



Treaty Series No. 35 (1994)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Peru

for the Promotion and Protection of Investments

London, 4 October 1993

[The Agreement entered into force on 21 April 1994]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1994*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE REPUBLIC OF PERU FOR THE
PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Peru, hereinafter referred to as "The Contracting Parties";

Desiring to intensify economic co-operation for the mutual benefit of both countries;

Wishing to create favourable conditions for investments by nationals or companies of one State in the territory of the other State;

Recognising that the promotion and protection of such investments under international agreement can encourage private economic initiative and increase the prosperity of both peoples;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) "investment" means every kind of asset defined in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:
- (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
 - (ii) shares, stock or debentures and other forms of participation in companies or joint ventures;
 - (iii) claims to money or to any performance under contract having a financial value;
 - (iv) intellectual property and industrial property rights such as copyright, patents, utility models, industrial models and designs, marks, trade names, goodwill and know-how;
 - (v) concessions conferred by law or under contract for the performance of an economic activity, including concessions for prospecting, exploration and exploitation of natural resources;
- A change in the form in which assets are invested does not affect their character as investments. The term "investment" includes all investments whether made before or after the date of entry into force of this Agreement;
- (b) "returns" means the amounts yielded by an investment and in particular though not exclusively, includes:
- (i) profit, dividends, interest and other income;
 - (ii) funds in repayment of loans and the interest on them;
 - (iii) royalties or fees;
 - (iv) the proceeds of sale or of the total or partial liquidation of the investment, including capital gains;
- (c) "nationals" means:
- (i) in respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;
 - (ii) in respect of the Republic of Peru: physical persons possessing Peruvian nationality in accordance with its legislation;
- (d) "companies" means:

- (i) in respect of the United Kingdom: corporations, firms, and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any other territory to which this Agreement is extended in accordance with the provisions of Article 12;
 - (ii) in respect of the Republic of Peru: entities including private and commercial companies and any other association with or without legal representation which perform an economic activity within the scope of this Agreement, and constituted in accordance with Peruvian legislation;
- (e) "territory" means:
- (i) in respect of the United Kingdom: Great Britain and Northern Ireland including the territorial sea and any maritime area situated beyond the territorial sea of the United Kingdom which has been or might in future be designated under the national law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights with regard to the sea-bed and sub-soil and the natural resources and any territory to which this Agreement is extended in accordance with the provisions of Article 12;
 - (ii) in respect of the Republic of Peru: the areas contained within its land boundaries and the adjacent maritime area and air space in which the Republic of Peru exercises sovereign rights and jurisdiction in accordance with its Constitution and international law.

ARTICLE 2

Promotion and Protection of Investment

- (1) Each Contracting Party shall encourage and create favourable conditions for the making of investments by nationals or companies of the other Contracting Party in its territory and shall admit such investments in accordance with its laws and regulations.
- (2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

ARTICLE 3

National Treatment and Most-Favoured-Nation Provision

- (1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.
- (2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.
- (3) For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.

ARTICLE 4

Exceptions

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

- (a) any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party, or
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 5

Repatriation of Investments and Investment Returns

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of their investments and returns. Transfers shall be effected without delay in the currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

ARTICLE 6

Expropriation

(1) Investments made in the territory of one Contracting Party by nationals and companies of the other Contracting Party shall not be expropriated, nationalised or subjected to other measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) except for reasons of public necessity and for a public purpose or in a social interest related to the internal needs of that Party on a non-discriminatory basis and, in such cases, they shall be subject to prompt, adequate and effective compensation.

(2) Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realisable and be freely transferable.

(3) The legality of the expropriation, the amount of the compensation and any related matter shall be subject to review in ordinary legal proceedings in accordance with the principles set forth in this Article.

(4) When a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs (1), (2) and (3) of this Article are applied to the extent necessary to guarantee the prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

ARTICLE 7

Compensation for Losses

(1) Nationals or companies of either Contracting Party who suffer losses in relation to their investments due to war or other armed conflict, revolution, state of national emergency, state of siege, insurrection or other similar events in the territory of the other Contracting Party, shall be treated by the latter no less favourably than its own nationals and companies or nationals or companies of a third State in respect of restitution, compensation, indemnification or other settlement. These payments shall be freely transferable.

(2) Without prejudice to the provisions set forth in paragraph (1) of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party, resulting from:

- (a) requisitioning of their property by its forces or authorities, or
- (b) destruction of their property by its forces or authorities, which was not caused by combat actions, or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation. The resulting payments shall be freely transferable.

ARTICLE 8

Subrogation

(1) If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognise:

- (a) the assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and
- (b) that the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The first Contracting Party shall be entitled in all circumstances to:

- (a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment, and
- (b) any payments received in pursuance of those rights and claims,

as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received in non-convertible currency by the first Contracting Party in pursuance of the rights and claims acquired shall be freely available to the first Contracting Party for the purpose of meeting any expenditure incurred in the territory of the second Contracting Party.

ARTICLE 9

Application of Other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE 10

Settlement of Disputes between a Contracting Party and a National of the other Contracting Party

- (1) Any legal dispute arising between one Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former shall, as far as possible, be settled amicably between the two parties concerned.
- (2) If any such dispute cannot be settled within three months between the parties to the dispute through amicable settlement, pursuit of local remedies or otherwise, each Contracting Party hereby consents to submit it to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965¹.
- (3) A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.
- (4) In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the national or company affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

ARTICLE 11

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 the diplomatic channel.
- (2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of one of the Contracting Parties be submitted to an arbitral tribunal.
- (3) The arbitral tribunal shall be constituted ad hoc. Each Contracting Party shall appoint one member, and the two members shall choose a national of a third State who upon approval shall be appointed Chairman by both Contracting Parties. The members shall be appointed within a period of two months, and the Chairman within a period of three months, after either Contracting Party has informed the other that it wishes the dispute to be submitted to an arbitral tribunal.
- (4) Should any time limit specified in paragraph (3) not be complied with, and in the absence of agreement to the contrary, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. In the event that the President is a national of either Contracting Party or is prevented for any other reason from making the appointments, the Vice-President shall be invited to make such appointments. Should the Vice-President also be a national of either Contracting Party or if he is also prevented from making the appointments, the next Court member in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

¹ Treaty Series No. 25 (1967), Cmnd. 3255

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the costs for its own member of the tribunal, and of its representation in the arbitral proceedings. The costs of Chairman and the remaining costs shall be borne in equal part by the two Contracting Parties. The arbitral tribunal shall determine its own procedure.

ARTICLE 12

Territorial Extension

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom is responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 13

Entry into Force, Duration and Termination of the Agreement

(1) The Contracting Parties shall notify each other when their respective constitutional requirements for the entry into force of this Agreement have been completed.

(2) This Agreement shall enter into force thirty days after the date of the second such notification. Its initial period of validity shall be 15 years and it shall remain in force indefinitely thereafter unless one of the Contracting Parties gives the other 12 months' notice in writing of its wish to terminate this Agreement.

(3) Investments made before the date of termination of this Agreement shall remain covered by the terms of the Agreement for a period of fifteen years after the said date of termination and without prejudice to the application thereafter of the rules of general international law.

This Agreement shall be done in English and Spanish, both texts being equally authoritative.

In witness whereof, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this fourth day of October 1993 in the official Agreement languages.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of the
Republic of Peru:

PATRICK McLOUGHLIN

EFRAIN GOLDENBERG