

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the People's Republic of China and the Government of the Republic of Peru (hereinafter referred to as Contracting Parties),

Intending to create favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Desiring to intensify the economic cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

## **Article 1.**

For the purpose of this Agreement,

1. The term "investments" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the Latter, and in particular, though not exclusively, includes:

- (a) Movable, immovable property and other property rights such as mortgages and pledges;
- (b) Shares, stock and any other kind of participation in companies;
- (c) Claims to money or to any other performance having an economic value;
- (d) Copyrights, industrial property, know-how and technological process;
- (e) Concessions conferred by law or under contract, including concessions to search for or exploit natural resources.

2. The term "investors" means:

In respect of the People's Republic of China:

- (a) Natural persons who have nationality of the People's Republic of China in accordance with its laws;
- (b) Economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the people's Republic of China;

In respect of the Republic of Peru;

- (a) Natural persons who, according to the law of the Republic of Peru, have its nationality;
- (b) All juridical persons established in accordance with the laws of the Republic of Peru and domiciled in the territory of the Republic of Peru, including civil and commercial companies and other associations with or without a legally acknowledged existence that perform an economic activity included within the sphere of this Agreement and which are directly controlled by nationals of the Republic of Peru.

3. The term "returns" means the amounts yielded by investments, such as profits, dividends, interests; royalties or other

legitimate income.

## **Article 2.**

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.
2. Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and working permit to nationals of the other Contracting Party to or in the territory of the Former in connection with activities associated with such investments in accordance with its laws and regulations.

## **Article 3.**

1. Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party.
2. The treatment and protection referred to in Paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.
3. The treatment and protection as mentioned in Paragraphs 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments of investors of a third State bases on customs union free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

## **Article 4.**

1. Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party in its territory, unless the following conditions are met:

- (a) For the public interest;
- (b) Under domestic legal procedure;
- (c) Without discrimination;
- (d) Against compensation.

2. The compensation mentioned in Paragraph 1, (d) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.

## **Article 5.**

Investors of one Contracting Party who suffer losses in respect of their investment in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, riot or other similar events. Shall be accorded by the latter Contracting Party, if it takes relevant measures, treatment no less favorable than that accorded to investors of a third State.

## **Article 6.**

1. Each Contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party the transfer of their investments and returns held in the territory of the one Contracting Party, including:

- (a) Profits, dividends, interests and other legitimate income;
- (b) Amounts from total or partial liquidation of investments;
- (c) Payment made pursuant to a loan agreement in connection with investments;
- (d) Royalties in Paragraph 1. (d) of Article 1;
- (e) Payments of technical assistance or technical service fee, management fee;
- (f) Payments in connection with projects on contract associated with investment;

(g) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the one Contracting Party.

2. The transfers mentioned above shall be made at the prevailing exchange rate of the Contracting Party accepting the investment on the date of transfer.

## **Article 7.**

If a Contracting Party or its Agency makes payments to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

## **Article 8.**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted at the request of either party to the international arbitration of the International Center for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington D.C., on March 18, 1965. Any disputes concerning other matters between an investor of either Contracting Party and the other Contracting Party may be submitted to the Center if the parties to the disputes so agree. The provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article.

4. The Center shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law accepted by both Contracting Parties.

## **Article 9.**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral Tribunal.

3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receive the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Party as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment (s).

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall better the cost of its appointed arbitrator and or its representation in arbitral proceedings.

The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

## **Article 10.**

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favorable than the treatment provided for in this Agreement, the more favorable treatment shall be applicable.

## **Article 11.**

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the Latter.

## **Article 12.**

1. The representatives of the two Contracting Parties shall hold meetings from time to time for the purpose of:

- (a) Reviewing the implementation of this Agreement;
- (b) Exchanging legal information and investment opportunities;
- (c) Forwarding proposals on promotion of investment;
- (d) Studying other issues in connection with investments.

2. Where either Contracting Party requests consultation on any matters of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in Beijing and Lima.

## **Article 13.**

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in Paragraph 1 of this Article.

3. After the expiration of the initial ten years period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of fifteen years from such date of termination.

Done in duplicate at Beijing on June 9, 1994 in the Chinese, Spanish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the People's Republic of China Qian Qichen Vice-Premier and Minister of Foreign Affairs

For the Government of the Republic of Peru Efrain Goldenberg Schreiber President of the Council of Ministers and Minister of Foreign Affairs

## **Protocol**

On signing the Agreement between the Government of the Republic of Peru and the Government of the People's Republic China concerning the Encouragement and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed upon the following provisions which shall form an integral part of the Agreement:

Ad Article 3:

Investments made in the territory of the Republic of Peru shall be accorded, in addition to the provisions of paragraphs 1 and 2 of this Article, treatment no less favorable than that granted to investments of investors of the Republic of Peru.

Ad Article 5:

Investors who made investments in the territory of the Republic of Peru shall be accorded, in addition to the provisions of this Article, treatment no less favorable than that granted to investors of the Republic of Peru.

Done in duplicate in Beijing, on June 9, 1994 in the Spanish, Chinese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU

Efrain Goldenberg Schreiber

President of Council of Ministers and Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

Qian Qichen

Vice-Premier and Minister of Foreign Affairs