

**INVESTMENT INCENTIVE AND FINANCIAL AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF PERU**

The Government of the United States of America and the Government of the Republic of Peru affirm their common desire to encourage economic activities in Peru which promote the development of the economic resources and productive capacities of Peru.

Recognizing that this developmental objective can be promoted through financial arrangements, such as investment insurance (including reinsurance), loans and guaranties, which are backed in whole or in part by the Government of the United States of America and administered by the Overseas Private Investment Corporation ("OPIC")--a non-commercial development agency of the Government of the United States of America--or pursuant to arrangements between OPIC and private companies,

The parties signatory hereto hereby enter into the following financial agreement:

ARTICLE 1

As used in this Agreement, the term "Coverage" shall refer to any investment insurance, reinsurance, or guaranty provided in accordance with this Agreement by an Issuer, and the term "Issuer" shall refer to OPIC, any successor agency of the United States of America, or any other entity or group of entities pursuant to arrangements with OPIC or any such successor agency, to the extent of its interest as insurer, reinsurer, or guarantor in any Coverage, whether as a party or successor to a contract providing Coverage or as an agent for the administration of Coverage.

ARTICLE 2

(a) (i) If the Issuer makes payment to any party under Coverage, the Government of the Republic of Peru shall, subject to the provisions of Article 3 hereof, recognize the transfer to the Issuer of any assets, including currency, credits, or investment, on account of which payment under such Coverage is made, as well as the succession of the Issuer to any right, title, claim, privilege, or cause of action existing, or which may arise, in connection therewith.

(ii) If the Issuer, in the exercise of its rights as a creditor, acquires any such assets or succeeds to any right, title, claim, privilege or cause of action, the Government of the Republic of Peru shall, subject to the provisions of Article 3 of this Agreement, recognize such acquisition or succession.

(b) The Issuer shall assert no greater rights than those of the transferring party under Coverage with respect to any interests transferred or succeeded to under this Article.

(c) The Issuer shall not be subject to regulation under the laws of Peru applicable to insurance or financial organizations.

(d) Interest and fees on loans made or guaranteed by the Issuer, as a development institution, shall be exempt from tax in Peru. The Issuer shall not be subject to tax in Peru as a result of any transfer or succession which occurs pursuant to Article 2(a) hereof. Tax treatment of other transactions conducted by the Issuer in Peru shall be determined by applicable law or specific agreement between the Issuer and competent authorities of the Government of the Republic of Peru.

ARTICLE 3

To the extent that the laws of Peru partially or wholly invalidate or prohibit the acquisition from a party under Coverage of any interest in any property within the territory of Peru by the Issuer, the Government of the Republic of Peru shall permit such party and the Issuer to make appropriate arrangements pursuant to which such interests are transferred to a person or entity permitted to own such interests under the laws of Peru.

ARTICLE 4

(a) Amounts in the currency of Peru, including credits thereof, acquired by the Issuer by virtue of such Coverage shall be accorded

treatment by the Government of the Republic of Peru no less favorable as to use and conversion than the treatment to which such funds would be entitled in the hands of the party under Coverage.

(b) Such amounts and credits may be transferred by the Issuer to any person or entity and upon such transfer shall be freely available for use by such person or entity in the territory of Peru in accordance with its laws.

(c) The provisions of this Article 4 shall also apply to any amounts and credits in the currency of Peru which may be accepted by the Issuer in settlement of obligations with respect to loans made by the Issuer for projects in Peru.

ARTICLE 5

(a) Any dispute between the Government of the United States of America and the Government of the Republic of Peru regarding the interpretation or application of this Agreement, including any dispute between the two governments arising out of any project or activity for which Coverage has been issued or a loan made, shall be resolved, insofar as possible, through negotiations between the two Governments. If, at the end of six months following the request for negotiations, the two Governments have not resolved the dispute by agreement, the dispute shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with Article 5(b).

(b) The arbitral tribunal for resolution of disputes pursuant to Article 5(a) shall be established and function as follows:

(i) Each Government shall appoint one arbitrator; these two arbitrators shall designate a president by common agreement who shall be a citizen of a third state and whose appointment shall be subject to acceptance by the two Governments. The arbitrators shall be appointed within three months and the president within six months of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary-General of the International Centre for the Settlement of Investment Disputes to make the necessary appointment or appointments, and both Governments agree to accept such appointment or appointments.

(ii) The arbitral tribunal shall base its decision on the applicable principles and rules of international law. The arbitral tribunal shall decide by majority vote. Its decision shall be final and binding.

(iii) During the proceedings, each of the Governments shall pay the expense of its arbitrator and of its representation in the proceedings before the arbitral tribunal, whereas the expenses of the president and other costs of arbitration shall be paid in equal parts by the two Governments. In its award, the arbitral tribunal may, in its discretion, reallocate expenses and costs between the two Governments.

(iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

c) Nothing in this Agreement shall limit the right of either government to assert a claim under international law in its sovereign capacity, as distinct from any rights it may have under this Agreement.

ARTICLE 6

The two Governments, desiring reciprocity, agree that, in the event the Government of the Republic of Peru makes arrangements to issue Coverage in the United States of America under a program similar in substance to the investment guaranty program to which this Agreement relates, provisions equivalent to those of this Agreement shall apply with respect to Peruvian investments in the United States of America upon completion of the constitutional and other legal processes of both Governments approving such arrangements.

ARTICLE 7

This Agreement shall continue in force unless either government shall have received from the other a diplomatic note stating its intention to terminate the Agreement, in which case the date of termination shall be six months after receipt of such note. Notwithstanding termination of this Agreement, the provisions of this Agreement shall continue to apply with respect to Coverage issued or loans made at any time before the date of termination.

This Agreement shall enter into force on the date of signature.

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

DONE at Washington on the 16th day of December, 1992, in duplicate in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES
OF AMERICA



FOR THE GOVERNMENT OF
THE REPUBLIC
OF PERU



**CONVENIO FINANCIERO
SOBRE INCENTIVOS PARA LAS INVERSIONES
ENTRE
EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMERICA
Y
EL GOBIERNO DE LA REPUBLICA DEL PERU**

El Gobierno de los Estados Unidos de América y el Gobierno de la República del Perú,

Deseando alentar aquellas actividades económicas en el Perú que promuevan el desarrollo de los recursos económicos y la capacidad de producción del Perú, y

Reconociendo que este objetivo del desarrollo se puede fomentar por medio de arreglos financieros, tales como seguros (incluidos los reaseguros), préstamos y garantías de inversión que estén respaldados total o parcialmente por el Gobierno de los Estados Unidos de América y administrados por la Overseas Private Investment Corporation ("OPIC"), organismo dedicado al desarrollo y sin fines mercantiles perteneciente al Gobierno de los Estados Unidos de América, o en virtud de acuerdos celebrados entre la OPIC y sociedades mercantiles,

Conciertan el siguiente convenio financiero:

ARTICULO CUARTO

a) El Gobierno de la República del Perú concederá a las sumas en moneda del Perú, incluidos los créditos en dicha moneda, adquiridas por la Entidad Emisora en virtud de la Cobertura, un trato no menos favorable en cuanto a su uso y conversión que aquél al que tendrían derecho si estuvieran en poder de la parte amparada por la Cobertura.

b) Dichas cantidades y dichos créditos podrán ser transferidos por la Entidad Emisora a cualquier persona física o jurídica y, una vez efectuada la transferencia, estarán a la libre disposición de dicha persona física o jurídica para su uso en el territorio del Perú de conformidad con sus leyes.

c) Lo dispuesto en este Artículo también se aplica a cualesquiera cantidades y créditos en moneda del Perú que sean aceptados por la Entidad Emisora en pago de deudas por concepto de préstamos concedidos por la Entidad Emisora para proyectos en el Perú.

ARTICULO QUINTO

a) Cualquier diferencia entre el Gobierno de los Estados Unidos de América y el Gobierno de la República del Perú acerca de la interpretación o aplicación del presente Convenio, incluida cualquier diferencia entre los dos Gobiernos que emane de cualquier proyecto o actividad para el que se haya emitido Cobertura o se haya concedido un préstamo, se resolverá, en la medida de lo posible, mediante negociaciones entre los dos Gobiernos. Si al expirar el plazo de seis meses a partir de la fecha de la solicitud de negociaciones, la diferencia no ha sido resuelta por acuerdo entre los Gobiernos, a iniciativa de

cualquiera de ellos se someterá dicha diferencia a un tribunal arbitral para su resolución conforme a lo dispuesto en el párrafo b) de este Artículo.

b) El tribunal arbitral para la resolución de diferencias conforme a lo dispuesto en el párrafo a) de este Artículo se establecerá y funcionará del modo siguiente:

(i) Cada Gobierno nombrará a un árbitro; los dos árbitros designarán de mutuo acuerdo a un presidente que deberá ser ciudadano de un tercer Estado y cuyo nombramiento estará sujeto a la aceptación de los dos Gobiernos. Los árbitros serán nombrados en un plazo de tres meses, y el presidente, en un plazo de seis meses, a partir de la fecha de recibo de la solicitud de arbitraje presentada por cualquiera de los dos Gobiernos. De no efectuarse los nombramientos en los plazos previstos, cualquiera de los dos Gobiernos, en ausencia de cualquier otro acuerdo, podrá solicitar al Secretario General del Centro Internacional de Arreglo de Diferencias Relativas a Inversiones que efectúe el nombramiento o los nombramientos necesarios, y los dos Gobiernos convienen en aceptar dicho nombramiento o nombramientos.

(ii) El tribunal arbitral fundará su decisión en los principios y las normas pertinentes del derecho internacional. El tribunal arbitral decidirá por mayoría de votos. Su decisión será definitiva y obligatoria.

(iii) Cada Gobierno pagará los gastos de su árbitro y de su representación en las actuaciones ante el tribunal arbitral; los gastos del presidente y demás costas del arbitraje serán sufragados a partes iguales por los dos Gobiernos. En su laudo el tribunal arbitral, a su discreción, podrá repartir de nuevo los gastos y las costas entre los dos Gobiernos.

(iv) En las demás cuestiones, el tribunal arbitral reglamentará sus propios procedimientos.

c) El presente Convenio no limita el derecho de cada Gobierno a sostener una reclamación con arreglo al derecho internacional en su condición de Estado soberano, a diferencia de los derechos que pudiera tener según el presente Convenio.

ARTICULO SEXTO

Los dos Gobiernos, en su deseo de reciprocidad, acuerdan que en el caso de que el Gobierno de la República del Perú tome medidas para emitir Cobertura en los Estados Unidos de América según un programa sustancialmente similar al programa de garantía de inversiones al que se refiere el presente Convenio, se apliquen a las inversiones peruanas en los Estados Unidos de América unas disposiciones equivalentes a las del presente Convenio, una vez concluidos los procedimientos jurídicos de los dos Gobiernos, incluidos los constitucionales entre ellos, por los cuales se aprueben dichas medidas.

ARTICULO SEPTIMO

El presente Convenio continuará en vigor a menos que uno de los Gobiernos haya recibido del otro una nota diplomática de su intención de dejar de ser Parte en el Convenio, en cuyo caso la fecha de terminación del Convenio será de seis meses a partir del recibo de tal nota. A pesar de la denuncia del presente Convenio, sus disposiciones seguirán en vigor con respecto a las Coberturas emitidas o a los préstamos concedidos en cualquier momento antes de la fecha de la denuncia.

El presente Convenio entrará en vigor en la fecha de la firma.

En fe de lo cual, los infrascritos, debidamente autorizados por sus Gobiernos respectivos, han firmado el presente Convenio.

HECHO en Washington el 16 de Diciembre de 1992, en dos versiones, en inglés y español, ambas igualmente auténticas.

POR EL GOBIERNO DE
LOS ESTADOS UNIDOS
DE AMERICA



POR EL GOBIERNO DE
LA REPUBLICA
DEL PERU

