

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF PERU ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Peru, hereinafter referred to as "the Contracting Parties",

Desiring to reinforce economic cooperation between the two States and to create favourable conditions for French investments in Peru and Peruvian investments in France,

Convinced that the promotion and protection of such investments are likely to stimulate transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article I.

For the purpose of this Agreement:

1. The term "investment" shall apply to all assets such as property, rights and interests of any category and particularly but not exclusively to:

(a) Movable and immovable property and all other real rights such as mortgages, preferences, usufruct, sureties and similar rights;

(b) Shares, issue premiums and other forms of participation, albeit minority or indirect, in companies constituted in the territory of either Contracting Party;

(c) Bonds, claims and rights to any benefit having an economic value;

(d) Copyrights, industrial property rights (such as patents for inventions, licences, registered trademarks, industrial models and designs), technical processes, registered trade names and goodwill;

(e) Concessions accorded by law or by virtue of a contract, including concessions for prospecting, cultivating, mining or developing natural resources, including those situated in the maritime zones of the Contracting Parties.

The said assets shall be or shall have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime zone the investment is made, before or after the entry into force of this Agreement.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary to the legislation of the Contracting Party in whose territory or maritime zone the investment is made.

2. The term "nationals" shall apply to any individual having the nationality of either Contracting Party.

3. The term "companies" shall apply to any body corporate constituted in the territory of either Contracting Party in accordance with its legislation and having its registered office there or controlled, directly or indirectly, by nationals of one Contracting Party or by bodies corporate having their registered office in the territory of one Contracting Party and constituted in accordance with that Party's legislation.

4. The term "income" shall mean all the amounts yielded by an investment, and particularly but not exclusively, profits, interest, capital appreciation, dividends, royalties and commissions.

Income from an investment and, in the event of reinvestment, income from its reinvestment shall enjoy the same protection as the investment itself.

5. This Agreement shall be applicable in the territory of each Contracting Party and to the maritime zone adjacent to the coasts of each Contracting Party within a limit of 200 nautical miles.

Article 2.

Each Contracting Party shall permit and promote, in accordance with its legislation and with the provisions of this Agreement, investments made in its territory and maritime zone by nationals and companies of the other Party.

Article 3.

Each Contracting Party shall undertake to accord in its territory and maritime zone just and equitable treatment, in accordance with the principles of international law, to the investments of nationals and companies of the other Party and to ensure that the exercise of the right so granted is not impeded either de jure or de facto.

In particular, each Contracting Party undertakes not to impose any restriction on the purchase or transportation of raw materials and secondary materials, energy and fuel, and means of production and operation of all kinds, or any impediment to the sale or transportation of goods within the country and abroad, or any other measures having a similar effect.

The Contracting Parties, within the framework of their legislation, shall give favourable consideration to applications for entry, stay, work and travel made by nationals by one Contracting Party in connection with an investment made in the territory or in the maritime zone of the other Contracting Party.

Article 4.

Each Contracting Party shall accord in its territory and maritime zone to nationals or companies of the other Party, in respect of their investments and activities in connection with such investments, treatment which is no less favourable than that accorded to its own nationals or companies, or the treatment accorded to nationals or companies of the most favoured nation, if the latter is more advantageous. For this purpose, nationals who are authorized to work in the territory and maritime zone of either Contracting Party shall be entitled to enjoy the material facilities appropriate for the exercise of their professional activities.

Such treatment shall not, however, include privileges which may be extended by a Contracting Party to the nationals or companies of a third State by virtue of its participation in or association with a free-trade area, customs union, common market or any other form of regional economic organization. The provisions of this Article shall not apply to taxation matters.

Article 5.

1. Investments made by nationals or companies of one Contracting Party shall be fully and completely protected and safeguarded in the territory and maritime zone of the other Contracting Party.

2. The Contracting Parties shall not take any expropriation or nationalization measures or any other measures which could cause nationals and companies of the other Party to be dispossessed, directly or indirectly, of the investments belonging to them in their territory and maritime zone, except for reasons of public necessity and on condition that such measures are not discriminatory or contrary to a specific undertaking by either Contracting Party with regard to a national or company of the other Contracting Party.

Any dispossession measures taken shall give rise to the payment of prompt and adequate compensation the amount of which, calculated in accordance with the real value of the investments in question, shall be assessed on the basis of a normal economic situation prior to any threat of dispossession.

Such compensation, its amount and methods of payment shall be determined not later than the date of dispossession. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall yield up to the date of payment, interest calculated on the basis of the appropriate market interest rate.

3. Nationals or companies of either Contracting Party whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or uprising in the territory or maritime zone of the other Contracting Party shall be accorded by the latter Party treatment which is no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6.

A Contracting Party in whose territory or maritime zone investments have been made by nationals or companies of the other Contracting Party shall accord to the said nationals or companies freedom of transfer of:

- (a) Interest, dividends, profits and other current income;
- (b) Royalties deriving from the intangible property listed in Article 1, subparagraphs 1 (d) and 1 (e);
- (c) Payments made towards the repayment of duly contracted loans;
- (d) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation in the invested capital;
- (e) The compensation for dispossession or loss provided for in Article 5, paragraphs 2 and 3, above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime zone of the other Contracting Party in connection with an approved investment shall also be authorized to transfer their remuneration to their country of origin.

The transfers referred to in the preceding paragraphs shall be carried out without delay at the regular official rate of exchange applicable on the date of transfer.

Article 7.

In so far as the regulations of one Contracting Party provide for guaranteeing external investments, a guarantee may be granted, on the basis of a case-by-case review, for investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.

The guarantee referred to in the preceding paragraph shall not be available for investments by nationals and companies of one Contracting Party in the territory or maritime zone of the other Party unless the investments have been granted prior approval by the latter Party, if such approval is required.

Article 8.

1. Any dispute relating to investments between one Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties concerned.
2. If any such dispute cannot be so settled within six months of the time when a claim is made by one of the parties to the dispute, the dispute shall, at the request of either party, be submitted for arbitration to the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on 18 March 1965.
3. A body corporate constituted in the territory of one of the Contracting Parties which, before the dispute arose, was controlled by nationals or bodies corporate of the other Contracting Party shall, for the purposes of the application of article 25, paragraph 2 (5), of the Convention referred to in paragraph 2 above, be considered to be a body corporate of the other Contracting Party.
4. Each Contracting Party shall agree without reservations to the settlement of disputes by international arbitration in accordance with the provisions of this Article.
5. The arbitral decisions shall be final and binding.

Article 9.

When one Contracting Party, by virtue of a guarantee issued in respect of an investment in the territory or maritime zone of the other Party, makes payments to one of its own nationals or companies, it shall thereby enter into the rights and shares of the said national or company.

Such payments shall be without prejudice to the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue actions brought before that body until the procedure has been completed.

Article 10.

Investments which have been the subject of a specific undertaking by one Contracting Party vis-a-vis nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking, in so far as its provisions are more favourable than those laid down by this Agreement.

Article 11.

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channel.
2. If a dispute cannot be settled within six months of the time when a claim is made by one of the Contracting Parties, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.
3. The said tribunal, shall, in each separate case, be constituted as follows: each Contracting Party shall designate one member, and the two said members shall, by agreement, designate a national of a third State, who shall be appointed Chairman by the two Contracting Parties. All the members shall be appointed within two months of the date on which one Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.
4. If the time limits established in paragraph 3 above are not observed, one Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if, for any other reason, he is prevented from performing that function, the Under-Secretary-General next in seniority shall, provided that he is not a national of either Contracting Party, make the necessary appointments.
5. The arbitral tribunal shall take its decisions by majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall adopt its own rules of procedure. It shall interpret its judgement at the request of either Contracting Party. Unless the tribunal decides otherwise, taking particular circumstances into consideration, costs of the arbitration, including leave for the arbitrators, shall be divided equally between the Parties.

Article 12.

Each Party shall notify the other Party of the completion of the respective constitutional procedures required by it for the entry into force of this Agreement, which shall take place one month after the date of the receipt of the last such notification.

This Agreement is concluded for an initial period of 15 years. It shall remain in force thereafter unless one year's notice of denunciation is given through the diplomatic channel by either Party.

Upon the expiry of the validity of this Agreement, investments made while it was in force shall continue to be protected by its provisions for an additional period of 15 years.

Done at Paris on 6 October 1993, in two original copies, each in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic:

EDMOND ALPHANDERY

For the Government of the Republic of Peru:

EFRAIN GOLDENBERG