones and air space in which the Contracting Parties exercise sovereign rights and jurisdiction in accordance with their respective legislation.

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

1. Each Contracting Party shall promote within its territory investments made by investors of the other Contracting Party and shall admit them in accordance with its laws and regulations.

2. Investments made by investors of one of the Contracting Parties within the territory of the other Contracting Party, in accordance with the laws and regulations of the latter, shall be entitled to the full protection and juridical security of this Agreement, in accordance with principles of international law.

3. Each Contracting Party shall publicize and disseminate laws and regulations related to investments of investors of the other Contracting Party. Likewise, the Contracting Parties shall exchange information on investment opportunities in their territory in order to increase investment flows.

## **Article 3. Investment Treatment**

1. Each Contracting Party shall ensure fair and equitable treatment for investments made, in accordance with this Agreement, by investors of the other Contracting Party and shall not impair by arbitrary or discriminatory measures, the free management, utilization, use, enjoyment or disposal of such investments by investors of that Contracting Party.

2. Each Contracting Party shall specifically grant to those investments a treatment that shall not be less favorable than that granted to investments of their own investors or to investments of investors of a third State, whichever may be more favorable to the investments of investors of the other Contracting Party.

3. If from the legal provisions of one of the Contracting Parties or from any other agreed upon by the Contracting Parties beyond what was stipulated in this Agreement, contains a general or special regulation in accordance with which the investments of the investors of the other Contracting Party shall be granted a most favorable treatment than what was provided for in this Agreement, these regulations shall prevail over this Agreement, insofar as they are more favorable.

4. The treatment agreed upon by this Article shall not extend to the benefits and advantages that one of the Contracting Parties grants to the nationals or companies of third States by virtue of agreements to avoid double taxation or other agreements on taxation matters.

5. This treatment shall not extend to the privileges that either of the Contracting parties may grant to nationals or companies of third States because they are members of a customs or economic union, a common market or a free trade area or similar international agreements entered into with third States, including integration and border development agreements.

## **Article 4. Transfers**

1. Each Contracting party shall guarantee to the investors of the other Contracting Party the free transfer of payments related to an investment registered with the national competent agency, in particular but not exclusively:

a. the capital of the investment and of the reinvestments made in accordance with the laws and regulations of the receiving State;

b. all net profits;

c. the repayment of loans and other lendings defined in section c) of paragraph 1 of article 1 of this Agreement;

d. the proceeds of the sale or partial or total liquidation of the investment;

e. indemnities and compensations by virtue of Articles 5 and 6 of this Agreement;

f. payment resulting from settlement of disputes by virtue of Articles 8 and 9.

1. Transfers shall be made in a freely convertible currency, without restriction or delay.

3. Nevertheless the agreed in paragraphs 1 and 2, the Contracting Parties may hinder the transfer by the equitable and non discriminatory application of their legislation in the following cases:

a. bankruptcy, insolvency or protection of creditor's rights;

b. issuance, trade and transactions of securities;

c. criminal or administrative infringements;

d. guarantee of enforcement of decisions in administrative proceedings;

e. Non-compliance of obligations under prevailing tax laws; f. Non-compliance of obligations under prevailing labour laws.

4. Paragraphs 1 and 2 are subject to reasonable measures to be adopted or hold by each Party, by reasons of prudence in order to ensure the integrity and stability of its financial system.

5. Notwithstanding paragraphs 1 and 2 of this Article, in cases of exceptional or serious difficulties in the balance of payments, each Contracting party shall have the right, to temporary limit transfers, in equitable and non discriminatory way and in accordance with principles internationally accepted.

## **Article 5. Expropriations**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measures that have equivalent effects to expropriation or nationalization (hereinafter called "expropriation") except for reasons of national security or, public necessity, in a non-discriminatory basis and under due legal process.

2. Such measures shall be taken along with provisions for the payment of a prompt, adequate and effective compensation. The amount of such compensation shall correspond to the fair value of the expropriated investment immediately before the date on which the expropriation is carried out or is declared, whichever occurs first. Such a fair value shall be expressed in a freely convertible currency at the exchange rate of the market in that moment. Compensation shall also include the interests at the banking rate in force, from the expropriation date up to the date of its effective payment.

2. The investor whose investment is expropriated shall have the right to submit to review of judicial authorities or other competent authorities of the Contracting Party, its case and the compensation valuation, under the principles contained in this Article.

## **Article 6. Compensation for Losses**

The investors of one of the Contracting Parties whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency, state of siege, rebellion or other similar events in the territory of the other Contracting Party shall be treated by the latter not less favorable, than its own investors with regards to restitutions, compensations and indemnifications.

## **Article 7. Subrogation**

1. If one of the Contracting Parties or an authorized agent makes payments to its investors in accordance with a guarantee granted against non-commercial risks in regard to an investment in the territory of the other Contracting Party, the latter, without prejudice of the rights granted in Article 9, shall recognize the rights of the former Contracting Party or its agent or agency, authorized or designated, whether by legal provisions or by means of a juridical measure.

2. Likewise, the other Contracting Party shall acknowledge the cause and scope of the subrogation by the former Contracting Party or agent authorized, in all these rights of the previous holder, granted in accordance with this Agreement.

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

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party relating to

investments made within the meaning of this Agreement shall, if possible, be settled in a friendly manner between the parties to the dispute.

2. If a dispute that is within the meaning of paragraph 1 cannot be settled within a term of six months, counted from the date in which one of the parties to the dispute has delivered a notice in writing to the other Contracting Party, it shall be submitted at the request of one of them to:

a. The competent tribunal of the Contracting Party within whose territory the investment was made.

b. The international arbitration of the International Center for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 18 March, 1965.

3. Once the dispute has been submitted to the competent tribunal of the Contracting Party within whose territory the investment was made or to international arbitration, the choice of one or the other procedure shall be definitive.

4. The arbitral decision shall be final and binding and each Party shall comply with it in accordance with its laws.

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

1. Disputes between Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall, if possible, be settled by the Contracting Parties through their diplomatic channels.

2. If a dispute cannot be settled this way within a term of six months from the date in which one of the Parties to the dispute has notified on the dispute to the other Party, it shall be submitted, at the request of one of them, to an Arbitral Tribunal.

3. The Arbitral Tribunal shall be constituted ad hoc. Each Contracting Party shall appoint one member and these two members shall agree to elect as Chairman a national of third State who shall be appointed by the both Contracting Parties. The members shall be appointed within a term of two months, and the Chairman, within a term of three months, after one of the Contracting Parties has notified the other Party that it wishes to submit the dispute to an Arbitral Tribunal.

4. If the terms stipulated in paragraph 3 have not been met, and in the absence of any other agreement, 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 is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the Member of the International Court of Justice who is ranked immediately below him and who is not a national of one of the Contracting Parties, shall be invited to make the necessary appointments.

3. The Arbitral Tribunal shall reach its decisions by a majority of votes. Its decisions shall be final and binding. Each Contracting Party shall bear the costs of its own arbitrator, as well as the costs of its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be born equally by the two Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

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

The provisions of this Agreement shall continue to be fully applicable irrespectively of whether or not the Contracting Parties have diplomatic or consular relations.

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

1. This Agreement shall apply to investments made by the investors of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. It shall, however, not be applicable to disputes which have arisen to its entry into force.

2. This Agreement shall not be applicable to disputes relating to events or actions taken and completed before its entry into force, even if the effects remain after that date.

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

1. The Contracting Parties shall notify each other of the completion of their legal requirements for the entry into force of this Agreement.

2. This Agreement shall enter into force thirty days after the date of the latter of the two notifications. It shall remain binding for fifteen years and shall be extended afterwards for an indefinite time unless one of the Contracting Parties gives written notice of its intention to terminate it, six months before it expires.

3. After fifteen years have elapsed, the Agreement may be denounced at any time with prior notice of six months.

4. For investments made before the date of termination of this Agreement, it shall continue to be in force for fifteen years after that date.

### **Article 13. Language**

This Agreement drafted in duplicate, one in Spanish and the other in , each version being equally authentic.

In case of any divergence or interpretation, the Spanish text shall prevail.

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

FOR THE REPUBLIC OF PERU FOR uo. sscscsseseees