

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

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

Desiring to intensify economic cooperation between the two States;

Taking into account the need to promote favourable conditions for investments by investors of one Contracting Party in the territory of the other contracting party;

Recognizing that the reciprocal protection of such investments will contribute to the development of mutually beneficial cooperation in the areas of economic, commercial, scientific and technical;

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement, it is understood that:

1. The term investment shall comprise every kind of assets or rights relating to economic activities carried out by an investor of one Contracting Party in the territory of the other Contracting Party and in accordance with the laws of the latter, including, in particular, though not exclusively:

A) Ownership of movable and immovable property and other property rights such as mortgages, liens and pledges;

B) Actions, quotas or other rights of participation representing the capital of a company or any other forms of participation;

C) Rights of claim or any other right with economic value;

D) Copyrights, industrial property rights, such as patents, know-how and technological procedures (know-how), trade names, trademarks, industrial designs and rights of key (goodwill);

E) Concessions conferred by law or administrative act by a competent public authority, or by virtue of a contract, including concessions to prospecting, exploration and exploitation of natural resources.

Any change in the form of investment does not affect its character, provided that such change is made in accordance with the legislation of the Contracting Party in the territory of which the investment is made.

2. The term "proceeds" means the amounts yielded by an investment in a given period, such as profits and dividends, interest and other income earned under the law and under the terms of this Agreement.

3. The term "liquidation of the Investment Investment" mean that culminated in accordance with the laws in force in the territory of the Contracting Party in which the investment has been made.

4. The term investor "means:

A) Nationality of natural persons with either of the Contracting Parties in accordance with their respective legislation.

B) Companies, including companies and other forms of association with or without legal personality, which are located in the territory of one of the Contracting Parties and which are constituted in accordance with the law of that Contracting Party.

5. The term territory includes the territory under the sovereignty of the Republic of Peru, on the one hand, and the territory under the sovereignty of the Portuguese Republic, on the other, such as defined in their constitutions policies.

## **Article 2.**

1. Both Contracting Parties shall promote and protect mutually investments in its territory by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations and to grant to such investment protection and fair and equitable treatment.
2. In the event that the profits of an investment are reinvested earnings, this reinvestment and enjoy the same protection as the original investment.

## **Article 3.**

1. Neither Contracting Party shall in its territory to investments made by investors of the other Contracting Party to treatment less favourable than that accorded to investments made by its own investors or to investors of third States, whichever is the more favourable prevail.
2. Neither Contracting Party shall subject investors of the other contracting party, as querespecta activities connected with the management, use and maintenance of the respective investments made in the territory of the former Contracting Party to treatment less favourable than that accorded to its own investors or to investors of third States, whichever is the more favourable prevail.
3. The provisions of paragraphs 1 and 2 of this article shall not extend to tratamientomás favourable or granted by the Contracting Parties to accord investments of investors of any third State by virtue of:
  - A) Participation in customs unions, free trade areas identical or other forms of regional economic cooperation and integration;
  - B) To avoid double taxation agreements or other tax arrangements.

## **Article 4.**

1. Each Contracting Party in accordance with its laws, allow the contracting of investors otraparte after fulfillment of all tax obligations owed, the free transfer of payments related to investments, namely:
  - A) The capital and additional payments for the maintenance or extension of the investment;
  - B) The profits of investment;
  - C) The amounts necessary for the service and raising loans, which both contracting parties have recognized as investments;
  - D) The proceeds of the total or partial sale or liquidation of the investment;
  - E) The compensation referred to in article 5 of this Agreement;
  - F) Any payment as may be made on behalf of the investor, in accordance with article 6 of this Agreement;
  - G) The remuneration received by nationals of the other contracting party for work or services related to investments made in its territory in accordance with its laws and regulations.
2. The transfers referred to in the preceding paragraphs shall be effected without delay, the type of cambiovigente on the date of transfer in the territory of the Contracting Party where the investment was made.

## **Article 5.**

1. Investments made by investors of one Contracting Party in the territory of laotra Contracting Party shall not be expropriated, nationalised or subjected to any other measures having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation) except for reasons of public interest declared under law, on a non-discriminatory basis and through prompt compensation.
2. The compensation shall correspond to the market value of the expropriated investment at lafecha of expropriation and shall be paid without delay in a freely convertible currency. annual shall include interest until the date of actual payment according to banking, the rate prevailing in the territory of the Contracting Party in which the investment was made. the compensation shall be freely transferable.

3. Investors of one Contracting Party who suffer losses of their investments in el territorio of the other contracting party by virtue of war, armed conflict, a state of national emergency or other similar events shall not receive of that Contracting Party to treatment less favourable than that accorded to its investors. hence resulting compensation shall be freely transferable.

## **Article 6.**

1. If one contracting party or its designated agency makes payment to its unode investors under a guarantee provided to an investment made in the territory of the other contracting party, the latter shall:

A) The subrogation, by the force of law or as a result of a legal transaction in the territory of that Contracting Party, of any right or action by the investor to the former Contracting Party or to its designated agency as well as:

B) The first Contracting Party or its designated agency by it has the capability by virtue of subrogation to exercise the rights and claims in the same terms that investor and assume the obligations related to the investment.

2. In the case of subrogation as defined in paragraph 1 of this article, el inversionista not seek judicial proceedings without the authorization of the Contracting Party or its designated agency by it.

## **Article 7.**

1. Any dispute between an investor of one Contracting Party and the other party contratant referentes to investments made in accordance with the provisions of this Agreement shall, as far as possible, be settled amicably by the parties in dispute.

2. If these disputes cannot be settled within six months, the date from either party lacual requires an amicable settlement, the investor may submit the dispute to the competent court of the Contracting Party in question.

3. As an alternative referred to in the preceding paragraph, the investor may submit the dispute to arbitration, recourse, either by:

A) The International Centre for International Centre for Settlement of Investment Disputes, established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965 (ICSID); or

B) To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The award shall be final and binding on both parties to the dispute and shall be executed according to the internal la legislación of the Contracting Party in question.

## **Article 8.**

1. Any dispute between the contracting parties concerning the interpretation and implementation del presente agreement shall be settled as far as possible through negotiations between the contracting parties.

2. If the contracting Parties do not reach an agreement in this way within 6 months después del initiation of negotiations, the dispute shall be submitted to an arbitral tribunal, at the request of either of the Contracting Parties.

3. The arbitral tribunal shall be constituted ad hoc manner. within two months from the date of the request for arbitration derecepción, each Contracting Party shall appoint one member of the Tribunal. those two members shall select a national of a third State who shall be appointed Chairman of the Tribunal by common agreement between the contracting parties. the Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If the appointments have not been made within the periods specified in paragraph 3, este artículo either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make such appointments.

If the President is prevented or is a national of either party, the appointment shall be made by the Vice-President. if this is also prevented or is a national of either Contracting Party, the appointment shall be made by the member of the International Court of Justice to continue in hierarchy, provided that there is a national of either of the Contracting Parties.

5. The Chairman and the members of the Tribunal shall be a national of a State with which both contracting parties ambas partes maintain diplomatic relations.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles and rules of international law generally accepted. the arbitral tribunal shall be decided by majority vote. the decisions shall be final and binding on both contracting parties. the tribunal shall determine its own procedural rules.

7. Each of the Contracting Parties shall bear the costs of its own arbitrator and of the respective representation in the arbitral proceedings. both contracting parties in equal parts bear the costs of the Chairman and the remaining costs.

## **Article 9.**

1. If, in addition to the present Agreement, the provisions of another international agreement in force or entry into force in the future between the two contracting parties, or domestic regulation of either of the Contracting Parties shall establish a general or specific, entitling investments made by investors of the other contracting party to a more favourable treatment than that provided for in this Agreement, the more favourable prevail.

2. Without prejudice to the provisions of this agreement, each Contracting Party undertakes to fulfil commitments incurred relating to investments made by investors of the other contracting party in its territory.

## **Article 10.**

This Agreement shall apply to all investments made before or after the date of entry into force by investors of one Contracting Party in the territory of the other contracting party, where they have been made in accordance with the respective legal provisions. however, it shall not apply to any dispute that arose before its Entry into Force.

## **Article 11.**

The representatives of the Contracting Parties shall, where necessary, hold meetings on any matter relating to the implementation of this Agreement. these meetings shall be held on the proposal of one of the Contracting Parties in place and date to agree upon through diplomatic channels.

## **Article 12.**

1. This Agreement shall enter into force on the date that both contracting parties are hayanotificado, a written notice to the other, compliance with the respective domestic legal procedures and shall remain in force for a period of fifteen years.

2. This Agreement shall remain in force unless either Contracting Party podescrito, notifies the other contracting party of its decision to terminate the agreement in twelve months before the date of expiry of the period of fifteen years and shall be automatically renewed on the same terms and by successive periods of five years.

3. In the event that this agreement is denounced, the provisions of articles 1 to 11 shall remain in force for a period of fifteen years in respect of investments made prior to the termination of this Agreement becomes effective.

On the signing of the agreement on reciprocal promotion and protection of investments between the Republic of Peru and the Portuguese Republic, the undersigned Plenipotentiaries have agreed in the following provisions, which constitute an integral part of this Agreement:

1. Under article 2 of this Agreement:

In the case of the Portuguese Republic, the provisions of article 2 shall apply to investors of the other Contracting Party who are established in the territory of the Portuguese Republic and decide to expand their activities or established in other sectors. such investments shall be considered as a new, and as such, shall be conducted in accordance with the rules governing access to the pursuit of economic activities, the terms set out in article 2 of the present Agreement.

3. With respect to article 3 of this Agreement:

The Contracting Parties consider that the provisions of this article 3 do not prejudice the right of each contracting party to apply the relevant provisions of its tax law to make a distinction between taxpayers who are not in identical situations as regards their place of residence or with regard to the place where their capital is invested.

In no case shall the provisions of the preceding paragraph shall be deemed as an establishment, modification or deletion of

taxes