

# Agreement between the Federal Republic of Germany and the Republic of Peru on the Promotion and Reciprocal Protection of Investments

The Federal Republic of Germany and the Republic of Peru (hereinafter referred to as "the Contracting Parties") -

In the desire to deepen economic cooperation for the benefit of the two States,

In the endeavor to create favorable conditions for the investments of nationals or companies of one of the contracting parties in the territory of the other Contracting Party,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

1. The term "investments" means, in particular but not exclusively, all types of assets under the legislation of the Contracting Party in whose territory the investment is made

a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;

b) Shares or shares in companies as well as other types of participations in companies;

c) Claims on money used to create an economic value or contractually agreed rights, as well as legally justified rights to benefits having an economic value;

d) Intellectual and industrial property rights such as copyrights, patents, utility models, industrial designs, trade names, business and business secrets, patented or non-patented technical procedures and knowledge, technical documentation and instructions, know-how and goodwill;

e) Concessions granted by law or contract by the Contracting Parties or their public bodies for the pursuit of an economic activity, including concessions and concession concessions for natural resources;

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment, such as profits, interest, dividends, royalties and other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) With regard to the Republic of Peru:

Peruvians in the sense of the Political Constitution of Peru;

4. The term "companies" means legal persons, companies of civil law and commercial companies, as well as other associations with or without legal personality who are established in the territory of one of the Contracting Parties, whether or not their activity is directed to profit.

## **Article 2.**

- (1) Each Contracting Party shall promote, in its territory, investments of nationals or companies of the other Contracting Parties and shall permit them in accordance with their laws. In any case, it will treat capital investments fairly and cheaply.
- (2) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.
- (3) Investments by nationals or companies of a Contracting Party carried out in the territory of the other Contracting Party in accordance with its legislation enjoy the full protection of this contract.

## **Article 3.**

- (1) Each Contracting Party shall, in its territory, treat capital investments of nationals or companies of the other Contracting Parties or investments in which nationals or companies of the other Contracting Parties are involved not less favorably than the investments of its own nationals and companies or investments of nationals and companies of third States.
- (2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.
- (3) This treatment does not relate to privileges granted by a Contracting Party to nationals or companies of third States because of their membership in a customs, economic or commercial market or a free trade zone because of their association with it or similar international agreements.
- (4) The treatment provided for in this Article does not relate to advantages and privileges granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other agreements on taxation issues.

## **Article 4.**

- (1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.
- (2) Investments made in accordance with the provisions of this Treaty by nationals or companies of a Contracting Party may be subject to nationalization or other measures which are subject to expropriation or nationalization in the territory of the other Contracting Parties only where the public good is required and expropriated against compensation equal.
- (3) The compensation must correspond to the value of the investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became public. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; It must in fact be usable and freely transferable.
- (4) The legality of the expropriation, nationalization or comparable measure, the amount of the compensation and all other related matters must be able to be verified by ordinary legal proceedings.
- (5) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national emergency, war or turmoil in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party as regards refunds, indemnities, Their own nationals or companies. Such payments must be freely transferable.
- (6) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article 5.**

- (1) Each Contracting Party shall ensure the free transfer of payments made in connection with an investment to the nationals or companies of the other Contracting Parties, in particular:
  - a) Of the capital and additional amounts for the maintenance or expansion of the investment;
  - b) Of income;
  - c) The repayment of the loans referred to in Article 1 (1) (c) and the interest thereon;

d) Of the proceeds in the case of the complete or partial liquidation or disposal of the investment;

e) Of the compensation provided for in Article 4.

(2) The transfer will be effected immediately and without restrictions in a freely convertible currency at the applicable rate. This rate may not differ materially from the cross-rate resulting from the conversion rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for non-commercial risks of investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights of such nationals or companies by law or by virtue of the rights of the former Contracting Party to the former Contracting Party. In addition, the other Contracting Party shall recognize the extent to which the former Contracting Party enters into the legal position of the previous owner. The transfer of payments resulting from the transferred claims shall be governed by Article 5 of this Treaty.

## **Article 7.**

(1) Where, by virtue of the legislation of a Contracting Party or of agreements which exist between Contracting Parties in addition to this Treaty, a general or specific rule whereby the investments of the nationals or companies of the other Contracting Party are to be accorded more favorable treatment than under this Treaty, this provision precludes the present Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 8.**

This Agreement shall also apply to the matters arising after the entry into force of this Treaty with regard to investments made by nationals or companies of the one Contracting Party in the territory of the other Contracting Party in accordance with its legislation before the entry into force of this Treaty.

## **Article 9.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by the Governments of the two Contracting Parties by diplomatic means.

(2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be formed on a case-by-case basis by appointing a member to each of the contracting parties. Both members agree to the members of a third state as chairman, to be appointed by the governments of the two contracting parties. The members shall be appointed within two months to appoint the chairman within three months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President is a citizen of one of the Contracting Parties or if he is prevented from doing so for another reason, the Vice-President shall take the measures. If the vice-president also has the nationality of one of the two contracting parties or if he is also prevented from doing so, the next member of the court, who is not a national of one of the two contracting parties, shall make the honors.

(5) The arbitral tribunal shall decide by a majority of votes; its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; the costs of the chairman and the other costs are borne equally by the two contracting parties. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) If a national or a company of one of the Contracting Parties and the other Contracting Party submit a dispute to a competent international arbitral tribunal or to the competent court of that Contracting Party in accordance with the provisions of Article 10 of this Treaty, the former Contracting Party shall not commence any dispute settlement proceedings under this Article on the same matter unless the other Contracting Party complies with the arbitration award or fails to

enforce the judgment.

## **Article 10.**

(1) Any differences of opinion regarding investments within the meaning of this Treaty between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be amicably settled between the Contracting Parties.

(2) If a disagreement within the meaning of paragraph 1 can not be settled within six months from the date of its assertion by one of the two parties, it shall, at the request of one of the two parties, be submitted to the competent courts of the Contracting Party in whose territory the investment was made, submit to.

(3) Under any of the following conditions, the differences of opinion may be submitted to an international arbitration court:

a) At the request of a party to the dispute, if, within 18 months from the commencement of the judicial proceedings pursuant to paragraph 2, a court decision has not been taken or if such a decision exists, the differences of opinion between the parties to the dispute continue;

b) If both parties agree.

(4) Unless the parties to the dispute have agreed otherwise, disputes between the parties in the cases referred to in paragraph 3 shall be subject either to an arbitration under the Convention of 18 March 1965 on the settlement of disputes between States and nationals of other States or to an ad hoc arbitration tribunal, UNCITRAL arbitrations. If no agreement is reached within three months after a dispute has been called for by a dispute, the dispute between the States Parties and the nationals of other States shall be subject to an arbitration procedure within the meaning of the Convention Framework of the abovementioned Convention. Otherwise the disagreement is subject to the aforementioned ad hoc arbitration.

(5) The arbitral tribunal shall make its decisions on the basis of this Treaty and, where appropriate, other agreements between the Contracting Parties, the national law of the Contracting Party in whose territory the investment is situated, including the rules of International Private Law and the general legal principles of international law.

(6) The arbitration shall be binding and shall be enforced in accordance with national law.

## **Article 11.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 12.**

(1) This Treaty shall enter into force one month after the date on which the Governments of the Contracting States have notified each other that the national requirements for the entry into force have been fulfilled.

(2) This Treaty shall remain in force for ten years; After the expiry of which period, the period of validity shall be extended for an indefinite period unless one of the two Contracting Parties terminates the contract in writing with a period of twelve months before the end of the ten years. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, its provisions shall apply for a further fifteen years from the date of expiry of the Treaty.

Done at Lima, this 30th day of January, 1995, in two originals, in German and Spanish, each text being equally authentic. shall be equally authentic.

For the Federal Republic of Germany

Wöckel

For the Republic of Peru

Efrain Goldenberg Schreiber

## Protocol

At the signing of the Agreement between the Federal Republic of Germany and the Republic of Peru on the Reciprocal Promotion and Protection of Investments, the undersigned Plenipotentiaries have further adopted the following provisions, which shall be considered as an integral part of the Agreement:

### (1) Ad Article 1

(a) The income from an investment, and in the case of reinvestment also the income therefrom, shall enjoy the same protection as the investment itself.

(b) Without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of the respective Contracting Party shall be considered in particular as a national of a Contracting Party.

### (2) Ad Article 2

The Convention shall also apply to the maritime areas adjacent to the coasts of both Contracting Parties in which they exercise sovereign rights or jurisdiction, in accordance with their national legislation and international law.

### (3) Ad Article 3

(a) As activities within the meaning of the second paragraph of Article 3, the administration, utilization, use and development of an investment shall be considered especially, but not exclusively. The following shall be considered in particular as "less favorable treatment" within the meaning of Article 3: restrictions on the acquisition of raw and auxiliary materials, energy and fuels, as well as means of production and exploitation of all kinds, restrictions on the sale of products within the country and abroad, and all measures having analogous effects. Measures taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable treatment" within the meaning of Article 3.

(b) The provisions of Article 3 do not oblige a Contracting Party to extend tax advantages, exemptions and reductions which, according to its tax laws, are available only to individuals and corporations resident in the territory of the other Contracting Party.

(c) The Contracting Parties shall, in accordance with their internal legal provisions, deal favourably with applications for immigration and residence of persons of one Contracting Party who, in connection with an investment, wish to enter the territory of the other Contracting Party; the same rule shall apply to employees of one Contracting Party who, in connection with an investment, wish to enter and reside in the territory of the other Contracting Party in order to carry on their activity as employees. Applications for work permits shall likewise be treated sympathetically.

### (4) Ad Article 4

The right to compensation shall also exist in the event that any of the measures defined in Article 4 are taken in respect of the company in which the investment is located and result in severe prejudice substantially affecting that company.

### (5) Ad Article 5

A transfer shall be deemed to have been effected "without delay" within the meaning of paragraph 2 of Article 5 when it has been effected within the period of time normally necessary for the completion of the transfer formalities. The time limit, which may in no case exceed two months, shall commence to run at the time of delivery of the relevant request.

(6) With respect to the transportation of goods and persons in connection with investments, each Contracting Party shall not exclude or hinder the transportation companies of the other Contracting Party and, if necessary, shall grant authorizations for the performance of the transportation.

Done at Lima, on January 30, 1995, in two copies, in the Spanish and German languages, both texts being equally authentic.

For the Federal Republic of Germany

Wockel

For the Republic of Peru

Efrain Goldenberg Schreiber

