

# **Agreement between the Government of the Republic of Peru and the Government of the Republic of Colombia on reciprocal promotion and protection of investments**

The Republic of Peru and Colombia, hereinafter the "Parties",

Recognizing that the promotion and protection of investments of investors of a Party in the territory of the other party contribute to stimulate business activity as may be mutually supportive and develop economic cooperation between the parties and to promote sustainable development,

Recognizing the regulatory capacity of the States,

Have agreed as follows:

## **Section A. Substantive Obligations**

### **Article 1. Scope and Coverage (1)**

1. This agreement shall apply to measures adopted or maintained by a Party relating to:

- (a) The investors of another party;
- (b) Covered investments; and

As regards articles 6 (performance requirements) and 9 (measures on health, safety and environment), all investments in the territory of the Party

2. The obligations of a party under this section shall apply to a State enterprise or other person when it exercises this any regulatory authority, administrative or other governmental authority delegated to it by that Party, such as the authority to expropriate, licensing, approve or commercial transactions; impose quotas or other charges and fees;
3. For greater certainty, the provisions of this Agreement do not bind a party in relation to any act or fact that took place or any situation that ceased to exist before the date of Entry into Force of this agreement for that Party
4. Nothing in this Agreement shall be construed to impose an obligation on a party to privatise any investment that owns or controls, or to prevent a party from designating a monopoly, provided that if a Party update or maintains a measure to privatize such investment or a measure to designate a monopoly, this Agreement shall apply to the measure;
5. Nothing in this Agreement shall require any party to protect investments made with capital or assets derived from illegal activities, and shall not be interpreted in a sense to forgive a Party to adopt or keep measures to preserve the public order, to keep or restore the international peace and security or the protection of its own security essential interests
6. The requirement by a party that a service provider of the other party constitute a security or other form of financial security as a condition of providing a trans-frontier service, does not in itself "which this Agreement applies to measures adopted or maintained by the Party relating to the cross-border supply of the service. This Agreement shall apply to measures adopted or maintained by the Party relating to the bond or financial security to the extent that such bond or financial security is a covered investment.

(1) For greater certainty, this agreement is subject to and will be interpreted according to Annexes A to G, according to the references, that will be done in each article of this Agreement

### **Article 2. National Treatment**

1. Each Party shall accord to investors of the other party treatment no less favourable than that accorded in like circumstances to its own investors with respect to the establishment, expansion and acquisition, management, leadership "operation and sale or other disposition of investments in its territory,
2. Each party shall accord to covered investments favourable treatment no less that it accords, in like circumstances, to its own investments of investors with respect to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of the investments in its territory.

### **Article 3. Most Favoured Nation Treatment**

1. Each Party shall accord to investors of the other party treatment no less favourable than that accorded in like circumstances to investors of a non-party with respect to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of investments in its territory.
2. Each party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments from investors of a country that is not a party with respect to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of investments in its territory.
3. For greater certainty, treatment with regard to the establishment, expansion and acquisition, administration, management, operation and sale of investments or other disposition referred to in paragraphs 1 and 2 does not include dispute settlement mechanisms as listed in sections B (STA investment - State dispute settlement and (c) Settlement of Disputes State - State), that are provided for in international trade treaties or agreements.

### **Article 4. Minimum Standard of Treatment (2)**

1. Each Party shall accord to a covered investment into in accordance with customary international law, including Fair and Equitable Treatment and full protection and security.
  2. For greater certainty, paragraph 1 prescribes that the minimum standard of treatment of aliens as the Customary International Law minimum standard of treatment that may be provided to covered investments. The concepts of Fair and Equitable Treatment and full protection and security do not require an additional treatment or a treatment beyond those required by that standards and does not create significant additional rights. The obligation to provide in paragraph 1:
    - (a) "Fair and Equitable Treatment includes the obligation not to deny justice in criminal, civil or administrative proceedings, in accordance with the principle of due process embodied in the principal legal systems of the world; and
    - (b) "Full Protection and Security" requires each party to provide the level of police protection that is required by the International Law.
  3. A determination that there has been a breach of another provision of this Agreement or another international agreement separately, does not establish that there has been a violation of this article.
- (2) For greater certainty, article 4 will be interpreted in accordance with Annex A

### **Article 5. Senior Executive Boards and Temporary Entry**

1. No party may require that a company of such delivery, that is a natural person covered investment to appoint a particular nationality to fulfil senior positions.
2. A Party may require that a majority of the members of the Boards or any committee, of an enterprise from which it is Party that is a covered investment, be of a particular nationality or resident in the territory of the Party provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
3. Subject to its laws, regulations and policies relating to the entry of aliens, each Party shall grant temporary entry to nationals of the other party that are:
  - (a) Investors; or
  - (b) Employed by an investor of the other party who seek to render services to an investment of that investor in the territory of the delivery, in charge of management and / or executive or requiring with specialized knowledge.

### **Article 6. Performance Requirements**

1. No Party may, in relation to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of an investment of an investor of a party or of a non-party in its territory impose or enforce any requirement or enforce any obligation or commitment (3):

(a) To export a given level or percentage of goods or services;

(b) To achieve a given level or percentage of the national content;

(c) To purchase, to use or grant preference to the goods produced in its territory or to purchase goods from persons in its territory;

(d) To link in any way the volume or value of the imports to the volume or value of the exports, or with the amount of inflows associated with that investment;

(e) To restrict the sell in their territory of the goods and services that the investment produces or provides, linking investment or in any way the volume or value of its exports or foreign exchange generating jointly;

(f) To transfer a particular technology, a production process or other knowledge of their property to any person in its territory except when the requirement is imposed or the obligation or the commitment is required by a court or administrative authority or other competent authority, to remedy a violation of competition laws or to act not contrary to other provisions of this Agreement

(g) to supply exclusively from the territory of a party the merchandise that it produces or the services that provide for a specific regional market or to the world market.

2. A measure that requires an investment to use technology to meet the general regulations applicable to health, safety or environment, shall not be considered inconsistent with paragraph 1(f)

3. Paragraph 1 (f) does not apply when a Party authorizes use of an intellectual property right in accordance with article 31 (4) of the TRIPS Agreement or to measures requiring the disclosure of proprietary information that fall within the scope of and are consistent with article 39 of the TRIPS Agreement.

4. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party concerning the establishment, acquisition, expansion, administration, management, operation or sale or other disposition of a covered investment or an investment of an investor of a country that is not a party in its territory, impose or enforce any requirement or enforce a commitment or obligation to train workers in its territory.

5. Neither party may condition the receipt of an advantage or continued receipt of an advantage in connection with the establishment, acquisition, expansion, administration, management, operation and sale or other disposition of an investment in its territory by an investor of a party or of a country that is not a party to comply with any of the following requirements:

(a) To achieve a given level or percentage of domestic content;

(b) To purchase, use or grant preferences to goods produced in its territory or to purchase goods from persons in its territory;

(c) To link, in any way, the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) To restrict the sales in its territory of goods or services that such investment produces or provides, relating in any way those sales to the volume or value of its exports or profits generated in foreign currencies

6. Nothing in paragraph 5 shall be construed as preventing a Party to condition the receipt of an advantage or keep receiving an advantage in connection with an investment in its territory by an investor of a party or of a country that is not a party, to the compliance with a requirement to locate production, provides services, train or employ workers, construct or extend particular facilities or carry out research and development in its territory.

7. Paragraphs 1 and 5 shall not apply to any requirement other than the commitment, obligation or requirements set out in those paragraphs.

8. Provisions of:

(a) Paragraphs (1)(a), (b) and (c), and (5) (a) and (b) do not apply to the qualification requirements for goods or services with regard to advocacy programmes to exports and foreign aid programs.

(b) Paragraph (5)(a) and (b) do not apply to requirements imposed by an importing party relating to the content of goods necessary to qualify for preferential tariffs or fees.

9. Provided that such measures are not applied in an arbitrary or unjustifiable and provided that such measures do not constitute a disguised restriction on international trade or investment, nothing in paragraphs 1 (b), (c) and (f), and 2 (a) and (b) shall be construed to prevent a party to undertake to maintain environmental measures including those of environmental nature:

(i) Necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(ii) Necessary to protect human life or health, animal or plant; or

(iii) Relating to the preservation of non-renewable natural resources whether living or not.

10. Paragraphs 1 (b), (c), (f) and (g), and 2(a) and (b) do not apply to government procurement.

11. This article does not preclude enforcement of any commitment, obligation or requirement between private entities, when a party did not impose or require the commitment, obligation or requirement.

(3) For greater certainty, a condition for the receipt or continued receipt of an advantage under paragraph 5 does not constitute an "obligation or compromise" for the purposes of paragraph 1

(4)The reference to article 31 includes the Footnote 7 of article 31.

## **Article 7. Non-conforming Measures (5)**

1. Articles 2 (National Treatment), 3 (most-favoured-nation treatment), 5 (high executive boards, board of directors and temporary entry) and 6 (performance requirements) shall not apply to:

(a) Any Non-Conforming Measure existing or maintained by a Party in:

(i) The national level of Government as set out by that party in its schedule in Annex I, or

(ii) A local level of the Government (6);

(b) The continuation or prompt renewal of any Non-Conforming Measure referred to in subparagraph (a); or

(c) Any modification of any Non-Conforming Measure referred to in the Non-Conforming Measure subparagraph (a) provided that such modification does not decrease the conformity level of the measure, as it was in force immediately before the amendment with articles 2 (National treatment ); 3 (most-favoured-nation treatment), 5 (senior management and boards of directors and entry and temporary) and 6 (performance requirements).

2. Articles 2 (National Treatment), 3 (most-favoured nation), 5 (senior management and boards and temporary entry) and 6 (performance requirements) shall not apply to any measure that adopts or maintains a Party with respect to the guiding subsectors or activities as set out in its schedule to Annex II.

3. With regard to intellectual property rights, a Party may derogate from articles 2 (National Treatment) and 3 (Most Favoured Nation Treatment) in a manner that is consistent with the WTO Agreement.

4. Neither party may require under any measure adopted after the date of entry into force of this Agreement and covered by its Annex II, to an investor of the other party, by reason of their nationality, to sell or otherwise dispose of an existing investment when it enter into force

5. The provisions of articles 2 (National Treatment), 3 (Most Favoured Nation Treatment) and 5 (senior management, boards of directors and temporary entry) shall not apply to subsidies or grants provided by a party, including loans, guarantees and insurance, supported by the government, or government procurement.

6. Nothing in this Agreement shall be construed to prevent a party including its public entities, provides or lead exclusively in its territory activities or services forming part of a retirement plan or delivery of public social security system established by law. Annex B lays down the understanding of the Parties on certain activities or services referred to in this paragraph.

7. Dissenting listed measures relating to financial subjects are related only to investment in financial services. For greater certainty, this Agreement shall in no way restrict the ability of each party to adopt or maintain measures with respect to the supply of financial services under the modes of supply detailed in subparagraphs 2 (a), (b) and (d) of article 1 of the GATS,

(5) for greater clarity, paragraph 1 and 2 of this article will be interpreted in accordance with article 39 (Andean Community relationship).

(6) for greater clarity, in the case of Colombia the "departamentos" are party of the local level of government; and, in the case of Peru the "regiones" form part of a local level of government.

## **Article 8. General Exceptions**

1. Subject to the requirement that the following measures are not applied in a manner that constitutes arbitrary discrimination between or among unjustifiable investments or investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be interpreted as a means of avoiding a Party to adopt or enforce the necessary measures:

(a) To protect the life or health of humans, animals or plants;

(b) In order to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or

(c) To conserve alive natural resources and non-living exhaustible.

2. Nothing in this Agreement shall be construed as a means of avoiding a party adopting or maintaining reasonable measures for prudential reasons, such as;

(a) The protection of investors, depositors, savers, financial market participants, the insured, applicants or holders of policy, or persons to whom a fiduciary duty is owed by a financial them;

(b) The maintenance of security, soundness, soundness, integrity, or financial responsibility of financial institutions; and

(c) To ensure the integrity and stability of the financial system of a party.

3. Nothing in this Agreement shall apply to the non-discriminatory measures of general application taken by any public entity in pursuit of monetary and credit policies or exchange rate policies. This paragraph shall not affect a Party obligations under article (or performance requirements) or Article 12 (transfers), without prejudice of Annex D (transfers)

4. Nothing in this Agreement shall be construed as a way.

a) To require the parties to facilitate or allow access to any information which disclosure would be contrary to its essential security interests;

b) To avoid actions that it considers necessary for the protection of its essential security interests:

(i) Relating to the traffic of weapons, ammunitions and implements of war and the traffic and transactions of other goods, materials, technology and services undertaken directly or indirectly for the purpose of being supplied to a military establishment or security,

(ii) Issued in time of war or other emergency or in international relations, o

(iii) related to the implementation of national policies or international agreements on the Non-Proliferation of Nuclear Weapons or other nuclear explosive devices; or

c) To block the parties to adopt measures in compliance with their obligations under the Charter of the United Nations for the maintenance of peace and international securities.

5. Nothing in this Agreement shall be construed as requiring a party to facilitate or allow access to information which disclosure will impede the enforcement of the law or would be contrary to the Law of the party that protects the confidential information, personal privacy or the confidentiality of financial affairs and the accounts of the individual customers of financial institutions

6. Any measure adopted by a Party in accordance with a decision, extended or modified by the World Trade Organization pursuant to Articles IX.3 or IX of the WTO Agreement shall also be considered in accordance with this agreement. An investor asserts that act in accordance with section B (investor - State dispute settlement) of this Agreement may not claim that such a conforming measure is contrary to this Agreement.

7. If a Party experiences serious difficulties in their balance of payments and external financial or a threat of these, or has the risk of them, may adopt or keep restrictive measures in relation to the payments and movement of capital, including

those associated with the investment;

8. The Parties shall endeavor to avoid the application of restrictive measures mentioned in paragraph 7.

9. The restrictive measures adopted or maintained under this article shall not be discriminatory and of a limited duration and they should not be beyond what is necessary to remedy the balance of payment's situation and the external financing. They shall be in accordance with the conditions established in the Agreements of the WTO and consistent with the agreement or constitutive convention of the International Monetary Fund, as appropriate

10. The Party that maintained or have adopted restrictive measures, or any modification of these, will report to the other Party without delay and will present, when it is possible, a calendar for their removal.

11. The Party that applies restrictive measures will initiate without delay under the framework of the commission constituted pursuant article 37 (Commission). During these consultations the balance of payments situation of the Party will be evaluated and the restrictions adopted or kept under paragraph 7, taking into account, other factors, such as:

(a) The nature and the scope of the scope of the external financial difficulties and balance of payments;

(b) The external economic and trading environment of the Party subject to consultations;

(c) Other possible alternative corrective measures which may be applied.

12. The conformity of any restrictive measure with paragraphs 9 and 10 will be examined during the consultations. It shall accept all fact findings of statistics related to the statistics or different order that the International Monetary Fund submit on exchange issues, monetary reserves and balance of payments and the conclusions shall be based on the assessment made by the Fund of the external financial situation and the balance of payments of a party subject to consultations

## **Article 9. Measures on Health, Safety and Environmental**

1. The Parties recognize that it is inappropriate to encourage investment by relaxing on health, safety or environmental national measures. Consequently, a Party shall not fail to apply or relax, or shall not offer to waive or relax such measures as an encouragement of the establishment, expansion or retention in its territory of an investment of an investor. If a party considers that the other party has offered such type of incentive, it may request consultations with the other Party in accordance with article 35 (consultations).

2. Nothing in this Agreement shall be construed as preventing a party to adopt or maintain any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken, taking into account environmental concerns.

## **Article 10. Treatment In Case of Dispute**

1. Without prejudice to provisions under article 7.5 (Non-conforming measures), each Party shall accord to investors of the other party and to covered investments, non-discriminatory treatment with respect to any measures it adopts or maintains relating to losses suffered by investments in its territory as a result of armed conflict or civil strifes.

2. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with the provisions of article 2 (National Treatment), with the exception of article 7.5 (Non-conforming measures)

## **Article 11. Expropriation and Compensation (7)**

1. Neither party will nationalize or expropriate a covered investment, either directly or indirectly, through equivalent measures to expropriation or nationalization (expropriation), except:

In the case of Colombia, for public purpose or social interest,

In the case of Peru, by public need or national security,

In accordance with due process of law and article 4 (minimum standard of treatment), in a non-discriminatory manner and on payment of a prompt, effective and adequate compensation.

2. The compensation shall be paid without delay and shall be fully realized and freely transferable. Such compensation will be equivalent to the value of the expropriated investment immediately before the expropriation takes place (date of expropriation), and shall not reflect any change in value occurring because the intended expropriation had become known

earlier.

3. If the fair market value is denominated in a free use of currency, the compensation referred to in paragraph 1 shall be no less than the fair market value on the date of expropriation, plus interest at a reasonable commercially rate for that currency accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not of free use, the compensation referred to in paragraph 1 - converted into the currency of payment at the market rate of exchange prevailing on the date of payment - shall be no less than:

(a) The fair market value on the date of expropriation, in a currency of free use, at the market exchange rate prevailing on that date; plus

(b) Interests at a reasonable commercial rate for this currency of free use, accrued from the date of expropriation until the date of payment.

5. The investor affected shall have a right under the law of the executing Party of the expropriation, to prompt review of their case by a judicial or other independent authority of that Party, and a valuation of its investment in accordance with the principles set out in this article,

6 The provisions of this article shall not apply to the issuance of Compulsory Licenses granted in relation to intellectual property rights, limitation, revocation or creation of Intellectual Property Rights in the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

(7) For further certainty, Article 11.1 will be interpreted according to the provisions in Annex C (Expropriation) related to the explanation of the indirect expropriation.

## **Article 12. Transfers (8)**

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and within its territory. Such transfers include:

(a) Contributions of capital;

(b) Profits, dividends, interests, capital gains, payment of royalties, fees, management technical assistance and other fees; returns and other amounts derived from the investment;

(c) Products derived from the sale or liquidation of all or part of the covered investment;

(d) Payments made under a contract entered into by the investor or investment covered the including a loan agreement;

(e) Payments made pursuant to paragraph 1 of articles 10 (treatment in case of disputes) and 11 (Expropriation and Compensation); and

(f) Payments arising out of the application of section B (investor - State dispute settlement).

2. Each Party shall permit transfers relating to a covered investment to be made in a currency of free use at the rate of exchange prevailing on the market in the date of transfer

3. Without prejudice to paragraphs 1 and 2, a Party may prevent a transfer through an equitable, non-discriminatory and in good faith application to its laws relating to:

(a) Bankruptcy or insolvency or the protection of the rights of creditors;

(b) Issuance, trade or operations of securities and futures, options or derivatives;

(c) Criminal offences;

(d) Financial reports or maintenance of transfer records when necessary to assist law enforcement or with the regulated financial authorities; and

(e) Ensuring compliance with orders or awards rendered in judicial or administrative proceedings.

4. Without prejudice to the prescribed under paragraphs 1 and 2, a Party may prevent or limit transfers by a financial institution to or for the benefit of an affiliate of related to such person or institution through the fair implementation, non-discriminatory and in good faith of measures relating to maintenance of security, integrity, responsibility or financial

soundness of financial institutions.

5. Without prejudice to paragraph 1, a party may restrict transfers in kind in circumstances where it could restrict transfers under the WTO Agreement and as set out in paragraph 3.

(8) For further certainty, Article 12 will be subject to Annex D (Transfers).

### **Article 13. Taxation Measures**

1. Except where explicitly refer, nothing in this Agreement shall apply to Taxation Measures. For greater certainty, nothing in this Agreement shall affect the rights and obligations of any tax punes under the Convention. In the event of any inconsistency between the provisions of this Agreement and any tax convention, the provisions of this Convention applies in the extent of the inconsistency.

2. Nothing in this Agreement shall be construed as requiring a party to furnish or allow access to information the disclosure of which would be contrary to the party law protecting information concerning the taxation affairs of a taxpayer wooden.

3. Article 11 (expropriation and compensation) and article 20 (submission of a claim to arbitration) shall apply to a taxation measure allegedly expropriatory.

### **Article 14. Denial of Benefits**

Subject to Article 15.3 (transparency), a Party could deny the benefits of this Agreement to;

(a) An investor of the other Party that is an enterprise of that Party and the investments of such investor if a person of a country that is not a party owns or controls the enterprise and the latter has no substantial business activities in the territory of the other party; or

(b) An investor of the other Party that is an enterprise of such other and the investments of that investor if the enterprise has no substantial business activities in the territory of any party other than the party , or denying a person of the party denying owns or controls the Enterprise.

### **Article 15. Transparency**

1. Each Party shall, as far as possible, to ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made available in such a manner that allow the interested persons and the other party have knowledge of the same.

2. In the extent of possible, each Party shall:

(a) Pre-publish any measure that it proposes to adopt; and

(b) Provide interested persons and the other party a reasonable opportunity to comment on the proposed measures.

3. At the request of a Party, shall exchange information on the measures of the other party that may have an impact on covered investments.

### **Article 16. Special Formalities and Information Requirements**

1. Nothing in article 2 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities related to a covered investment, such as a requirement that investors be residents of the party or that covered investments be constituted under the laws or regulations of the Party provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and to the investments covered pursuant this Agreement.

2. Notwithstanding articles 2 (National Treatment) and 3 (most-favoured-nation treatment), a Party may require an investor of the other party or its covered investment to provide information concerning that investment or informational solely for statistical purposes. The party shall protect any confidential information that is from that disclosure would prejudice the competitive position of the investor or the investment covered. Nothing in this paragraph shall be construed as an obstacle for a Party to get or disclose information concerning the good faith and equitable application of its law.

### **Article 17. Implementation**



1. The Parties shall consult annually, or otherwise agreed to revise the implementation of this Agreement and consider matters of mutual interest, including the development of procedures that could contribute to greater transparency of measures described in article 7.1 (c) (non-conforming measures).

## **Section B. Investor - State Dispute Settlement**

### **Article 18. Limitation of Claims In Respect of Financial Institutions**

In respect of:

- (a) Financial institutions of a party; and
- (b) Investors of a Party, and investments of investors, in such financial institutions in the territory of the other party,

This section applies only in respect of claims in the other party for breaches of obligations of the article 11 (Expropriation and Compensation), 12 (transfers) and 14 (denial of benefits),

### **Article 19. Consultation and Negotiation**

1 In case of a dispute relating to an investment, opposing parties should first seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding third-party consultations and negotiations. The consultation and negotiation process shall begin with the request which have to be sent to the office designated in Annex F (Deliver of documents of a Party under Section B). Such request shall be sent to the respondent prior notification of intent, referred to in article 20.4 (submission of a claim to arbitration), and shall include the information specified in Article 20.4 (a), (b) and (c) (submission of a claim to arbitration),

2, The consultations shall be carried out for a minimum period of six (6) months and may include face-to-face meetings in the capital of the respondent.

### **Article 20. Submission of a Claim to Arbitration**

1 In respect to administrative acts, for a claim to arbitration under this article, or before a judicial or administrative tribunal, will be essential previously exhaust local remedies when the administrative legislation of a Party so require. The exhaustion shall in no case exceed six (6) months from the date of its initiation by the investor and shall not prevent the investor to request the consultations referred to in article 19 (Consultations and negotiations).

2, In the case that a Party considers that a dispute concerning an investment cannot be resolved by consultation and negotiation:

(a) The applicant, on their own account, may submit a claim to arbitration in which it alleges:

- (i) That the respondent has breached an obligation pursuant to section (a) (substantive obligations;) and
- (ii) That the claimant has incurred losses or damages by virtue of such violation or as a result of this.

(b) The applicant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or is under direct or indirect control, may in accordance with this section, submit a claim alleging

- (i) That the respondent has breached an obligation pursuant to section (a) (substantive obligations); and
- (ii) That the enterprise has incurred losses or damages by virtue of such violation or as a result of the latter.

3 Only the breach of an obligation under section 3 (substantive obligations) may set a claim to arbitration under this Section. An investor may not submit a claim under this section related to the breach of the obligations under Articles 5.3 (senior executives, executive boards and temporary entry), 9 (healthy, safety and environmental measures), 15 (transparency) and 17 (implementation).

4. At least six months before the submission of the reclamation to arbitration under this section, the claimant to the respondent shall deliver a written notice of its claim to submit the dispute to arbitration (Notification of intent). The notification of intent shall specify

(a) The name and address of the claimant and, in the event that the reclamation is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;

- (b) For each redamación, suction (a) substantive obligations which is alleged to have been breached and any other relevant provisions;
- (c) The facts and the law under which each claim is based, including the measures at issue; and
- (d) The relief sought and the approximate amount of damages claimed
5. The applicant must deliver, together with its modification of intent, evidence establishing that it is an investor of the other Party.
6. Provided that six (6) months has elapsed since the events giving rise to the claim and provided that the Claimant has fulfilled with the conditions specified in article 22 (conditions and limitations of the consent of each party), the claimant may submit the claim referred to in paragraph 2:
- (a) In accordance with the ICSID Convention and ICSID Rules of Procedure for Arbitration Proceedings, provided that the respondent as Party of the claimant are parties of the ICSID Convention;
- (b) In accordance with the ICSID Additional Facility Rules DD, provided that the respondent or the party of the claimant are parties of the ICSID Convention;
- (c) In accordance with the UNCITRAL arbitration rules, or
- (d) If the disputed parties agree to an ad hoc arbitral institution or any other arbitral institution or any other arbitration rules.
7. A claim shall be deemed submitted to arbitration under this section when the notice of or request for arbitration (Notice of Arbitration) of the applicant:
- (a) Referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) Referred to in article 2 of Schedule C of the ICSID Additional Facility Rules, is received by the Secretary-General;
- (c) Referred to in article 3 of the Rules of Arbitration of the UNCITRAL, together with the statement of claim referred to in article 18 of the Arbitration Rules of the UNCITRAL, is received by the respondent; or
- (d) Referred to arbitration under any other institution or any arbitration rules selected under paragraph 6 (d) is received by the respondent.
8. The arbitration rules applicable under paragraph 1 that are in effect on the date the claim or claims which have undergone to arbitration under this section, shall govern the arbitration except in the extent this is amended or supplemented by this Agreement.
9. The responsibility among the disputed parties in respect of the assumption expenses, including, where appropriate, the cost pursuant article 25.12 (conduct of the arbitration), derived from their participation in the arbitration shall be established;
- (a) By the arbitral institution to which a claim has been submitted to arbitration in accordance with its rules of procedure; or
- (b) According to the rules of procedure agreed by the disputed parties, when applicable.
10. The Commission established under article 37 (Commission) shall have the power to make rules supplementing the applicable arbitral rules and may amend its own rules of any establishment. Such rules could be binding for a tribunal established under this section and on individual arbitrators serving on such courts,
11. The claimant shall provide with the notice of arbitration referred to in paragraph 7:
- (a) the name of the arbitrator appointed by the respondent; or
- (b) The written consent of the claimant for the Secretary-General to appoint that arbitrator.

## **Article 21. Consent to Arbitration of Each Party**

1. Each party consents to submit a claim to arbitration under this section in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this section shall comply with the requirements set out in:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the rules of the ICSID Complementary Mechanism which require written consent of the Parties to the dispute;

(b) Article II of the New York Convention requests a "written agreement"; and

(c) Article I of the Inter-American Convention which requires an "agreement".

## **Article 22. Conditions and Limitations on Consent of Each Party**

1. No claim may be submitted to arbitration under this section if more than thirty nine months (39) has elapsed from the date on which the claimant knew or should have had knowledge of the alleged breach under article 20.2 (submission of a claim to arbitration) and knowledge that the claimant, by the claims filed under article 20.2(a) (submission of a claim to arbitration) or the enterprise (for claims brought under article 20.2(b) (submission of a claim to arbitration)), has suffered losses or damages.

2. No claim may be submitted to arbitration under this section unless:

(a) The claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) The notice of arbitration referred to in article 20.7 (submission of a claim to arbitration) is annexed,

(i) For claims submitted to arbitration under article 20.2 (a) (Submission of a claim to arbitration), of the claimant written waiver; and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly written waiver of the claimant and the enterprise, written waivers

(ii) For reclamations submitted to arbitration under article 20.2 (b) (submission of a claim to arbitration), written waivers of claimant and the enterprise;

Any right to initiate before any tribunal or administrative court under the law of any Party, or any other dispute settlement procedures proceedings with respect to any measure alleged to be a breach referred to in article 20 (submission of a claim to arbitration).

3. In the case of a claim relating to a taxation measure in accordance with article 13.3 (Tax Measures), no investor may invoke article 11 (expropriation and indemnisation) as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke article 11 (expropriation and compensation) with respect to a taxation measure must first refer the matter to the competent authorities of the Parties(9) at the time of delivery the notice of intent under article 20 (submission of a claim to arbitration), so that such authorities determine whether the taxation measure is an expropriation. The authorities of the two Parties shall, as far as possible, be available, if within six (6) months after the referral of the matter to the competent authorities of the parties do not reach an agreement as to whether the measure is not an expropriation, the investor may proceed with the procedure under article 20 (submission of a claim to arbitration).

4. Without prejudice to paragraph 2 (b), the claimant, who started reclamations under article 20.2 (Submission of a claim to arbitration), and the claimant or the enterprise for claims brought under article 20.2 (b) (submission to arbitration of a reclamation), may initiate or continue an interim measure, that does not involve the payment of monetary damages before a judicial or administrative tribunal the respondent, provided that such action is filed with the sole purpose of preserving its rights and interests of the claimant or the enterprise while the proceedings of the arbitration continue(10).

5. The consent and the waiver required by this article shall be in the format was foiled in Annex E (standard format consent and waiver under Article 22), shall be delivered to the respondent and shall be included in the notice of arbitration.

6. A waiver from the enterprise under paragraph 2 (bxi) or 2 (b) (ii) shall not be required only when a claim that the respondent deprived the applicant of control of the Enterprise

7. No claim may be submitted to arbitration under article 20.2 (a) (submission of a claim to arbitration) or article 20.2 (b) (submission of a claim to arbitration) if the applicant has previously submitted the same alleged breach before a judicial or administrative tribunal of the defendant, or to any other binding dispute settlement procedure.

8. For greater certainty, if the applicant chooses to submit a claim described under this section to a court or administrative tribunal of the defendant or any other binding dispute settlement mechanism, that election shall be definitive and the claimant may not submit the same claim under this section.

9. A breach of any of the conditions precedent described in paragraphs 1 to 8 shall squash the consent given by the parties in article 21 (consent of each party to arbitration).

(9) For the case of Colombia, the Department of taxes and tariffs - DIAN - or its successor. For the case of Peru, the Ministry of Finance and Economy - MEF- or its successor.

(10) In the provisional measure, including the measures to preserve evidence and property pending the processing of the claim submitted to arbitration, an administrative court is the respondent to any dispute referred to arbitration under section B (Settlement of Investor - State disputes), will apply the legislation of that Party.

## **Article 23. Procedure for Prudential Measures**

1. Where an investor submits a claim to arbitration under this section and the opposing side invokes as defence article 8.2 or 8.3 (general exceptions) or article 12.4 (transfers) and Annex D (transfers), the Tribunal established pursuant to article 20.2 (a) (submission of a claim to arbitration) or article 20.2 (b) (submission of a claim to arbitration) shall ask, at the request of that Party, a report in writing from the parties on the issue of whether the provisions indicated is a valid defence to the claim of the investor and the extent. The Tribunal may not proceed until the receipt of a report referred to in this paragraph, except as provided in paragraph 3.

2. Pursuant to a request received in accordance with paragraph 1, the Parties shall proceed under section C (Settlement of State - State Disputes) to prepare a written report, either on the basis of the Agreement under the consultations, or by means of an arbitral tribunal. The consultations shall be held between the authorities of financial services of the Parties, the report shall be delivered to the Tribunal and shall be binding on the Tribunal.

3. If within seventy (70) days of the request, the Tribunal has not received the report and none of the parties has requested the establishment of a panel in accordance with article 34 (settlement of disputes between the parties), the tribunal may proceed to decide the matter.

## **Article 24. Selection of Arbitrators**

1. Unless the parties agree otherwise, the Tribunal shall comprise three arbitrators: one arbitrator appointed by each of the contending parties and the third, who shall be the President, shall be appointed by agreement of the contending parties.

2. The Secretary-General shall serve as appointing authority in the arbitration procedures under this section.

3. The arbitrators shall;

(a) Have experience or expertise in International Law, International Investment Rules or in the settlement of disputes arising under international investment agreements;

(b) Not rely on any of the parties or of the applicant, not being involved or receive instructions from either of them;

(c) Comply with any a code of conduct for dispute settlement as agreed by the Commission.

4. When a different Tribunal established under article 31 (Consolidation) not be integrated in a period of ninety (90) days from the date that the claim is submitted to arbitration under this section, the Secretary-General, upon request of either party, shall, after consultation designate the arbitrator or arbitrators not yet appointed. Unless otherwise agreed before, the president of the Tribunal shall not be a national of any of the Parties.

5. For the purposes of article 39 of the ICSID Convention and article 7 of part C of the rules of the additional facility of ICSID, and without prejudice to an arbitrator to objection on grounds that are not nationals:

(a) The respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or with the rules of the additional facility of the ICSID;

(b) The claimant referred to article 20.2 (a) (submission of a arbitration request) may submit a claim to arbitration under this section, or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only on condition that the claimant's consent in writing to the appointment of each member of the Tribunal; and

(c) The claimant referred to in article 20.2(a) (Submission of a claim to arbitration) may submit a claim to arbitration under this section, or continue a claim under the ICSID Convention or ICSID Additional Facility Rules only under the condition that the claimant and the company manifest its consent in writing to the appointment of each member of the Tribunal.

6. The parties may agree on the fees of arbitrators. If the disputed parties do not reach an agreement on the fees of the arbitros before the constitution of the tribunal shall apply the fees established by the ICSID.

7. If a party considers that a dispute involves measures adopted or maintained by a Party relating to financial institutions of

the other party of investments or investors of the other party in financial institutions, then:

(a) Where the contending parties agree, the arbitrators shall, additionally to the criteria set out in paragraph 3, have expertise or experience in financial system, which may include the regulation of financial institutions; or

(b) Where the parties do not agree,

(i) Each Party shall select the arbitrators who meet the qualifications set out in subparagraph (a), and

(ii) If the respondent invokes articles 8.2 or 8.3 (general exceptions) or article 12.4 (transfers) and Annex D (transfers), the President of the Court shall meet the qualifications set out in subparagraph (a).

## **Article 25. Implementation of the Arbitration**

1. The contending parties may agree on the legal place of any arbitration under the applicable arbitral rules under article 20.6 (b), (c) or (d) (submission of a claim to arbitration), in the absence of agreement between the contending parties, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the Convention of Nueva York.

2. Any non-contending party (*amicus curiae*) wishes to make written submissions to a tribunal (the "applicant") may request permission to the tribunal, submitted it in accordance with Annex G (submissions by Parties which are not in dispute). It may attach the submission to the request.

3 The requesting party may refer the request for permission to make the submission of a Party not litigants, together with the submission to all the non-contending parties and the Tribunal.

4. The Tribunal may establish an appropriate date for opposing parties to comment on the application to submit a presentation of a non-contending party.

5. In determining whether to grant permission to formulate a presentation by a non-contending Party, the Tribunal shall consider, *inter alia*, the extent to which:

(a) The presentation of a non-contending party will assist the Tribunal in the determination of a law or a factual question relating to arbitration providing a perspective, particular knowledge and understanding that is different from the contending parties;

(b) The presentation of a non-contending Party would cover a matter within the scope of the dispute;

(c) The non-contending party would have a significant interest in the arbitration; and

(d) There would be a public interest in the subject-matter of the arbitration.

6. The tribunal shall ensure that:

(a) Any submission of a non-contending Party would not disrupt the proceedings; and

(b) None contending party is unduly burdened or unfairly prejudiced by such submissions.

7. The Tribunal shall decide whether gives permission to make a submission to a non-contending party. If such permission for the presentation of a non-contending Party is granted, the tribunal shall determine the appropriate date for the opposing parties to respond in writing to the submission of the Party not litigants. To this date the non-contending party could observe any issue of interpretation of this Agreement in the non-contending party's submission.

8. The Tribunal that grants leave to the submission of a Party does not require litigants refer to the submission to the arbitration at any time, either non-contending party that made the submission is not entitled to make further submissions in the arbitration.

9. The access to documents and hearings by non-contending parties who submit applications under this procedure shall be governed by the provisions contained in article 26 (transparency in the arbitral proceedings).

10. Without prejudice to the discretion of the Tribunal to know other objections as a preliminary issues, such as an objection that the dispute is not within the competence of the Tribunal, a tribunal shall decide any question as a preliminary objection by the respondent that, as a matter of law, a claim submitted is not a claim for which it may make a favourable award to the applicant in accordance with article 31 (awards).

(a) Such objection shall be submitted to the Tribunal as soon as possible after the Constitution of the Tribunal, and in no event later than the date fixed by the Tribunal for which the respondent will submit its reply to the notice of arbitration (or in the case of an amendment to the notice of arbitration referred to in article 20.7 (submission of a claim to arbitration), the Tribunal fixes the date for the respondent to submit its response to the amendment).

(b) Upon receipt of an objection in accordance with this paragraph, the Tribunal shall suspend any proceedings on the merits, shall establish a schedule for the objection consistent with any schedule it has established for the consideration of any preliminary objection and it will issue a decision or award on the objection, stating the grounds thereof.

(c) On deciding an objection under this paragraph, the tribunal assume certain factual arguments submitted by the claimant in support of any claim in the notice of arbitration (or any amendment thereof) and in disputes brought under the UNCITRAL Arbitration Rules of the statement of claim referred to in article 18 of the UNCITRAL Arbitration Rules, the Tribunal may also consider any other relevant fact that is not under dispute.

(d) The respondent does not waive to the right to make any objection with respect to the competition or any argument merits merely because it has or has not formulated an objection under this paragraph or make use of the expedited procedure set in paragraph 11.

11. In the event that the respondent so requests, within forty five (45) days following the date of the Constitution of the Tribunal, the Tribunal shall decide on an expedited basis an objection under paragraph 10 and any objection that the dispute is not within the competence of the Tribunal. The Tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds thereof, not later than one hundred and fifty (150) days after the date of the request. However, if a opposing side requests a hearing, the Tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, the Tribunal can demonstrate a special reason, delay issuing its decision or award by an additional brief period, which may not exceed thirty (30) days.

12. If the Tribunal decides on the objection of the respondent in accordance with paragraphs 10 or 11 may, if warranted, grant the opposing side winning reasonable costs and attorneys fees incurred in submitting the objection or opposing to it. In determining whether such an award is justified, the Tribunal shall consider whether the claim of the claimant or the objection of the respondent were irrelevant, and shall accord to the contending parties a reasonable opportunity to present their comments.

13. A tribunal may order an interim measure of protection to preserve the rights of a combatant or with the aim of ensuring the full exercise of the competence of the Tribunal, including an order to preserve evidence in the possession or control of the combatant party or to protect the Tribunal jurisdiction. The Tribunal may not order the foreclosure or prevent the application of a measure that is deemed to be a breach referred to in article 20 (the submission of a claim to arbitration).

14. (a) In any arbitration conducted pursuant to this section; the request of any of the parties, the court before making a decision or award on liability, will transmit its proposed decision or award to the disputed parties and non-contending Party . Within sixty (60) days after communicated the proposed decision or award, the contending parties may submit written comments to the Tribunal concerning any aspect of its proposed decision or award. The Tribunal shall consider any such comments and issue its decision or award later than forty-five (45) days following the expiry of the period of sixty (60) days to submit comments.

(b) Subparagraph (a) shall not be applied in any arbitration in which an appeal resource is available under paragraph 15.

15. If the parties shall enter into force on a separate multilateral treaty that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall endeavour to reach an agreement that would make such appellate body review awards rendered under article 31 (awards) in arbitrations commenced after the Multilateral Agreement enters into force between the parties;

## **Article 26. Transparency of Arbitral Proceedings**

1. The respondent shall deliver to the non-disputing party a copy of the notice of intent to submit a claim to arbitration and other documents such as the notice of arbitration, not more later than thirty (30) days after the date that such documents have been delivered to the respondent.

2. The non-disputing Party shall be entitled to receive from the respondent a copy of:

(a) The evidence that has been submitted to the Tribunal;

(b) Copies of all pleadings filed in the arbitration; and

(c) The written argument of the parties involved.

3. The non-disputing Party shall have the right to attend any hearings held under this section, regardless of whether it makes a submission to the Tribunal or not.

4. Subject to paragraphs 6 and 8, the respondent after receiving the following documents, shall promptly notify the non-disputing Party and make them available to the public:

(a) The notice of intent referred to in article 20.4 (Submission of a reclamation to arbitration) (11);

b) The notice of arbitration referred to in article 20.7 (submission of a claim to arbitration);

(c) The pleadings, written submissions and explanatory notes to the Tribunal submitted by a contending Party; any written communication submitted in accordance with article 25.2 and 3 (conduct of the arbitration) and article 30 (Consolidation);

(d) The minutes or transcripts of the hearings of the Tribunal, when available; and

(e) Orders, awards and decisions of the Tribunal

5. The Tribunal shall conduct hearings open to the public and shall, in consultation with the relevant parties, the pending logistic arrangements. However, any Party that intends to use confidential information in a hearing shall so inform to the tribunal .The tribunal shall make appropriate arrangements to protect the information from disclosure.

6. Nothing in this section requires a respondent to provide protected information or to allow the access to information that could be retained in accordance with the following paragraph.

7. Any confidential information that is submitted to the Tribunal shall be protected from disclosure in accordance with the following procedures:

(a) Under subparagraph (d), neither warring parties; or the court will disclose to any non-contending party or the public any confidential information, when the opposing side that provided the information clearly designates it in accordance with the subparagraph (b);

(b) Any contending party requests that certain information is designated as confidential information will do it when it submits it to the Tribunal;

(c) An opposing side shall, at the same time that it submits a document containing information claimed as confidential information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-contending parties and shall be made public in accordance with paragraph 1; and

(d) The Tribunal shall decide any objection regarding the qualification of the information as confidential information. If the Tribunal determines that such information was not properly designated the opposing side submitted the information may (i) withdraw all or part of the submission containing such information; or (ii) agree to resubmit with complete and redacted documents corrected designations in accordance with the determination of the Tribunal and subparagraph (c). In any case, the other contending party shall, where necessary, resubmit complete and redacted documents, which shall omit the information withdrawn in accordance with the (i) by the disputing Party that submitted first the information or redesign the information in accordance with the designation made under (ii) of the contending Party that first submitted the information.

8. Nothing in this section allows the respondent to deny public access to the information that, in accordance with its legislation, should be disclosed,

(11) The respondent may disclose to the public the notice of intent in conjunction with the notice of arbitration in order to facilitate the consultations of the contending parties with a view to resolve the dispute so friendly.

## **Article 27. Applicable Law**

1. Subject to paragraph 2, when a claim is submitted under article 20.2 (a) (submission of a claim to arbitration) or article 20.2 (b) (Submission of a claim to arbitration), the Tribunal shall decide the issues in dispute in accordance with this Agreement and the rules of international law; and, where applicable, the national law of the Party in whose territory the investment was made, including the rules relating to conflicts of law

2. A decision of the Commission declaring its interpretation of a provision of this Agreement under article 37 (Committee), shall be compulsory for a Tribunal established under this section and any decision or award issued by a tribunal must be consistent with that decision / interpretation.

## **Article 28. Interpretation of Annexes**

1. When the respondent raises as a defence that the measure is alleged to be a breach within the scope of Annex I or Annex II, at the request of the defendant, the Tribunal shall request the interpretation of the Commission on the issue. Within sixty (60) days after the delivery of the request, the Commission shall submit in writing to any decision declaring its interpretation pursuant article 37 (Committee).

2. In accordance with article 27.2 (Applicable law), the decision issued by the Commission under paragraph 1 shall be binding on the tribunal and any decision or award issued by the Tribunal must be consistent with that decision. If the Commission fails to issue such a decision within sixty (60) days, the Tribunal shall decide on the matter.

## **Article 29. Expert Reports**

Without prejudice to the designation of other kinds of experts where this is authorized by the applicable arbitration rules, the Tribunal, at the request of a contending party or unless the contending parties do not agree on it, on its own initiative, may appoint one or more experts to inform in writing on any factual issue concerning environmental affairs, health, safety or other scientific matters raised by a Party in a proceeding litigants, upon the terms and conditions to be agreed between the contending parties.

## **Article 30. Accumulation of Procedures**

1. In cases in which they have been submitted to arbitration two or more claims separately, pursuant to article 20.2 (submission of a claim to arbitration), and the claims arising within the question of law or fact and arise out of the same events or circumstances litigants, any Party may seek a consolidation order in accordance with the agreement of all the contending parties regarding to which the order of accumulation is sought or in accordance with the terms from paragraphs 2 to 10.

2. The opposing side seeking a consolidation order under this article shall deliver a written request to the Secretary-General and to all parties involved in respect of which the accumulation order is sought and shall specify in the request:

- (a) The names and addresses of all the contending parties against which the order of accumulation is sought;
- (b) The nature of the order of accumulation sought; and
- (c) The rationale underlying the request;

3. Unless the Secretary-General determines within thirty (30) days after receiving a request under paragraph 2 that it is manifestly unfounded, there shall be established a tribunal under this article.

4. Unless all parties involved in respect of which the order of accumulation is sought agree otherwise, the Tribunal established pursuant to this article shall be composed of three arbitrators.

- (a) One arbitrator appointed by agreement of the claimants;
- (b) One arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General who shall not be a national of any of the Parties.

5. If within sixty (60) days of the receipt by the Secretary-General of the request made under paragraph 2, the respondent or the co-claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, at the request of any of the disputed parties in respect of the accumulation, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the respondent and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a party of the claimants.

6. In the cases that the Tribunal is established under this article confirms that have been submitted to arbitration under two or more claims in accordance with article 20.2 (submission of a claim to arbitration), which pose a question of fact or law in common and which will emerge under the same facts or circumstances, the Tribunal may in the interest of fair and efficient resolution of the claims and after hearing the parties, by order:

- (a) Recognise the jurisdiction to hear and determine together on all or a party of one of the claims;
- (b) Recognise the jurisdiction and know and establish one or more claims, which determination considers that would assist in the resolution of the others; or



(c) To instruct a tribunal established under article 24 (selection of arbitrators) to assume jurisdiction to hear and determine jointly, on all or part of the claims, provided that

(i) The Tribunal, at the request of any claimant which has not acted before as contending party, recover itself with its original members, except that the arbitrator of the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) That Tribunal shall decide to repeat any prior hearing.

7. When a tribunal has been established under this article, an applicant who has submitted a claim to arbitration under article at 20.2 (submission of a request of arbitration), and whose name is not mentioned in a request made under paragraph 2, may make a written request to the Tribunal that it be included in any order made under paragraph 6 and in the request shall specify:

(a) The name and address of the claimant;

(b) The nature of the order sought; and

(c) The reasons for the request.

Claimant shall deliver a copy of its request to the Secretary-General and the contending parties contained in the request pursuant to paragraph 2.

8. A tribunal established under this article shall conduct its proceedings in accordance with the UNCITRAL arbitration rules except as modified by this section.

9. A tribunal established under article 24 (selection of arbitrators) shall have jurisdiction to decide a complaint, or a part of a claim, over which has recognized jurisdiction a tribunal established or instructed under this article.

10. At the request of a party, a tribunal established in accordance with this article may, pending its decision under paragraph 6 provide that the proceedings of a tribunal established under article 24 (selection of arbitrators) be postponed, unless the latter Tribunal already has adjourned its procedures.

## **Article 31. Awards**

1. Where a tribunal issuing a final award unfavourable to the defendant, the Tribunal may award separately or in combination, only:

(a) Monetary damages and interest as appropriate; and

(b) Restitution of property, in which case the award will provide that the respondent may pay monetary damages plus appropriate interest in lieu of restitution.

The Tribunal may also award costs and attorney fees in accordance with this section and the applicable arbitration rules

2. Subject to paragraph 1, when a claim is submitted to arbitration under article 20.2 (b) (Submission of a claim to arbitration):

(a) The award for the restitution of property that shall provide restitution be made to the enterprise;

(b) The award granted monetary damages and interest, shall provide that the sum be paid to the enterprise; and

(c) The award shall provide that it is made without prejudice to any right that any person has in the relief under the applicable domestic law.

3. A tribunal is not authorized to award punitive damages with.

4. For greater certainty, a Tribunal shall not be competent to rule on the Legality of the measure in respect of the domestic law.

## **Article 32. Finality and Enforcement of an Award**

1. For greater certainty, the award made by a tribunal shall have no compulsory force except the fighting sections and only in respect of the particular case,

2. Subject to paragraph 3 and the review procedure applicable for an interim award, the opposing side abide by and comply

with an award without delay.

3. The opposing side may not seek enforcement of a final award until:

(a) In the case of a final award made in accordance with the ICSID Convention

(i) Within one hundred and twenty (120) days from the date the award was rendered and no contending party has requested revision or annulment of the same; or

(ii) Have concluded the revision or annulment proceedings; and

(b) In the case of a final award made under the ICSID Additional Facility Rules or the Arbitration Rules or the Rules selected in accordance with article 20.6 (d) (submission of a claim to arbitration),

(i) Has elapsed (90) days from the date the award was rendered and no contending party has commenced a proceeding to set aside or revised, annul it; or

(ii) A court has dismissed or allowed an application for revision or annulment of the award, revocation and this decision cannot be appealed.

4. Each Party shall provide for the enforcement of an award in its territory.

5. When the respondent fails to abide by or comply with a final award at the delivery of a request by the non-contending Party a panel shall be established under section C (State - State Settlement of Disputes ). The applicant may seek in such proceedings:

(a) A determination that the failure or refusal of the terms of the final award is inconsistent with the obligations of this Agreement; and

(b) A recommendation with the message that the respondent abide by or comply with the final award.

6. A contending party may resort to the execution of an arbitral award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether or not the procedures referred to in paragraph 5 have commenced.

7. For the purposes of article I of the New York Convention and article I of the Inter-American Convention shall be considered a claim that is submitted to arbitration under this section arises out of a relationship or commercial transaction.

### **Article 33. Provision of Documents**

The delivery of the notice and other documents to a party shall be done in the place designated by it in Annex A to F (delivery of documents of a party under section B).

## **Section C. State - State Dispute Settlement**

### **Article 34. Disputes between the Parties**

1. Either party may request consultations on the interpretation or application of this Agreement. The other party shall consider the request. Any dispute between the parties concerning the interpretation or the application of this agreement should, if possible, be settled through consultations.

2. If a dispute cannot be settled through consultations, shall, upon request of either of the parties, be submitted to an arbitral panel so it will decide on it.

3. An arbitral panel shall be constituted for each dispute within two (2) months after receipt of the request for arbitration through diplomatic channels, each party shall appoint one member of the arbitral Tribunal. Those two Members shall designate a national of a third State who, at be adopted by the two parties shall be appointed Chairman of the arbitral Tribunal. The chairman shall be appointed within two (2) months from the date of appointment of the other two members of the arbitral tribunal.

4. If within the periods specified in paragraph 3 of this article have not been made the necessary appointments, either Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of a given Party or is prevented from exercising the function said, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of a party or is prevented

from exercising the function, the said member of the International court of Justice who continues in seniority, who is not a national of any of the parties, shall be invited to make the necessary appointments.

5, The arbitrators:

(a) They shall have the necessary expertise or experience in International Law, rules of international investment or international trade, or the resolution of disputes arising under international investment agreements or international trade.

(b) Be independent and not be affiliated with or receive instructions; of the parties; and

(c) Comply with the Code of Conduct for dispute settlement, as may be decided by the Commission.

6. Where a party requests that a dispute involves measures relating to financial institutions, or to investors or investments of those investors in financial institutions, then,

(a) When the parties agree, the arbitrators shall in addition to the criteria set out in paragraph 5 shall have expertise or experience in financial services, law or practice which may include the regulation of financial institutions; or

(b) Where the parties do not agree,

(i) Each contending party may select arbitrators who have the profile of the qualifications set out in subparagraph (a), and

(ii) if the respondent invokes articles 8.2 (general exceptions) or article 12.4 (transfers) and Annex D (transfers), the President of the Court shall meet the qualifications set out in subparagraph (a),

7. The arbitral panel shall determine its own procedure. The arbitral panel shall reach its decision by a majority of votes. such decision shall be binding on both parties unless otherwise agreed, the decision of the Arbitral Tribunal shall be issued within six months (6) following the appointment of the President in agreement with paragraphs (3) and (4) of this article.

8. The Parties shall be borne in equal parts the expenses of the arbitrators, which shall not exceed the rights, fees and charges prevailing ICSID, as well as the other costs of the proceedings, unless they agree otherwise, the arbitral tribunal in its decision, however, may direct that a higher proportion of the costs be covered by one of the two parties, and this decision shall be binding on both parties.

9. The parties, within sixty (60) days after the decision of panel shall reach agreement on the manner in which to resolve their controversy. Such agreement normally implement the panel decision. If the parties do not reach an agreement, the Party that submits the dispute shall be entitled to compensation or to suspend benefits equivalent to the use of those granted by the Panel.

## **Article 35. Consultations**

A Party may request, by writing, a consultation with the other party regarding proposed or actual measures or related to some other issue that it considers it may have an effect in the implementation of this Agreement.

## **Article 36. Observance of the Obligations**

The parties shall ensure that all measures required to give effect to the provisions of this Agreement are taken; including its observance.

## **Article 37. Committee**

1. Through this agreement the parties agree to establish a commission which includes representatives

On behalf of Colombia, the Ministry of Commerce, Industry and Turism, or its successor; and

On behalf of Peru, the Ministry of Finance or its successor

2. The Commission shall:

(a) Overseeing the implementation of this Agreement;

(b) Resolve disputes that may arise regarding its interpretation or application:

(c) Consider any other matter that may have an impact on the implementation of this Agreement; and

(d) Adopt a code of conduct for arbitrators.

3. The Commission may take any other action in the exercise of its functions as agreed by the parties, including the amendment of the code of conduct for arbitrators.

4. The Commission shall establish its rules and procedures.

## **Article 38. Amendments**

1. The parties agree to convey any amendment to this Agreement.

2. When so agreed and approved according to the constitutional requirements of each Party; an amendment shall constitute an integral party of this Agreement and shall enter into force on the date on which the parties so agree.

## **Article 39. The Andean Community**

The Parties confirm that nothing in this Agreement shall mean a limitation of commitments agreed by both in the framework of the Andean Community. In case of any inconsistency that emerges pursuant to this Agreement and the commitments undertaken by the parties within the framework of the Andean Community, these last shall prevail provided that they provide a greater scope of liberalization than those agreed in this Agreement.

## **Article 40. Termination of the Bilateral Investment Treaty**

1. Without prejudice to paragraph 2, the Parties agree that the "Agreement between the Government of the Republic of Peru and the Government of the Republic of Colombia on reciprocal promotion and protection of investments" and its Protocols, hereinafter referred to as the "APPRI", signed at Lima, on April 26th, 1994, shall cease to apply at the date of entry into Force of this Agreement, as well as all the rights and obligations derived of the APPRI.

2. Any investment made in accordance with the APPRI, in a period prior to the Entry into force shall be governed by the provisions of this Agreement.

3. Notwithstanding the provisions of paragraph 2, an investor may only submit a claim to arbitration by acts, facts or situations caused during the term of the APPRI, in accordance with the rules and procedures laid down in article 12, and provided that has not elapsed more than three (3) years from the date of entry into force of this Agreement.

## **Article 41. Application and Entry Into Force**

1. Annexes and the footnotes of the present Agreement, for all purposes, shall form an integral part thereof.

2. Each Party shall notify the other in writing of the completion of the procedures required in its territory for the Entry into Force of this Agreement. This Agreement shall enter into force on ten (10) days after the date of the last two notifications.

3. This Agreement shall remain in force unless a Party notifies the other in bearing writing of its intention to terminate it. The termination of this agreement will be effective one (1) year after the Notice of termination has been received by the other party. With regard to the covered investments made prior to the date when the termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a further period of fifteen (15) years.

## **Section E. Definitions**

### **Article 42. Definitions**

For the purposes of this Agreement:

ADPIC Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights related to Commerce part of the WTO agreement;

WTO Agreement means the Marrakech Agreement establishing the World Trade Organization on April 15th, 1994;

AGCS means the General Agreement on Trade in Services as part of the WTO Agreement,

ICSID means the International Centre for Settlement of Investment Disputes;

The Andean Community means the Cartagena Agreement dated 26 May 1969 laying down the Andean Community;

The New York Convention means to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards held at New York on June 10th, 1958;

Inter-American Convention means the Inter American Convention on International Arbitration held in Panama; on January 30th, 1975;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on March 18th, 1965;

Tax Convention means a convention for the avoidance of double taxation or other international agreement on taxation;

Respondent means the party that is a party to a dispute concerning an investment;

Claimant means an investor of one Party which is a party to an investment dispute with the other party;

Enterprise means any entity constituted or organized under the applicable statutory, whether or not for profit and whether private or government owned, including companies, trusts, interests, sole proprietor companies, joint ventures and other forms of associations and a branch of an enterprise;

Enterprise of a party constituted means an enterprise organized or under the law of a Party and a branch located in the territory of a party and carrying out business activities there;

Public entity means a central bank or a monetary authority of a party or any financial institution owned or controlled by a party;

Confidential information means:

(a) Confidential business information; and

(b) Privileged information or otherwise protected from disclosure, according to the Law of the Party;

Financial institution means any financial intermediary or other enterprise that is authorized to do business or supervised and regulated as a financial institution under the law of a Party in whose territory it is located;

Investment means any asset owned or controlled by the investor itself, directly or indirectly, that has the characteristics of an investment, including characteristics such as the commitment of capital or other resources, the expectation of gain or profit or the assumption of risk. An investment may take forms that include:

(a) An enterprise;

(b) Actions, capital and other forms of equity participation in an enterprise;

(c) Bonds, obligations and other debt instruments and loans<sup>(12)</sup>;

(i) A loan granted to a financial institution or a debt instrument issued by a financial institution is an investment only where the loan or debt instrument is treated as a capital regulatory by the Party in whose territory the financial institution is located; and

(ii) A loan granted by a financial institution or a debt instrument owned by a financial institution, other than a loan to a financial institution or a debt instrument of a financial institution referred to in subparagraph (i), is not an investment;

(d) Futures, options and other derivatives;

(e) Turnkey, construction, management, production of participation in the granting of earnings and other similar contracts;

(f) Intellectual Property Rights;

(g) Authorizations, licences, permits and similar rights conferred pursuant to domestic law<sup>(13)</sup>; and

(h) Other property rights tangible or intangible, movable or real estate and the related rights, such as leases, mortgages, liens and pledges guarantees;

Investment does not include:

(a) An order or judgment in judicial or administrative proceedings.

(b) Loans granted from one party to the other party.

(c) Claims to money arising solely from:

(i) Commercial contracts for the sale of goods or services by a national or enterprise in the territory of a party to a national or enterprise in the Territory of the other party; or

(ii) Loans in connection with a commercial transaction.

(d) Public debt operations and public institutions debt.

A change in the manner in which assets have been invested or reinvested does not affect their status of investment under this agreement, provided that such change falls within the definition of this article and done according to the legislation of the Party in whose territory the investment has been admitted.

A covered investment means, with respect to a party, an investment in its territory of an investor of the other party existing on the date of Entry into Force of this Agreement, as well as to investments made or acquired or expanded thereafter;

An investor of a country that is not a party means with respect to a Party that seeks to perform an investor through concrete actions (14), that is making or has made an investment in the territory of that Party that is not an investor of that party, that is not an investor of one Party;

An investor of a Party means a Party or a state enterprise thereof, or national or company that seeks to perform through concrete actions(15), is making, or has made an investment in the territory of the other party; whereas, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the state of his or her dominant and effective nationality;

Currency means "currency of free use" as determined by the International Monetary Fund under its Articles of Agreement;

Monopoly means an entity, including a consortium or government agency, which in the relevant market of the territory of a Party is designated as the sole provider or purchaser of a good or service, but it does not include an entity that has been granted an intellectual property right only under that provision;

National means:

For Colombia, Colombians by birth or by naturalization according to Article 96 of the Political Constitution of Colombia.

For Peru, the natural person who has the nationality of Peru in accordance with Articles 52 and 55 of the Political Constitution of Peru.

A non-contenting party means a Party that is not a party in a dispute under section B (investor State dispute settlement);

A non-contenting party means a person of a party or a person of a country that is not a party with a significant presence in the territory of a Party that is not a party to an investment dispute under section B (Investor - State dispute settlement);

Litigant party means either the claimant or the respondent;

Litigant parties means the claimant and the respondent;

UNCITRAL arbitration rules means the Arbitration Rules of the United Nations International Law Commission on International Trade Law adopted by the United Nations General Assembly on 15 December 1976;

The ICSID Additional Facility Rules means the Additional Facility Rules for the administration of proceedings by the ICSID secretariat;

Secretary-General means the Secretary-General of ICSID; and

Financial service means any service of a financial nature. Financial services include all insurance and insurance-related and all the banking services and other financial services (excluding insurance). The Financial Services include the following activities:

Insurance and insurance-related services

(i) Direct insurance (including co-insurance):

(A) Life insurance;

(B)

Non-life insurances.

(ii) Reinsurance and retrocession

(iii) Insurance intermediation activities, such as brokerage and insurance agency.

(iv) Auxiliary services to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking services and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds from the public.

(vi) Loans of any kind, including personal loans, mortgages, factoring and financing of commercial transactions.

(vii) Leasing services.

(viii) All payment and money transmission services, including credit cards, similar checks and bank drafts.

(ix) Guarantees and commitments.

(x) Commercial exchange by own account or for account of customers, whether on a stock market, over the counter market or otherwise, the following:

(A) Money market instruments (including checks, bills, certificates of deposit);

(B) Foreign currency;

(C) Derivative products, including but not exclusively, future and options;

(D) Monetary and foreign market change instruments, e.g. swaps and forward rate agreements;

(E) Transferable values; and

(F) Other instruments and trading financial assets, including silver.

(xi) Participation in emissions of any type of securities, including the subscription and the positioning as agents (whether publicly or privately) and the supply of services related to such emissions,

(xii) Brokerage of exchange.

(xiii) Management of assets; such as cash or portfolio, management of collective investment in all its forms, management of pension services, custody, deposit and trust services.

(xiv) Clearing and settlement services for assets, financial assets, including values, derivative products, and other negotiable instruments;

(xv) supply and transfer of financial information and process of financial data and logistic support related, by suppliers of other financial services.

(xvi) Advisory services and other financial services related to any of the activities mentioned from subparagraphs (v) to (xv), including reports and credit analysis, studies and advices on credits, studies and investment and portfolio, advices on acquisitions, restructuring and strategy of Companies

A tribunal means an arbitration tribunal established under article 20 (submission of a claim to arbitration) or article 30 (Merge of proceedings),

(12) It is likely that some types of debts, such as bonds, obligations and promissory note in long term, have the characteristic of an investment, while it is less likely that other type of debts such as payment claims and as a result of the sale of goods and services, have these characteristics.

(13) The fact that one type of licence, authorization, permit or a similar instrument (including a concession, in the extent this "measure" has the nature of this type of instrument) has the characteristics of an investment depends on factors such as the nature and the extent of the rights held pursuant the legislation of the Party. Between the licences, authorizations, permits or similar instruments that do not have the characteristics of an investment are those that do not grant protected rights under the local legislation. For further clearance, the previous statement is without prejudice that an asset associated

with such licence, authorization, permit or similar instrument has the characteristics of an investment.

(14) It is understood that an investor "tries" to made an investment when it may done the necessary actions to set the investment, such as the provision of funds to constitute the capital of the company, the approval of permits and licences, and others.

(15) It is understood that an investor "tries" to made an investment when it may done the necessary actions to set the investment, such as the provision of funds to constitute the capital of the company, the approval of permits and licences, and others.

In WITNESS WHEREOF the undersigned, being authorized, have signed this agreement.

Done in duplicate in the city of LIMA, on the day of 11 of December 2007, in Spanish, both texts are equally authentic.

For the Republic of Peru

Mercedes Araoz Fernández

Minister of Trade and Tourism

For the Republic of Colombia

Luis Guillermo Plata Páez

Minister of Commerce, Industry and Tourism

The Parties confirm their mutual understanding that "customary international law", as is generally and specifically referred to in article 4 (minimum standard of treatment), it is a general practice and consistent of States, followed by them in the context of a legal obligation with respect to article 4 (minimum standard of treatment), the minimum treatment granted to aliens pursuant customary international law refers to all customary international law principles that protect the economic rights and interests of aliens.

1. The parties understand that nothing in this Agreement shall be construed as preventing a party including its public entities, lead or exclusively from its territory to supply services and activities described in Article 7.6. The parties understand that nothing in this chapter shall be construed to prevent a party or maintains or adopts measures concerning those contributions with respect to which such activities or services are supplied or drive exclusively.

2. For greater certainty, with respect to the activities or services referred to article 7.6, the Parties recognize that the adoption of any of the following actions is not inconsistent with this Agreement.

A Party may:

(a) In effect, or formally designating a monopoly, including a financial institution to provide some or all activities or services;

(b) Require or allow participants to locate all or part of their relevant contributions under the administration of an entity other than the Government publishes, an entity or a designated monopoly;

(c) Prohibit either permanent or temporary, some or all participants to choose certain activities or services are supplied by an entity other than the Government, a public monopoly or a designated entity; and

(d) Require some or all activities or services are taken or supplied by financial institutions located in the territory of one Party. These activities or services may include the administration of some or all of the contributions or the provision of annualy and lifely rents or other options for withdrawal (distribution) using certain contributions.

3. For purposes of this Annex, "contribution" means an amount paid by a person or on its behalf, with respect to or otherwise subject to a plan or system described in Article 7.6,

The Parties confirm their mutual understanding that:

1. A measure or a series of actions by a party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or with the essential attributes or powers of the domain of an investment.



2. Article 11 (expropriation and compensation) addresses two situations. The first is direct expropriation, where an investment is directly expropriated or nationalized or by other means it is directly expropriated through formal transfer of title or the right of ownership

3. The second situation addressed by article 11 (expropriation and compensation) is indirect expropriation measure or, where a series of measures of a Party has an effect equivalent to expropriation without direct formal transfer of the title or the right of ownership.

4. The determination of whether a measure or series of measures of a Party in a specific fact situation, constitutes an indirect expropriation requires a case by case factual investigation consider, among other factors:

(i) The economic impact of the measure or series of measures of a party, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the measure or measures of a series of a party interferes with clear and reasonable expectations of investment; and

(iii) the character of the measure or group of measures of a Party

5. Except in exceptional circumstances, as if the measure or where a series of measures are so severe in the light of its purpose that it cannot reasonably be viewed as adopted and applied in good faith, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and environment do not constitute an indirect expropriation (16).

(16) For greater certainty, the list of "public welfare legitimate objectives" in this sub-parragraph is not exhaustive.

With respect to the obligations contained in article 12 (d) transfers, each Party, through its central bank or other competent authorities, as the case may be, shall reserve its right to maintain or adopt measures, in accordance with its applicable legislation to ensure currency stability and the normal operation of internal and external payments trouble granting powers as, for this purpose, the regulation of the amount of money and credit in circulation, implementation of credit transactions and international changes, as also, promulgate monetary regulation, credit, financial and international changes.

As part of these measures including the requirements restricting or limiting the current payments and transfers (movement of capital) to or from each party and operations which relate to them, such as establish that deposits or investments from loans, or intended to be subject to the obligation to maintain a deposit. When applying measures under this Annex, the parties shall not discriminate between the other party and a country in relation to operations of the same type.

To facilitate the submission of waivers as required in article 22 (conditions and limitations on the consent of parties) and to facilitate the orderly conduct of the dispute settlement procedures set out in section B (investor - State dispute settlement), shall be used standard formats on waiver referred to below, depending on the type of claim.

Claims submitted pursuant article 20.2 (a) (claim by an investor of a Party on its own behalf) must be accompanied by Form 1, where the investor is a national of one of the Parties, the format or 2, where the investor is a party or a State Enterprise or an enterprise of that Party.

When the basis of a claim based on the loss or damage to an interest in an enterprise of the other Party that is a juridical person owned by the investor on which it owns or controls directly or indirectly any formats 1 or 2 must be accompanied by Form 3.

Claim submitted following Article 20.2 (b) (Complaint by an investor of a Party on behalf of an enterprise) must be accompanied by form 1, where the investor is a national of one of the Parties, or form 2, where the investor is a party or a state enterprise; or an enterprise of that Party, in addition to form 4.

Form 1

The consent of the investor and waiver by a Party submits a claim under article 20.2 (a) or article 20.2 (b) (When the investor is a national of one of the Parties) of the agreement on reciprocal promotion and protection of investments between the Republic of Peru and Colombia (entry into force):

I (name of the investor) in the arbitration in accordance with the procedures set out in this Agreement; and waive my right to initiate or continue before an administrative tribunal or court under the law of either of the Parties to the agreement or other procedures for making a dispute settlement proceedings with respect to the measure of (name of disputing party)

that is alleged to be a breach referred to in article 20.2 (a) or article 20.2 (b), except for those interim measures that do not involve the payment of damages before an administrative tribunal or court according to the law of (name of the Party in dispute).

(must be signed with the date)

#### Form 2

The consent and waive of the investor of a Party submits a demand according to article 20.2 (a) or Article 20.2 (b) (When the investor is a party or a State Enterprise or a Company of the said party) of the agreement on reciprocal promotion and protection of investments between the Republic of Peru and Colombia (entry into force).

(I) Name of declarant, on behalf of (name of the investor) in the arbitration in accordance with the procedures set out in this Agreement, waive to my right (name of the investor ) to initiate or continue before an administrative tribunal or court under the law of either of the Parties of the Agreement, or other procedures for the resolution of disputes, to any procedure with respect to the measure of name and (d) The Parties to the dispute that is alleged to be a breach referred to article 20.2 (a) or article 20.2 (b), except for the precautionary procedures that do not involve the payment of damages before an administrative tribunal or court under the name of law (p) of art in dispute.

I hereby solemnly declare that I am duly authorised to execute this consent and waive on behalf of (name of investor).

(It must be signed with the date)

#### Form 3

A waiver from the enterprise subject to the claim by an investor of one of the parties according to article 20.2(a) of the agreement on reciprocal promotion and protection of investments between the Republic of Peru and Colombia (entry into force)

I (name of the declarant) waive to the right of (name of the company), to initiate or continue before an administrative tribunal or corie according to the legislation of either of the Parties to this Agreement, or any other dispute settlement procedures proceedings with respect to the measure of (name of disputing party) that is alleged by (name of investor) to be a breach referred to in article 20.2 (a) Except for prudential procedures that does not involve the payment of damages before a court or administrative fribunal according to the law of (name of disputing party).

I hereby solemnly declare that I am duly authorised to execute this waiver on behalf of (name of the enterprise).

(It must be signed with the date)

#### Form 4

The consent and waiver of an enterprise that is the subject of the Claim by the investor of a Party according to article 20.2(b) of the agreement on the reciprocal promotion and protection of investments between the Republic of Peru and Colombia (date of the entrance into force):

I (Name of declarant), on behalf of (name of the enterprise), consent in the arbitration in accordance with the procedures set out in this Agreement, and waive to the right (name of such company) to initiate or continue in front of an administrative tribunal or court under the law of either of the Parties to the agreement or other procedures for the resolution of disputes, to any procedure with respect to the measure of (name of the disputed Party) that (name of the investor) alleges to be a breach referred to in article 20.2 (b), except for prudential procedures that does not involve the payment of covering damage, before an administrative tribunal or court under the law of (name of the party in dispute).

I hereby solemnly declare corresponding I am duly authorised to execute this waiver and consent on behalf of (name of the enterprise). (It shall be signed with the date)

#### Colombia

The place of the submission of the notice of intent and other documents referred to the settlement of disputes related to section 13 (investor - State dispute settlement), in Colombia is:

Department of Foreign Investment and Services, Ministry of Commerce, Industry and Turism. Street 28 thee A-15 Floor 3 13 Bogotá D.C. - Colombia

Or its successor.

#### Peru

The submission of the notice of intent and other documents referred to the settlement of disputes concerning the Section B (Investor-State Dispute settlement), in Peru is:

The General Directorate of International Economic Affairs, Competition and Private Investment

Ministry of Economy and Finance

Jirón Lampa 277 floor # 5

Lima, Peru

Or its successor.

The request to allow the presentations of a party that is not in dispute shall:

- (a) Be done in written, dated and signed by the person submitting the request, and include the address and the other contact details of the applicant;
- (b) have a length not exceeding 5 written pages;
- (c) Describe the applicant, including wherever is pertinent, its position as partner as its legal status (e.g. company, trade association or other non-governmental organization), its general objectives, the nature of their activities as well as any organisation (including all organization that the applicant controls directly or indirectly);
- (d) disclose whether the applicant has any affiliation, directly or indirectly, to any of the parties in controversy;
- (e) Identify to any government, person or organization that has provided financial assistance or any type of assistance during the preparation of the submission;
- (f) Explain the interest of the applicant in the arbitration;
- (g) Identify facts and law specified items in the arbitration that the applicant has referred in its written submission;
- (h) Explain the reference to the factures specified in article 25.5, the reason why the tribunal shall admit its submission; and
- (i) Write in the language of the arbitration

2. The submission by the party which is not in a dispute shall:

- a) Be dated and signed by the person who submitted;
- (b) Be concise and in no case shall exceed 20 pages, including written appendices;
- (c) Set out a precise statement supporting the applicant's position on the issues; and
- (d) Only address matters within the scope of the dispute.

1. The schedule of a Party to this Annex sets out, in accordance with Article 7.1 (dissenting measures), the existing measures from a Party that are not subject to any or some obligations imposed by:

- (a) Article 2 (National Treatment);
- (b) Article 3 (most-favoured-nation treatment);
- (c) Article 5 (senior management and boards and temporary entry); or
- (d) Article 6 (performance requirements);

2. Each entry of the list sets out the following elements;

- (a) Sector refers to the Sector for which the entry have been done;
- (b) Obligations concerned specifies the article(s) referred in paragraph 1, under article 7 (dissenting measures), do not apply to the dissenting aspects of law, regulation or other measure as provided for in paragraph 3;
- (c) Level of government indicates the level of Government maintaining the measure(s) enounced;
- (d) Measures identifies the laws, regulations or other measures for which the entry has been made. A measure referred to in

the element measures:

(i) Means the measure as amended, continued or renewed as of the date of Entry into Force of this Agreement; and

(ii) Includes any subordinate measure adopted or maintained under the authority of that measure and consistent with it; and

(e) Description sets aspects of the dissenting measures for which the entry is made. It may also set out liberalization commitments.

3. In the interpretation of a entry, all elements of the entry shall be considered. An entry shall be interpreted in the light of the relevant provisions of the Agreement with respect to which the entry is made. To the extent that

(a) The element measures is qualified by a liberalization commitment to the element Description, the element measures so qualified shall prevail over all other: and

(b) The measures element is not qualified, the element measures shall prevail over any other element, except when a discrepancy between the measure element and the other elements considered in their totality is so substantial and material that would not be reasonable to conclude that the element measure shall prevail, in which case the other elements shall prevail to the extent of the inconsistency

4. The list of a measure in this Annex is without prejudice to a future claim that Annex II applies to the measure or any application of the measure.

Sector: All the sectors

Affected obligations: National treatment (article 2)

Level of government: central

Measures: Decret 2080 of 2000, art. 26 and 27

Description: A foreign investor may make equity portfolio investments only in Colombia through a foreign capital investment fund.

Sector: All the sectors

Concerned obligations: National Treatment (Article 2)

Level of government: central

Measures: Act 226 of 1995, Art. 3 and 11

Description: If the Colombian State decides to sell all or part of its participation in a company to a different person to another Colombian State Enterprise or to another Colombian government entity it shall first offer such participation, and exclusively under the conditions laid down in article 11 Act 226 of 1995 to:

(a) The workers, pensioners, and former workers (other than the former workers removed with a justified cause) with the enterprise and other businesses owned or controlled by that enterprise;

(b) Employee associations or former employees of the enterprise;

(c) Trade unions;

(d) Federations and trade union federations of workers;

(e) Employment funds;

(f) Unemployment and retirement fund; and

(g) Cooperatives entities

Colombia does not reserve the right to control any other subsequent sale or transfer of ownership.

Sector: Fishery and other services related to fishery

Obligations concerned: National Treatment (Article 2)

Level of Government: Central

Measures: Decret 2256 of 1991, article 27, 28, and 67. Agreement 005 of 2003, Section II and VII

Description: Only Colombian nationals may execute artisanal fisheries.

A vessel with a foreign flag may engage in fishing activities in Colombian territorial waters through the association with the Colombian enterprise allowed. The value of the authorization and the fishery patent are higher for foreign vessels than for the Colombian vessels.

If the flag of a foreign vessel belongs to a country that is party of another bilateral agreement with Colombia, the terms of that bilateral agreement shall establish if the requirement of association with a Colombian company that holds the authorization applies(17).

(17) The Treaty of Vasquez-Saccio, signed by Colombia and the United States in September 1972, includes related topics with the fishery.

Sector: surveillance and private security services

Affected obligations: National treatment (Article 2)

Level of government: Central

Measures: Decret 356 of 1994, article 8, 12, 23 and 25

Description: only an enterprise organized under the laws of Colombian as a Limited Liability Company or as cooperative of surveillance and private security(18) can provide monitoring and private security services in Colombia. The partners or members of these companies should be nationals from Colombia.

The companies incorporated prior to 11 of February 1994 with partners or foreign capital, cannot increase the participation of the foreign partners. The cooperatives incorporated prior to that date may retain their legal nature.

(18) Article 23 defines a "surveillance cooperative and private security" as a non-profit associative company in which the workers, are simultaneously the contributors and managers of the company, built with the purpose to provide services of surveillance and private security, and related services, in a remunerated form.

Sector: journalism

Affected obligations: Members of the board, board of directors and temporal entry (article 5)

Level of the government: Central

Measures: Act 29 of 1944, Art. 13

Description: The Director General or manager of any newspaper

Published in Colombia in charge of the national policy must be national of Colombia.

Sector:Domiciliary public services

Obligations concerned: National Treatment (Article 2).

Level of government: Central

Measure: Act 142 of 1994, Art. 1, 17, 18, 19 and 23. Code of commerce, Art 471 and 422

Description:

A public services company with domicile, has to be establish under the procedure or utilities "Public Services Companies" or "E.S.P.", must be resident of Colombia and legally constituted under Colombian law as company by actions. The requirement to be organized as company by actions does not apply in the case of decentralized entities that have the form of industrial and commercial company of the State.

For the purpose of this entry, domiciliary public services includes the provision of the services of aqueduct, sewage and refuse disposal, electricity, gas fuel and basic public switched telephone (BPST) and its complementary activities. The complementary activities to the public telephone services basic commuted are public long-distance telephone and mobile in the rural sector, but not the mobile commercial services.

A company in which a local community organized possesses majority, shall be preferred over any other enterprise fleeing submitted a tender equivalent in the granting of concessions or licenses pure public residential services to the community.

Before a request by a Party after two years (2) of the entry into force of this Agreement, Colombia shall consult with that party to consider whether:

(a) Party of any such measure shall be amended; or

(b) Any sector may be removed from this measure.

If, as a result of the consultations under this paragraph, the parties agree that this Non-Conforming Measure must then be amended, with the approval of the Parties the entry shall be amended.

Sector: Cinematography

Affected obligations: performance requirements (Article: 6)

Level of the Government: Central :

Measures: Act 814 of 2003, Art 5, 14, 15, 18 and 19.

Description: the exhibition or distribution of foreign films is subject to the quota for film development, which is established in a 8.5% (per cent) of the net monthly income derived from the exhibition or distribution.

The rate applied to the exhibited shall be reduced to 2.25 per cent (per cent) where the display of foreign films shall present together with a national short film.

Until 2013, the rate applied to a distributor shall be reduced to 5.5 per cent (per cent) if, during the year immediately preceding, the percentage of Colombian feature-length circulated to cinemas or other broadcasters matched or exceeded the target percentage established by the Government.

Sector: open television audiovisual production services

Obligations concerned: National Treatment (Article 2)

Performance requirements (Article 6)

Level of government: central

Measures:

Act 014 of 1991, Art. 37, Act. 680 of 2001, Art. 1 and 4

Act 335 of 1996, Art. 13 and 24, Act 182 of 1995, Art. 37 paragraph 3, Art. 47 and Art. 48

Agreement 002 of 1995 (article 10)

Agreement 023 of 1997 (article 8)

Agreement 024 of 1997 (article 6 and 9)

Agreement 020 of 1997 (article 3 and 4)

Description: Only Colombian nationals or juridical persons legally formed in Colombia may obtain concessions to provide the service of open television.

To obtain a concession for the operation of a private national television channel provides open television services, a legal person must be organized as a company,

The number of concessions for delivery of open television coverage of national and local for-profit is subject to an economic needs test according to the criteria established by law.

The foreign capital in any open television concessionaire is limited to 40 per cent (per cent).

National television

The providers (operators and concessionaires of spaces) of services of national open television services shall be issued in each programming of national production as follows:

(a) At least 70% (per cent); between 19 and 22:30 hours.

(b) A minimum of 50% (per cent) between the 22:30 p.m. and 24:00 hours.

(c) A minimum of 50% (per cent) between 10:00 and 19 hours

(d) A minimum of 50% (per cent) for Saturdays, Sundays and holidays during the hours described in paragraphs 1, 2 and 3 until 31 January 2009, the date from which the minimum for these days and hours shall be reduced to 30% (per cent).

#### Regional and local television

The regional television may only be provided by entities owned by the State.

Service providers of open regional and local television shall allocate in each broadcast a minimum of 50 (%) of programming of national production.

Sector: Television by subscription audiovisual production services

Obligations concerned: performance requirements (article 6)

Level of government: Central

Measures:

Act No. 680 of 2001 art. 4 and 11

Act No. 182 of 1995 art. 42

Agreement 014 of 1997, art. 14, 16 and 30

Act 335 of 1996, art 8

Agreement 032 of 1998 art. 7 and 9

Description: Only legal persons legally constituted in Colombia may provide television services by subscription. Such entities must make available of subscribers the reception, without additional costs, of the Colombian open television channels of national, regional and municipal available in the area of coverage. The transmission channels of Regional and Municipal shall abide by the technical capacity of television operator by subscription.

Satelital television service providers only have the obligation to include within their basic programme the transmission of channels of public interest of the Colombian Government. When the programming of an open channel subject to a quota of domestic content is re-broadcasted, the service provider shall not modify television the content of the original signal.

#### Television by subscription not including satellite television

The concessionaire by subscription television service that transmits advertisement other than those of origin must comply with the minimum programming percentages of national production applied to national television service providers as described in the entry of open television and audiovisual production services from page 20 to 21 of this annex. Colombia interpretes article 16 of agreement 014 of 1997 as not requiring providers by subscription television services to comply with minimum percentages of national production programming when advertisement are inserted within the programming outside the territory of Colombia, Colombia continue this interpretation, subject to Article 7.1(c).

There shall be no restrictions on the number of concessions television subscriptions in a zonal level, district and municipal once current concessions in these levels expire and in no case beyond 31 October 2011.

Service providers of cable television should produce and broadcast in Colombia at least one hour of this schedule between 18:00 and 24:00 hours.

Sector: removal scraps services

Obligations affected: National Treatment (article 2)

Level of government: central

Measures: Decrete 2080 of 2000 Art. 6

Description: is not permitted foreign investment in activities in relation to the processing and disposal of hazardous waste,

radioactive or toxic waste not produced in the country.

Sector: Financial Services

Obligations concerned: National Treatment (Article 2)

Level of government: Central

Measures: Decree 2419 of 1999 Art. 1 (consistent with the Act 270 of 1996 article 203 and Decree No. 1065 of 1999 art. 16)

Description: The amounts of money which should be disclosed to the judiciary bodies, police authorities(19), bonds and amounts relating to developing leasing contracts shall be deposited in the Agrarian Bank of Colombia S. A.

(19) A guarantee under Colombian legislation, is an deposit of money that is done under the command of a judge. For example, a guarantee could be done by a respondent with the purpose to eliminate the provisional measures of foreclosure or seizure.

Sector: Financial Services

Obligations concerned: National Treatment (Article 2)

Level of government: central

Measures: professional statute of the financial system

Description: Colombia may grant exclusive rights or benefits to the following public entities:

Agriculture financing fund (FINAGRO):

Colombian farming bank;

National Guarantees Fund;

National Electricity financial (FEN);

Financial territorial development (FINDETER);

Fiduciary La Previsora;

The Colombian Institute for Educational Credit and Technical Studies Abroad (ICETEX).

External commerce bank (BANCOLDEX)

Financial Fund Development Projects (FONADE).

Such advantages or exclusive rights, shall include but are not limited to the following(20):

Tax exemptions.

(20) For more clearance and no matter the Non-Conforming Measures within the Annex A, the Parties understand the advantages or exclusive rights a Party may give to specific entities are not limited to the quoted examples.

Exemptions from the requirements for registration and periodic report in the field of actions.

The purchase by the Colombian Government, through any of its public entities, of obligations issued by such entities.

Sector: All the sectors

Obligations concerned: National treatment (article 2)

Level of government: Central

Measures: Political Constitution of Peru (1993), art.71

Decreto Legislativo N 757, official journal El Peruano 13 November 1991. Legal Framework for the increase of private investment, article 13

Description:



Within fifty (50) km of borders, foreigners may not acquire or possess by any title mines, land, forests, water, fuel and energy sources, directly or indirectly, individually in society, under penalty of forfeiture to the State, the ISA acquired right. Except for the case of public need expressly declared by the Supreme Decree adopted by the Council of Ministers, according to the law.

For each case of acquisition or possession in the area, the investor shall submit an application to the competent ministry in accordance with the legislation in force.

For example such authorisations have been issued in the mining sector.

Sector: Broadcasting services

Obligations affected: National treatment (article 2)

Level of government: Central

Measures: Act No. 28278 official journal El Peruano July 16th, 2004, Radio and Television Act, art. 24

Description: Natural persons with peruvian nationality or legal entities constituted under Peruvian legislation and domiciled in Peru may only be holders of broadcasting services' authorisations and licences.

Foreign participation in such legal persons may not exceed 40 per cent (per cent) of the total participations or shares of social capital, shall also be or have participation or shares in broadcasting companies in their country of origin.

The foreigner, neither directly or through a single-member company, may hold authorization or licence.

Sector: Audiovisual services

Obligations concerned: Performance requirements (Article 6}

Level of Government: Central

Measures: Act No. 28278 official journal "El Peruano" July 16th, 2004, Radio and Television Act, 8th supplementary and final provision

Description: The holders of broadcasting services (open signal) shall establish a minimum national production of 30% (per cent) of its programming, in the schedule from 5:00 to 24:00, on weekly average.

Sector: Broadcasting services

Obligations concerned: National Treatment (Article 2), Most favoured nation treatment (Article 3)

Level of government: Central

Measures: Decreto Supremo No 005-2005-MTC, official journal "El Peruano" February 15th, 2005, Regulation of the Radio and Television Act.

Description: If an alien is directly or indirectly a shareholder or member of a legal person, that juridical person may not be holder of licenses to provide broadcasting service within the border areas in the country of origin of the alien, except in the case of public need authorized by the Council of Ministers.

This restriction does not apply to legal persons with foreign participation with two or more authorisations in force, provided that it is the same frequency band.

Sector: Notarial services

Obligations affected: National Treatment (Article 2)

Level of government: Central

Measures: Decreto Ley No 26002, Diario Oficial del El Peruano

December 27th, 1992, Notarial Act, article 5 (as amended by Law No 26741) and 10 (as amended by Act No 27004}

Description: Only peruvian nationals by birth can provide notarial services.

Therefore, no foreign national may be notary or possess a notary in the Republic of Peru

Sector: Architectural services

Obligations concerned: National Treatment (Article 2)

Level of government: Central

Measures: Law No. 14085 official journal "El Peruano" June 30th 1962, Act of the College of Architects of Peru

Act No 16053, official journal "El Peruano" of February 14th 1966. Act of professional associations, authorizes architectural and engineering of Peru to supervise the professional engineering architecture of the Republic, Art. 1.

The Council of architects, of October 6th, 1987.

Description: To practice as an architect in Peru, a person must be registered in the College of Architects and pay any right of membership according to the following schedule:

- (1) Peruvians graduate from Peruvian universities 250.00 USD;
- (2) Peruvians graduate from Foreign universities 400.00 USD; and
- (3) Foreigns graduate in foreign universities 3,000.00 USD

Furthermore, for the temporary registration, Architects non-resident require a contract of association with an Peruvian architect resident.

Sector: Audit services

Obligations concerned: National treatment (Article 2)

Level of Government: Central

Measures: Domestic regulation of the Lima Accountant Bar article 145 and 146

Description: The audit companies shall only be constituted by certified public accountants resident in the country and qualified by the College. No member may be a member of another audit society in Peru.

Sector: Security services

Obligations concerned: Senior executives, Members of the Board and temporary entry (article 5)

Government level: Central

Measures: Decreto Supremo No 005-94-IN Official Journal "El Peruano" May 12th, 1994, regulation of content of private security, article 81 and 83

Description: Senior executives of security services companies shall be Peruvians by birth or resident in the country,

Sector: Broadcasting services

Obligations concerned: Performance requirements (Article 6)

Level of Government: Central

Measures: Act No. 28131 official journal "El Peruano" December 18th, 2003, Artist act, interpreters and performer, article 25 and 45

Description: Broadcasting companies of open signal shall allocate no less than 10% ( per cent) of their folklore music broadcasts daily dissemination of national programmes and series produced in Peru related to literature, history, culture or national Peruvian reality; undertaken with artists hired under the following percentages:

- (1) A minimum of 80% (per cent) of national artists.
- (2) National Artists shall receive no less than 60% (per cent) of the total staffing salaries and wages artists
- (3) The same percentages established in the previous paragraphs governed by the worker technical linked to artistic activity.

Sector: Transport, air transport and specialized air services

Obligations concerned: National Treatment (Article 2), senior management and boards and temporary entry (Article 5)

Level of the Government: Central

Measures: Act No. 27261 Official journal "El Peruano" May 10th, 2000, Civil Aeronautics Act, art. 70 and 75

Supreme Decree No. 050-2001 - MTC official journal "El Peruano" of 26 December 2001, regulation of the Civil Aeronautics Act, art. 159, 160, 147 and VI Supplementary Provision

Description: Commercial aviation is reserved to national natural and legal persons. The term includes national commercial aviation air specialty services.

For the purposes of this entry is considered Peruvian any legal person complies with:

(a) Be incorporated under Peruvian law, indicate in their social object of commercial aviation activity which will devote and having its registered office in the Republic of Peru, which shall develop their main activities and installation of its administration in the Republic of Peru;

(b) at least the half plus one of the managers and persons who had the control and direction of the society must be Peruvian nationality or have permanent domicile or habitual residence in Peru; and

(c) At least 51 percent of the equity capital of the company must be Peruvian under property and real and effective control of shareholders of Peruvian nationality domiciled in the Republic of Peru (this limitation does not apply to enterprises constituted under the Law No 24882 who may maintain the percentages of property within the limits established therein). Six (6) months after the enter into force of the permit operation of the company to provide services for commercial air transport, the percentage of capital owned by nationals may be up to 70 per cent.

Sector: Transport, transport of water

Obligations concerned: National Treatment (article 2), senior management and temporary entry (article 5).

Level of government: Central

Measures: Law No 28583 Recovery Act, and promotion of the National Merchant Marine Official Journal El Peruano of 22 July 2005, Article 4.1, 6.1, 7.1 and 7.2, 7.4 and 13.6.

Decreto Supremo No 028 DE/MGP Official Journal El Peruano of 25 May 2001, regulation of the Law No 26620, art. 1-010106 a)

Description

1. Only a "national shipping" or a "national shipping company" can provide shipping services in national traffic or cabotage(21). It means, a National Shipping Company or the national shipping Peruvian national or legal person constituted pursuant Peruvian Law, principal domicile, principal seat with real and effective in the Republic of Peru, who engages in the service of water transport in national traffic or cabotage and/or international traffic and owns or lessee under the lease or rental bareboat compulsory purchase, with a mandatory purchase option, of at least a merchant vessel with Peruvian flag and have obtained a permission of operation from the General Direction of Aquatic Transport.

(21) For greater certainty: Maritime Affairs includes transport by rivers and lakes.

2. At least 51 (percent) from the capital of a juridical person, signed and paid, must be owned by Peruvian nationals,

3. The Chairman of the Board of Directors, Directors and the majority of the Director General of the national shipping company must be of Peruvian nationality and reside in Peru.

4. The national flag ships Captain Peruvian and must have at least 80% (percent) of the crew of Peruvian nationality shall be approved by the General Directorate of Captaincy and Coast Guard. In absence of availability of Captain Peruvian qualified, may be granted to a business centres Captain services of foreign nationality.

5. To obtain a licence of practical must be a national of Peru.

6. The cabotage is reserved to Peruvian flag merchant shipping vessels owned by the national or company or the modalities of national shipping under lease or rental bareboat compulsory purchase except as follows:

(i) Oil transport in national waters is reserved only 25 per cent (per cent) for vessels of the Peruvian Navy; and

(ii) For the aquatic transport only between Peruvian ports or cabotage and, in cases of absence of ships owned or leased, the affreightment of vessels with foreign flag to be operated solely by national shipowners or national shipping companies for a

period that does not exceed six (6) months.

Sector: Acuatic transport

Obligations concerned: National Treatment (Article 2)

Level of government: Central

Decreto Supremo No 056-2000-MTC Official Journal El Peruano December 31th, 2000 stipulate that of maritime transport and related services in bays and port areas shall be provided by natural and legal persons authorized, with the national flag vessels and devices, art. 1

Ministerial Resolution No. 259-2003-MTC/02 Official Journal "El Peruano" 4 April 2003, adopt Rules of transport services rendered in aquatic and related to traffic Bay and Port areas, art. 5 and 7

Description: The following aquatic transport services and related that are made in the Bay and trafficking port areas, shall be provided by natural persons domiciled in Peru and legal persons formed and domiciled in Peru, duly authorized with naval vessels and devices of Peruvian flag:

- (1) Supply of fuel services,
- (2) Service and untying,
- (3) Diver service.
- (4) Service victualling ships,
- (5) Dredging services.
- (6) Pilotage service.
- (7) Service to collect waste,
- (8) Towing service.
- (9) People Transportation service.

Sector: all the sectors

Obligations concerned: Senior management and boards of directors and temporary entry (article 5)

Level of government: Central

Measures: Decreto Legislativo N 689. Law for the recruitment of foreign workers, official Journal "El Peruano", 05 November 1991, articles 1, 2, 4, 5 (as amended by Law No. 26196) and 6.

Description: All employers in the Republic of Peru, whatever their activity or nationality, will give preference to national workers.

Foreign natural persons who are service providers and employed by service providers companies may provide services in the Republic of Peru through a contract to be concluded in writing and a deadline for a period not exceeding three (3) years, extendable by equal periods, and shall further include the commitment of the training of national staff in the same occupation.

Foreign natural persons may not exceed more than 20% (per cent) of the total number of employees and workers, officials of a company, and their remuneration shall not exceed the 30% (per cent) of the total staffing salaries and wages. These percentages shall not apply in the following cases:

If the service provider is an alien spouse, ascendant, descendant or brother of a Peruvian;

In the case of foreign companies engaged in international transport land service, air or water with foreign flag and registration;

In the case of foreign personnel who works in multinational corporations or multinational banks, subject to legislation enacted to specific cases(22);

When a foreign investor, provided that the investment has permanently in the Republic of Peru a minimum amount of 5

units during the duration of its contract(23);

When artists, sportspersons or service providers operating in public performances in the territory of Peru, up to a maximum of three (3) months of the year;

When an alien with immigrant visa;

When an alien whose country of origin has a reciprocity labor agreement or one of dual nationality;

In the case of a foreign personnel, under bilateral or multilateral agreements concluded by the Government of the Republic of Peru, provides its services in the country.

Employers may request exemption percentages limitation on the number of foreign workers and their remuneration share in the total amount of the staff of the enterprise, when:

(22) Until now, there is not an entity under this exception.

(23)The Unity Tax is a reference amount that is used in the tax laws to keep constant the tax bases, deductions, expropriation and other aspects of the taxes that the legislator considers convenient.

It is a professional staff or specialized techniques

It is about a senior management and / or management staff of a new business or enterprise conversion;

It is about lecturers for higher education, or basic education in secondary schools or foreign individuals or language in private schools or specialized languages national centres;

It is about a company employee from a public or private agency, with contracts with organisms, institutions or companies from the public sector;

In any case established by Supreme Decree following the specialization criteria, qualification or experience.

Sector: Financial Services

Obligations concerned: National Treatment (Article 2)

Level of government: central

Measures: General Act on the financial system and the insurance system of the Superintendency of Banking and insurance, (Act No. 26702) and its amendments

The agricultural Bank Act, No. 27603

The Act of Development Finance Corporation (Cofide), Decree-Law 188807

The Bank Act, Act No. 16000

Law No. 28579, My housing fund

Decreto Supremo n ° 157-90-ef

Decreto Supremo 07-94-el N ° 7 and its amendments

Description: The Republic of Peru may grant advantages or exclusive rights without limitation to one or more financial entities where there is total or partial state participation. These entities are Development Finance Corporation (cofide). The Bank Agricultural Bank, fund mi vivienda, cajas municipales, credit unions and municipal fund of loan.

Examples of such benefits are the following(24)

(24) To greater certain, and no matter the place of the Non-Conforming Measure under Annex I, parties understand that the asset or exclusive right that the Republic of Peru could grant to the specific entities is not limited just to the above examples.

The National Bank and the Agricultural Bank do not have the obligation to diversify its risk; and

The cajas municipales de ahorro y credito can directly auction the apparel pledged in cases of non-compliance with the repayment of loans, according to pre-established procedures.

1. The list of a Party to this Annex sets out, in accordance with Article 7.2 (dissenting), sectors and sub-sectors or specific

activities for which that Party may maintain existing restrictive measures or adopt new or additional measures that do not conform with obligations imposed by.

- (a) Article 2 (National Treatment);
- (b) Article 3 (most-favoured-nation treatment)
- (c) Article 5 (senior management and boards of directors and temporary entry); or
- (d) Article 6 (performance requirements);

2. Each entry sets out the following elements:

- (a) Sector refers to the sector for which the Lia entry is made;
- (b) Affected obligations concerned article (s) referred in paragraph 1 corresponding under article 7 (dissenting), do not apply to sectors and sub-sectors or activities listed in the entry;
- (c) Description sets out the scope of the sectors and sub-sectors or activities covered by the entry; and
- (d) Existing measures identify, for purposes of transparency, existing measures that apply to sectors and sub-sectors or activities covered by the entry.

3. In the interpretation of a entry, all the elements of the entry shall be considered. The element description shall prevail over all other elements.

Sector: all sectors

Obligations concerned: National Treatment (Article 2)

Description: Colombia reserves the right to adopt or maintain measures relating to immovable property ownership by foreigners in border regions, national costs or the island territory of Colombia.

For the purposes of this entry:

- (a) Bordering region means an area of two (2) kilometres, parallel to the national border;
- (b) National cost is an area of two (2) kilometres, parallel to the highest oil; and
- (c) Island territory means the islands, islets and cays, Saliba and banks that are part of the territory of Colombia

Sector: all sectors

Obligations concerned: most favoured nation treatment (Article 3)

Description: Colombia reserves the right to adopt or maintain any measure that grants differential treatment accorded to countries under any bilateral or multilateral agreement in force or international signed prior to the date of entry into force of this Agreement.

Colombia reserves the right to adopt or maintain any measure that grants, differential treatment to countries under any bilateral or multilateral agreement in force or international signed after the entry into force of this Agreement:

- (a) Aviation;
- (b) Fisheries;
- (c) Maritime affairs, including salvage,

Sector: Social services

Obligations concerned: National Treatment (Article 2), most favoured nation treatment (Article 3), senior management and boards of directors temporary entry (Article 5), performance requirements (Article 6)

Description: Colombia reserves the right to adopt or maintain any measure with respect to the supply of services of implementation and enforcement of laws and correctional services, the following services to the extent they are social services that are to be kept for reasons of public interest: social re-adaptation, security or insurance, social security services, social welfare, education and training, public health and child care.

For greater certainty, the Comprehensive Social Security System in Colombia is composed by the following mandatory systems: the pension general system, the Health and Social Security system, the general system of occupational risks and unemployment assistance and redundancy.

Sector: Matters relating to minorities and ethnic groups

Obligations concerned: National Treatment (Article 2), Most favoured nation (Article 3)

Senior executives, boards of directors and temporary entry (Article 5)

Performance requirements (article 6)

Description: Colombia reserves the right to adopt or maintain any measure to accord the rights or preferences to the minorities with social or economic disadvantages and their ethnic groups including with respect to their communal land ownership of ethnic groups in accordance with article 63 of the Political Constitution of Colombia, ethnic groups in Colombia are: indigenous peoples and communities, Roma (Gypsy) community and the Colombian *áiro* Member of the Archipelago of San Andrés, Providencia and Santa Catalina.

Sector: Cultural industries and activities

Obligations concerned: National Treatment (Article 2)

Most favoured nation treatment (Article 3)

Description: For the purposes of the entry the term "industries and cultural activities" means:

(a) Publication, distribution or sale of books, periodicals or magazines, newspapers printed or electronic typesetting, excluding the printing or any of the foregoing;

(b) Production, sale or exhibition of distribution of film or video recordings;

(c) Production, distribution or sale exhibition of music or video recordings in audio format;

(d) Production and performing arts;

(e) Production or display of visual arts;

(f) Production, distribution or sale of printed music or readable music by machines;

(g) Designed, production, distribution and sale of handicrafts; or

(h) Broadcastings aimed at the general public, as well as all activities related to the radio, television, and cable television programming broadcast networks.

Colombia reserves the right to adopt or maintain any measure granting preferential treatment to persons of any other country through any treaty between Colombia and that country, containing specific commitments or co-production in cooperation with respect to cultural industries and cultural activities,

For greater certainty, articles 2 (National Treatment) and 3 (most-favoured-nation treatment) do not apply to "government support"(25) for the promotion of cultural industries and initiatives.

Colombia may adopt or maintain any measure that a person of the other party treatment equivalent to that provided by that other party to Colombians in sectors or video Music Publishing.

(25) For the purposes of this entry, "(support means taxes government incentives, incentives for the reduction of the mandatory contributions, assistance provided by a Government, loans provided by a government and guarantees or insurance companies, accompanied by a Government regardless of whether a private entity is wholly or partly responsible for the administration of the "Government support". In anyway, a measure is not covered by this entry as long as the measure is inconsistent Article 13 (taxes measures ).

Sector: Design of jewellery, visual arts, Music, Publishing

Obligations concerned: article 6 (performance requirements)

Description: Colombia reserves the right to adopt or maintain any measure subjecting the receipt or continued receipt of government support(26) to the design and production of jewellery, performing arts, music, visual arts and publishing the recipient to achieve a given level or percentage of domestic creative content.

For greater certainty, this entry do not apply to advertising and performance requirements in all cases shall be consistent with the Agreement on Trade-related Investment of the WTO.

(26) As it was defined in the footnote of the previous entry.

Sector: cottage industries

Obligations concerned: performance requirements (Article 6)

Description: Colombia reserves the right to adopt or maintain any measure related to the design, distribution or exhibition of crafts identified as crafts of Colombia

For greater certainty performance requirements shall in all cases be consistent with the Agreement on Investment related with trade measures in the WTO.

Sector: Audiovisual, publicity

Obligations concerned: performance requirements (Article 6)

Description: Cinematographic works

(a) Colombia reserves the right to adopt or maintain any measure requiring a specific percentage (does not exceed 15 per cent) of the total yearly cinematographic works shown in cinemas or exhibition in Colombia, consists of cinematographic works Colombian. To establish those percentages, Colombia shall take into account the conditions of national film production, the infrastructure for exhibition in the country and the averages of assistance.

Cinematographic works in open television

(b) Colombia reserves the right to adopt or maintain any measure requiring a specific percentage (not exceeding the 10 per cent) of the total of cinematographic works shown annually in open television channels, consists of cinematographic works Colombian. For this, Colombia shall take into account the availability of cinematographic works national television. Such works shall be counted as part of the domestic content requirements that apply to channel as described in the entry of open television and audiovisual production of Annex I.

Communitary television(27)

(c) Colombia reserves the right to adopt or maintain any measure requiring a specific portion of the weekly television programming community (not exceeding 56 hours per week) consists of national programming produced by the operator of the community.

Open commercial television in multicanal

(d) Colombia reserves the right to apply the minimum requirements of programming that are listed in the entry of Open Television and audiovisual production services under Annex I, to the open trading television channel, except that these requirements may not be imposed more than two channels or 25( per cent) of the total number of channels (whichever is greater) made available by a supplier.

Publicity

(e) Colombia reserves the right to adopt or maintain any measure requiring a specific percentage (does not exceed 20 per cent) of the total orders advertising hired annually with service companies established in Colombia, different of the daily newspapers and subscription services with parent outside of Colombia, is produced and established in Colombia. Any such measures shall not apply to: (i) the advertisements of premiere films in theatres or exhibition halls; and (ii) any means where the progromation or the contents have originate outside of Colombia or the reemisión of the programming in Colombia.

(27) As defined by the Agreement 006 of 1999.

Sector: traditional expressions;

Obligations concerned: National treatment (Article 2)

Description:

Colombia reserves the right of adopt or maintain any measure that the rights or preferences provided to local communities with regard to support and development of expressions relating to intangible cultural heritage declared under Resolution no. 0168 of 2005.



Sector: interactive audio video and / or services

Obligations concerned: performance requirements (article 6)

Description:

1. Subject to paragraphs 2 and 3, Colombia reserves the right to adopt or maintain measures to ensure that, when the Government of Colombia has determined that the audiovisual content Colombians are not readily available to Colombian consumers, the access to the scheduling of audiovisual content Colombians through interactive services measured and / or video is not denied to an unreasonable consumers Colombians.
2. Colombia shall publish in advance any such measure that it proposes to adopt reasonable not addressed to the denial of access to consumers Colombian audiovisual content Colombians through interactive services of audio and/or video and shall provide to interested persons and a reasonable chance to comment. At least ninety (90) days before any measure is adopted, Colombia shall notify the other parties of the proposed measure, the notification shall provide information with respect to the proposed measure, including information which constitute the pure basis the determination of the Government of Colombia that the audiovisual colombian contend is not readily available to Colombian consumers and a description of the proposed measure, fules measures must be consistent with your obligations of Colombia under the GATS.
- 3, A Party may request consultations with Colombia in respect to the proposed measure. Colombia shall commence consultations with the requesting party within thirty (30) days of the receipt of the request. Colombia may exercise their rights under the paragraph 1 just if as a result of these consultations: (i) the requesting party agrees that the Colombian contained audiovisual is not easily available to the Colombian consumers and that the proposed measure is based in objective criteria and it has the lesser restrictive commercial impact (ii) Colombia agrees that measure will be applied only to a service provided by Colombia by a Company established in Colombia; and (iii) the applicant and Colombia agree a liberalised compensation in the services interactive sector of audio and/or video.

Sector: Financial Services

Obligations concerned: Most-favoured-nation treatment (Article 3)

Description: Colombia reserves the right of adopt or maintain any measure that differential treatment accorded to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Consistent with the above, Colombia reserves the right to adopt or maintain any measure that in development of the Cartagena Agreement and the legal system of the Andean Community grants differential treatment to its members.

Sector: all sectors

Obligations concerned: most favoured nation treatment (Article 3)

Description: The Republic of Peru reserves the right to adopt or maintain any measure that differential treatment accorded to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The Republic of Peru shall reserve the right to adopt or maintain any measure that differential treatment accorded to countries under any bilateral or multilateral international agreement in force or signed after t Techa of entry into force of this Agreement:

(a) Aviation;

(b) Fisheries;

(c) Aquatic affairs, including salvage.

To greater certainty, aquatic issues includes transportation by lakes and rivers.

Sector: matters related to indigenous communities, rural and indigenous and minority

Obligations concerned: National Treatment (Article 2)

Most favoured nation (article 3)

Senior management and boards and temporary entry (Article 5)

Performance requirements (article 6)

Description: the Republic of Peru reserves the right to adopt or maintain any measure that grants rights or preferences provided to socially or economically disadvantaged minorities and ethnic groups. For the purposes of this entry: ethnic minorities means and indigenous and native communities, minorities include indigenous communities.

Sector: fisheries

Obligations concerned: National Treatment (Article 2)

Most favoured nation treatment (Article 3)

Performance requirements (Article 6)

Description: the Republic of Peru reserves the right to adopt or maintain any measure related to artisanal fisheries.

Sector: Cultural industries

Obligations concerned: National Treatment (article 2);

Most favoured Nation treatment (Article 3)

Description: For the purposes of this entry, the term "cultural industries" means:

(a) Publication, distribution or sale of books, magazines, newspapers or periodicals in print or electronically, but does not include the printing or isolated typesetting any of the foregoing;

(b) Production, sale or exhibition of distribution of films or video recordings,.

(c) Production, sale or distribution of music exhibition in audio or video recordings.

(d) Production and performing arts.

(e) Production and showing visual arts.

(f) Production, distribution or sale of music in print or readable through machine

(g) Design, production, distribution and sale of handicrafts; or

(h) For the public broadcasters in general, as well as all activities related to the radio, and cable television, satellite and broadcast programming network.

The Republic of Peru reserves the right to adopt or maintain any measures that accord preferential treatment to persons (natural and legal) of other countries in accordance to any international bilateral treaty or former or future multilateral with respect to cultural industries, including agreements of audiovisual cooperation.

For greater certainty, articles 2 (National treatment) and 3 (most-favoured-nation treatment) do not apply to governmental support programmes for the promotion of cultural activities.

For the purposes of this entry, performing arts means live performances or presentations in theatre, dance and music.

Sector: crafts

Obligations concerned: performance requirements (Article 6)

Description: the Republic of Peru shall reserve the right to adopt or maintain any measure with respect to the design, distribution, sale or exhibition of crafts as may be identified as Peruvian crafts.

Performance requirements shall in all cases be compatible with WTO Agreement on Trade-related Investment

Sector: audiovisual industry

Obligations concerned: article 6 (performance requirements)

Description: the Republic of Peru reserves the right to adopt any measure to establish or maintain a specific percentage (to 20 per cent) of the total of cinematographic works exhibited annually in cinemas or exhibition facilities in the Republic of Peru to peruvian cinematographic works. The criteria to be considered by the Republic of Peru to the establishment of such percentage shall include; the national film production, infrastructure for exhibition in the country and assistance of the

public.

Sector: jewellery design music performing visual arts Editing industry

Obligations concerned: performance requirements (article 6);

Description: The Republic of Peru reserves the right to adopt or maintain any measure that condition the receipt or continued receipt of government support for the development and production of jewellery design arts, performing and visual arts, music; publishing industry to achieve a given level or percentage of domestic creative content.

Sector: industry and I or visual Music Publishing Industry

Obligations concerned: National Treatment (article 2)

Most favoured nation treatment (Article 3)

Description: the Republic of Peru reserves the right to adopt or maintain any measure that a natural or juridical person of the other parte the same treatment granted to a natural or legal peruvian person in the broadcasting sector, editorial and musical by that other party.

Sector: social services

Obligations concerned: National Treatment (article 2),

Most favoured nation treatment (Article 3)

Executive Boards in trouble and temporary entry (Article 5)

Performance requirements (Article 6)

Description: the Republic of Peru reserves the right to adopt or keep any measure with respect of the execution of services of execution of laws and social services, as of the following services to the extent they are social services by establishing or maintaining for public interest purposes: insurance and income security, social security services, public social welfare, education, public training, health and child care.

Sector: international road transport

Obligations concerned: National Treatment (Article 2)

Most favoured nation treatment (Article 3)

Description: the Republic of Peru reserves the right to adopt or maintain any measure relating to the operation of international land transportation of passengers or fall in border areas.

Additionally, the Republic of Peru reserves the right to maintain or adopt the following limitations, for the provision of services to international transport from the Republic of Peru:

- (1) The service provider shall be a natural or legal Peruvian person ;
- (2) Having elected domicile and at the Republic of Peru; and
- (3)

In the case of a legal person, be legal established in Peru and for more than 50% (per cent) of its Equity and effectively controlled by nationals Peruvians.