

ACTA DE NEGOCIACION

SOBRE UN ACUERDO CONCERNIENTE A LA PROMOCION Y PROTECCION
RECIPROCA DE INVERSIONES

ENTRE

EL REINO DE SUECIA

Y

LA REPUBLICA DEL PERU

I

Delegaciones del Reino de Suecia y de la República del Perú se han reunido en la ciudad de Lima, Perú, los días 7 y 8 de noviembre de 1991, con el propósito de ultimar las negociaciones de un Acuerdo concerniente a la promoción y protección recíproca de inversiones.

Las dos delegaciones estuvieron integradas por las siguientes personas:

Delegación sueca

- Señor Embajador Hans Olwaeus (Jefe de Delegación)
Departamento Legal del
Ministerio de Asuntos Exteriores
- Sr. Consejero Soren Lundvall
Embajada de Suecia en el Perú
- Sra. Primera Secretaria Agneta Vesterskold
Departamento Legal del
Ministerio de Asuntos Exteriores

Delegación peruana

- Señor Embajador Juan Garland Combe (Jefe de Delegación)
Asesor Jurídico del
Ministerio de Relaciones Exteriores
- Sr. Dr. Jorge Muñiz Ziches
Presidente del Directorio de la Comisión Nacional
de Inversiones y Tecnología Extranjeras (CONITE)
- Sra. Dra. Elizabeth Winstanley Patio
Asesora del Directorio de CONITE
- Srta. Dra. María del Carmen Vega Sánchez
Asesora del Directorio de CONITE
- Sr. Tercer Secretario Hernando Torres Fernández E.
Departamento de Política Financiera del
Ministerio de Relaciones Exteriores
- Sr. Tercer Secretario de Cancillería
Manuel Gonzales Chávez
Asesoría Jurídica del
Ministerio de Relaciones Exteriores

II

Las negociaciones se han desarrollado dentro de una atmósfera amistosa y constructiva. Las dos delegaciones han dado su conformidad sobre el Proyecto de Acuerdo, en anexo, en idioma inglés, cuya mayor y substancial parte ha sido mutuamente convenida, a excepción del Parágrafo (2) del Artículo Séptimo, el cual será objeto de posterior consideración.

III

Las dos Delegaciones han convenido someter dicho Acuerdo a los Gobiernos respectivos, con miras a su suscripción.

Las Delegaciones se encargarán de traducir el texto en Inglés a los dos otros idiomas oficiales del Acuerdo; la Delegación sueca al idioma Sueco y la Delegación peruana al idioma Español. Estas dos versiones serán intercambiadas para su examen y aprobación recíprocos, en el más breve plazo posible.

Ha sido convenido que el lugar de la firma del Acuerdo será fijado posteriormente, por la vía diplomática.

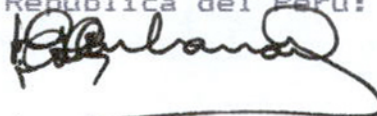
Hecho en Lima, el 8 de noviembre de 1991, en dos originales en idioma Español.

El Jefe de la Delegación
del Reino de Suecia:



Embajador
Hans Olwaeus

El Jefe de la Delegación
de la República del Perú:



Embajador
Juan Garland Combe

Agreement between the Government of the Kingdom of Sweden
and the Government of the Republic of Peru on the Promotion
and Reciprocal Protection of Investments

The Government of the Kingdom of Sweden and the Government of the Republic of Peru 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 protection of such investment favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

have agreed as follows:

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Article 1

Definitions

For the purposes of this Agreement:

(1) The term "investment" shall mean every kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

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

(b) shares and other kinds of interest in companies;

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

(d) intellectual property rights, technical processes, trade names, know-how, good-will and other similar rights;

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

(2) Goods that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being a national of the other Contracting Party or a legal person having its seat in the territory of that Contracting Party, shall be treated as an investment.

(3) The term "investor" shall mean:

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

(b) any legal person having its seat in the territory of either Contracting Party, or in a third country with a predominant interest of an investor of either Contracting Party.

(4) The term "territory" shall mean the national territory of either Contracting Party as well as those maritime areas adjacent to the coast of the Contracting Party concerned, to the extent to which it may exercise sovereign rights or jurisdiction in those areas in accordance with its legal system and international law.

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Article 2

Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, 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 as well as the acquisition of goods and services and the sale of its production, through arbitrary or discriminatory measures.

(3) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(4) In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of one of the Contracting Parties, this Contracting Party shall notwithstanding its own national requirements for bookkeeping and auditing permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by his national requirements or according to internationally accepted standards (e.g. International Accounting Standards, IAS, drawn up by the International Accounting Standards Committee, IASC). The result of such accountancy and audit shall be freely transferable to the investor.

(5) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, enjoy the full protection of this Agreement.

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Article 3

Treatment of Investments

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments to investors of third States.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, a Contracting Party which has concluded an agreement regarding the formation of a customs union, a common market or a free-trade area shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(3) The treatment granted to investments under the Commercial Agreements which the Kingdom of Sweden has concluded with the Ivory Coast on 27 August 1965, with Madagascar on 2 April 1966 and with Senegal on 24 February 1967 shall not be invoked as the basis of most-favoured-nation treatment under this Article.

(4) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party that benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(5) Without prejudice to laws and regulations in force at the time of signature of this Agreement, each Contracting Party shall, on the basis of reciprocity, apply to investments in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments by its own nationals.

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Article 4

Expropriation and Compensation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with:

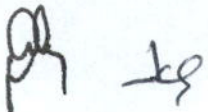
(a) the measures are taken in the public interest and under due process of law;

(b) the measures are unequivocal and not discriminatory; and

(c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) The provisions of Paragraph (1) of this Article shall also apply to the income from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(3) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded with respect to restitution, indemnification, compensation, or other settlement, a treatment which is no less favourable than that accorded to its own investors or investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.



Article 5

Transfers

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency of:

(a) the returns accruing from any investment by an investor of the other Contracting Party, including in particular, though not exclusively, capital gains, profits, interests, dividends, licences, royalties or fees;

(b) the proceeds from a total or partial liquidation of any investment by an investor of the other Contracting Party;

(c) funds in repayment of loans;

(d) earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) The Contracting Parties undertake to accord to transfers referred to in Paragraph (1) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

(3) Any transfer referred to in this Agreement shall be effected at the prevailing market rate of exchange, in each case.

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Article 6

Subrogation

If a Contracting Party or one of its organs makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8, recognize the transfer of any right or title of such an investor to the former Contracting Party for its organ and the subrogation of the former Contracting Party or its organ to any such right or title.

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Article 7

Disputes between an Investor and a Contracting Party

(1) With a view to an amicable solution of disputes between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned.

(2) [If these consultations do not result in a solution,] [disputes between one Contracting Party and an investor of] [the other Contracting Party concerning an obligation of] [the former under this Agreement in relation to an] [investment of the latter, shall at the request of the] [investor concerned be submitted to the International] [Center for Settlement of Investment Disputes, for] [settlement by arbitration or conciliation under the] [Convention on the Settlement of Investment Disputes] [between States and Nationals of Other States opened for] [signature at Washington on 18 March 1965.]

For the purpose of this Paragraph, any legal person which is constituted in accordance with the legislation of one Contracting Party and in which before a dispute arises the majority of shares are owned by investors of the other Contracting Party shall be treated, in accordance with Article 25 (2) (b) of the said Washington Convention, as a legal person of the other Contracting Party.

(3) The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of laws, the terms of any specific agreement concluded in relation to such an investment and the principles of international law.

(4) The Contracting Party which is a party to the dispute shall not at any time during the procedures assert as a defence its immunity or the fact that the investor has received compensation under insurance contract covering the whole or part of the incurred damage or loss.

(5) The arbitral decisions shall be final and binding on both parties to the dispute. Each Contracting Party shall execute them in accordance with its laws.

Article 8

Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Party. Each Contracting Party shall bear the cost of the members appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 9

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.

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Article 10

Final provisions

(1) This Agreement shall enter into force on the day the Governments of the two Contracting Parties notify 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 writing 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 provision of Article 1 to 9 shall 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 _____ on _____ in duplicate in the Swedish, Spanish and English languages, the three texts being equally authentic. In case of difference of interpretation reference shall be made to the English text.

For the Government of
the Kingdom of Sweden

For the Government of
the Republic of Peru