

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

The Government of the Republic of Peru and the Government of the Republic of Finland

desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

recognizing that the promotion and reciprocal protection of investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "Investment" means any kind of asset, established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, and in particular, though not exclusively, includes:

(a) movable and immovable property as well as property rights, such as mortgage, lien, pledge, usufruct and leasing;

(b) shares, stock, debentures and other forms of participation in companies or joint ventures;

(c) title to money or any performance having an economic value;

(d) intellectual property, such as technical processes, trade names, know-how and goodwill;

(e) rights conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

(2) A change in the form in which assets are invested does not affect their character as investments.

(3) The term "Investor" means:

(a) any natural person who is a national of a Contracting Party in accordance with its laws, and

(b) any legal person, company or other organization constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of that Contracting Party.

(4) The term "Returns" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

(5) The term "Territory" means the areas contained within the land boundaries, the adjacent maritime zones and airspace in which the Contracting Party exercises sovereign rights and jurisdiction in accordance with its legislation and international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investments, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other

Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof through arbitrary or discriminatory measures.

(3) Each Contracting Party shall, subject to its laws and regulations, examine in good faith applications of individuals working for an investor of the other Contracting Party, as well as members of their household, relating to the entry, stay and work of aliens.

(4) Investments by investors of one Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Contracting Party.

Article 3. Treatment of Investments

(1) Neither Contracting Party shall in its territory subject investments by investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments by investors of any third State.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards the management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

(3) Neither Contracting Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

Article 4. Exceptions

The provisions of this Agreement relative to the granting of treatment no less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from

(a) any existing or future customs union, common market or free trade area to which the Contracting Party is or may become a party, or

(b) any international agreement or arrangement or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation

(1) Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to measures having the same effect except for a purpose which is in the public interest and related to the internal needs. The measures can only be taken on a non-discriminatory basis and carried out under due process of law. The measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation.

(2) Such compensation shall amount to the genuine market value of the investment expropriated at the time immediately before the expropriation or before the impending expropriation became public knowledge in such a way as to affect the value of the investment.

(3) The genuine market value shall be calculated in a freely convertible currency at the market rate of exchange at the moment referred to in paragraph (2) of this Article. Compensation shall also include interest at the London Interbank Offered Rate (Libor) from the date of expropriation until the date of payment.

Article 6. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbance shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification or other settlement, no less favourable than that which that Contracting Party accords to an investor of any third State.

(2) Without prejudice to paragraph (1) of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffer losses resulting from requisitioning or destruction of its investments or a part thereof, shall be accorded prompt, adequate and effective compensation.

Article 7. Transfer of Payments

(1) Each Contracting Party shall allow, with respect to investments in its territory by investors of the other Contracting Party, the unrestricted transfer of payments in connection with investments into and out of its territory. The free transfer shall, inter alia, include the initial capital or the proceeds from the liquidation of the investment, the returns, funds in repayment of loans, amounts appropriated for the coverage of the management expenses of the investment, earnings of personnel not being its nationals who are allowed to work in connection with an investment, payments arising out of the settlement of a dispute and compensation under Article 5 and 6 of this Agreement.

(2) Transfers under paragraph (1) of this Article shall be effected without delay and in a freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party of all the rights and claims resulting from such an investment, and that the former Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

Article 9. Disputes between an Investor and a Contracting Party

(1) Any dispute between one Contracting Party and an investor of the other Contracting Party relating to an investment under this Agreement shall, as far as possible be settled amicably between the parties to the dispute.

(2) If such a dispute has not been settled amicably within six months from the date at which amicable settlement was requested, the dispute, at the request of either party to the dispute, shall be submitted for settlement by conciliation or arbitration to the International Center for the Settlement of Investment Disputes (ICSID), under the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States. The investor has the right to choose whether conciliation or arbitration is the method of settlement.

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations.

(2) If a dispute has not thus been settled within six months from the date at which negotiations were requested, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be constituted for each individual case. Each Contracting Party shall appoint one member, and the two members shall agree upon a national of a third state to be appointed Chairman by both Contracting Parties. The members shall be appointed within two months and the chairman within four months from the date of the written notice containing the request under paragraph (2) of this Article.

(4) If the time limits specified in paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from discharging this task, the most senior deputy of the President shall be invited to make the appointments.

(5) The arbitration tribunal shall determine its own procedures and take its decisions by a majority of votes. Each Contracting Party shall bear the cost of its own member and its own representation in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties, unless the arbitration tribunal decides otherwise. The decisions and awards of the arbitration tribunal shall be final and binding on both Contracting Parties.

Article 11. Application of the Agreement

(1) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

(2) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 12. Final Clauses

(1) This Agreement shall enter into force on the thirtieth day after the day on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in written notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 11 remain in force for a further period of fifteen years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Helsinki, on 2 May 1995 in duplicate in the Spanish, Finnish and English language all three texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

For the Government of the Republic of Peru

For the Government of the Republic of Finland