

## **Chapter XX**

### **Investment**

#### **Article X-01            Definitions**

For the purpose of this Chapter,

1. The term “investment” means every kind of asset invested by investors of one Party in accordance with the laws and regulations of the other Party in the territory of the Latter, and in particular, though not exclusively, includes:

- (a) movable, immovable property and other property rights such as mortgages and pledges, and similar rights;
- (b) shares, debentures, stock and any other kind of participation in companies;
- (c) claims to money or to any other performance having an economic value associated with an investment<sup>1</sup>;
- (d) Intellectual property rights, in particularly copyrights, patents, trade-marks, trade-names, know-how and technological process, as well as good-will;
- (e) Concessions conferred by law or under contract, including concessions to search for , cultivate, extract or exploit natural resources.

2. The term “investors” means:

2.1 In respect of the Republic of Peru:

- (a) natural persons who, according to the law of the Republic of Peru, have its nationality; or
- (b) All juridical persons established in accordance with the laws of the Republic of Peru, including civil and commercial companies and other associations with or without a legally acknowledged existence that perform an economic activity included within the sphere of this Chapter and which are directly or indirectly controlled by nationals of the Republic of Peru.

that have made an investment in the territory of the other Party.

2.2 In respect of the People’s Republic of China,

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<sup>1</sup> For greater certainty, investment does not include loans issued by one Party to the other Party.

- (a) natural persons who have nationality of the People's Republic of China in accordance with its law; or
- (b) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;
- (c) Legal entities not established under the law of the People's Republic of China but effectively controlled, by natural persons, as defined in paragraph 2.2.a or by economic entities as defined in paragraph 2.2.b

that have made an investment in the territory of the other Party.

3. The term "returns" means the amounts yielded by investments, such as profits, dividends, interests, capital gains, royalties, fees or other legitimate income.

## **Article X-02 Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

- (a) investors of the other Party;
- (b) investments of investors of the other Party.

2. This Chapter shall not apply to measures adopted or maintained by a Party affecting trade in services.

3. Notwithstanding paragraph 2, for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles X-07, 08, 09, 10, 11 and 12 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party. Article 14 shall apply to Articles X-07, 08, 09, 10, 11 and 12 with respect to the supply of a service through commercial presence.

4. For greater certainty, the provisions of this Chapter do not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

5. This Chapter shall not apply to laws, regulations, policies or procedures of general application governing the procurement by government agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.

6. Notwithstanding paragraph 5, Articles X-07, 08, 09, 10, 11, 12 and 14 shall apply to the laws, regulations, policies or procedures mentioned therein before.

7. This Chapter shall apply to all investments made by investors of a Party in the territory of the other Party, whether made before or after the entry into force of this Agreement, but Article 14 shall not apply to any dispute or any claim concerning an investment which was already under judicial or arbitral process before the entry into force of this Agreement.

### **Article X-03 Promotion and Protection of Investment**

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Subject to its laws and regulations, one Contracting Party shall provide assistance in and facilities for obtaining visas and working permit to nationals of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

### **Article X-04 National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to investments of investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments.

3. Notwithstanding Paragraph 1 and 2, the Parties reserve the right to adopt or maintain any measure that accords differential treatment involving Indigenous Communities, Peasant, Native, and Minority Affairs<sup>2</sup>.

### **Article X-05 Non-conforming Measures**

1. Article X-04 does not apply to:

- (a) any existing non-conforming measures maintained within its territory;
- (b) the continuation of any non-conforming measure referred to in subparagraph (a);

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<sup>2</sup> For purposes of this paragraph: ethnic groups means indigenous and native communities; minorities includes peasant (campesinos) communities.

- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations.
2. The Parties will endeavour to progressively remove the non-conforming measures.

## **Article X-06 Most-Favored-Nation-Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion management, conduct, operation, and sale or other disposition of investments<sup>3</sup>.

3. Notwithstanding Paragraph 1 and 2, the Parties reserves the right to adopt or maintain any measure that accords differential treatment involving:

- (a) Indigenous Communities, Peasant, Native, and Minority Affairs.<sup>4</sup>
- (b) Cultural Industries related to the production of books, magazines, periodical publications, or printed or electronic newspapers and music scores.

4 The treatment and protection as mentioned in Paragraph 1 to 2 of this Article shall not include any preferential treatment accorded by the other Party to investments of investors of a third State based on free trade agreement, free trade zone, custom union, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

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<sup>3</sup> For greater certainty, treatment “with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments” referred to in paragraphs 1 and 2 of Article X-06 does not encompass dispute settlement mechanisms, such as those in Article X-14 that are provided for in international investment treaties or trade agreements.

<sup>4</sup> For purposes of this paragraph: ethnic groups means indigenous and native communities; minorities includes peasant (campesinos) communities.

**Article X-07 Fair and Equitable Treatment and Full Protection and Security**

1. Each Party shall accord fair and equitable treatment and full protection and security in accordance with customary international law in its territory to investment of investors of the other Contracting Party.
2. For greater certainty,
  - (a) The concepts of “fair and equitable treatment” and “full protection and security” do not require additional treatment to that required under the minimum standard of treatment of aliens in accordance with the standard of customary international law.
  - (b) A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached.
  - (c) “Fair and equitable treatment” includes the prohibition against denial of justice in criminal, civil, or administrative proceedings in accordance with the general accepted principles of customary international law.
  - (d) The “Full protection and security” standard does not imply, in any case, a better treatment to that accorded to nationals of the Contracting Party where the investment has been made.

**Article X-08 Expropriation**

1. Neither Party shall expropriate or nationalize, either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as “expropriation”) against investments of investors of the other Party in its territory, unless the following conditions are met:
  - (a) for the public interest<sup>5</sup>;
  - (b) under domestic legal procedure;
  - (c) without discrimination;
  - (d) against compensation;

2. The compensation mentioned in paragraph 1, (d) of this Article shall be equivalent to the fair market value of the expropriated investments immediately before the expropriation took place (“the date of expropriation”), convertible and

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<sup>5</sup> Domestic law may express this concept using different terms, such as “public necessity” and “public purpose”.

freely transferable. The compensation shall be paid without unreasonable delay.

#### **Article X-09 Compensation for Losses**

1. Investors of one Party who suffers losses in respect of their investments in the territory of the other Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Party, as regards restitution, indemnification, compensation and other settlements no less favorable than that accorded to the investors of its own or any third State, whichever is more favorable to the investor concerned.

#### **Article X-10 Transfers**

1. Each Party shall guarantee investors of the other Party the transfer of their investments and returns held in the territory of the one Party, including:

- (a) profits, dividends, interests and other legitimate income;
- (b) amounts from total or partial liquidation of investments;
- (c) payments made pursuant to a loan agreement in connection with investment;
- (d) royalties in Paragraph 3 of Article 1;
- (e) payments of technical assistance or technical service fee, management fee;
- (f) payments in connection with projects on contract associated with investment;
- (g) earnings of nationals of the other Party who work in connection with an investment in the territory of the one Party.

2. The transfers mentioned above shall be made at the prevailing exchange rate of the Party accepting the investment on the date of transfer.

3. Each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of compensation and other payments under Article 08 and 09.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;

- (c) criminal or penal offenses;
- (d) ensuring compliance with orders or judgments in judicial or administrative proceedings.

#### **Article X-11 Subrogation**

If one Contracting Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) the assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to its designated agency, as well as,
- (b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

#### **Article X-12 Denial of Benefits**

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

- (a) investors of the other Party where the investment is being made by a enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business activities in the territory of the other Party, or
- (b) investors of the other Party where the investment is being made by a enterprise that is owned or controlled by persons of the denying Party.

#### **Article X-13 Settlement of Disputes Between Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal comprises of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a national of a third State having diplomatic relations with both

Contracting Parties who, upon approval by the two Contracting Parties, shall be appointed as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Contracting Parties.

#### **Article X-14 Investor-State Dispute Settlement**

1. Any dispute between an investor of one Party and the other Party in connection with an investment in the territory of the other Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months from the date on which the Disputing Investor requested for the consultation or negotiation in writing, and if the Disputing Investor has not submitted the dispute for resolution to the competent court<sup>6</sup> or any other binding dispute settlement mechanism of the Party receiving the investment, it may be submitted to one of the following international conciliation or arbitration fora by the choice of the investor<sup>7</sup>:

- (a) Conciliation or arbitration in accordance with the International Center for Settlement of Investment Disputes (ICSID), under the Convention on the Settlement of Disputes between States and

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<sup>6</sup> In respect of the Republic of Peru: the courts of justice or administrative tribunals;  
In respect of the People's Republic of China: the People's Courts

<sup>7</sup> Provided that the People's Republic of China requires the investor concerned to go through the domestic administrative review procedures specified by the laws and regulations of China before the submission to the international fora.

Nationals of Other States, done at Washington on March 18, 1965,

- (b) Conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes so long as the ICSID Convention is not in force between the Contracting Parties;
- (c) Arbitration under the arbitration Rules of the United Nations Commission on International Trade Law; and
- (d) If agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

For more clarity, the election of one dispute settlement fora shall be definitive and exclusive.

3. An arbitral tribunal established under paragraph 2 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

4. The Disputing Investor who intends to submit the dispute to conciliation or arbitration pursuant to paragraph 2 shall give to the Disputing Party written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

- (a) the name and address of the Disputing Investor;
- (b) the specific measures of the Disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Chapter alleged to have been breached;
- (c) waives its right to initiate any proceedings before any of the other dispute settlement for referred to in paragraph 2 in relation to the matter under dispute;
- (d) conciliation or arbitration set forth in paragraph 2 which the Disputing Investor will choose; and
- (e) the relief sought and the approximate amount of expropriation claimed.

5. Notwithstanding paragraph 4, no claim may be submitted to conciliation or arbitration set forth in paragraph 2, if more than three years have elapsed since the date on which the Disputing Investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter causing loss or damage to the Disputing Investor or its investment referred to in paragraph 1.

6. The arbitration award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

7. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance the applicable arbitration rules.

8. The responsibility among the Parties for the assumption of expenses derived from their participation in the arbitration shall be established by the Center according to its rules of procedure for arbitration proceedings.

9. Any disputing investor shall serve notices and other documents on disputes under this Article:

on Peru by delivery to:

**Division of International Economy, Competition and Private  
Investment Affairs.  
Ministry of Economy and Finance  
Jirón Lampa 277, floor 5th Lima, Peru**

on The People's Republic of China by delivery to:

**Ministry of Commerce  
2, East Chang An Avenue  
100731, Beijing, People's Republic of China**

#### **Article X-15 Meetings**

1. The representatives of the two Parties shall hold meetings from time to time for the purpose of:

- (a) reviewing the implementation of this Chapter;
- (b) exchanging legal information and investment opportunities;
- (c) forwarding proposals on promotion of investment;
- (d) studying other issues in connection with investments.

2. Where either Party requests consultation on any matters of Paragraph 1 of this Article, the other Party shall give prompt response and the consultation be held alternately in Lima and Beijing.

#### **Article X-16 Essential Security**

Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations under United Nation Charter for the maintenance or restoration of international peace or security, or the protection of its own essential security interests<sup>8</sup>.

## **Article X-17            Taxation Measures**

1. Except as provided in this Article nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of the contracting Parties under any tax convention. In the event of any inconsistency between the provision of this Agreement and any such convention, the provisions of that convention shall apply to the extent of the inconsistency.

3. The provisions of Article X-08 and Annex 2 of the Investment chapter shall apply to taxation measure alleged to be expropriatory.

4. The provisions of Article X-14 (Investor-State Dispute Settlement) of the Investment chapter applies with respect to paragraph 3 of this Article.

5. If an investor invokes Article X-08 and Annex 2 of the Investment chapter, as the basis of a claim to arbitration according to Article X-14 (Investor-State Dispute Settlement) of the Investment chapter, the following procedure shall apply:

The investor must first refer to the competent authorities described in paragraph 6(c), at the time that it gives written notice of intent under Article X-14 of the Investment chapter, the issue of whether the tax measure concerned involves an expropriation. In case of such referral, the competent authorities shall consult. Only if, within six months of the referral, they do not reach an agreement that the measure does not involve an expropriation, or in case the competent authorities of the Contracting Parties fail to consult with each other, the investor may submit its claim to arbitration under Article X-14 of the Investment chapter.

6. For the purposes of this Article,

- (a) Taxation measures do not include:
  - (i) a customs duty; or

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<sup>8</sup> For greater certainty, if a Party invokes Article 16 in an arbitral proceeding initiated under the Investment Chapter, the corresponding tribunal hearing the matter shall find whether the exception applies.

- (ii) the measures listed in exceptions (b) and (c) of the definition of customs duty.
- (b) Tax convention means a convention, or other international arrangement on taxation, to avoid double taxation.
- (c) Competent authorities means:
  - (i) for the People's Republic of China, State Administration of Taxation; and
  - (ii) for Peru, Ministry of Economy and Finance, or its successor.

#### **Article X-18      Other Obligations**

1. If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the Agreement, such position shall not be affected by this Agreement.

**ANNEX 1  
PUBLIC DEBT**

1. The Parties recognize that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award may be made in favor of a disputing investor for a claim with respect to default or nonpayment of debt issued by a Party unless the disputing investor meets its burden of proving that such default or nonpayment constitutes an uncompensated expropriation for purposes of Article X-08 or a breach of any other obligation under this Chapter.

2. No claim that a restructuring of debt issued by a Party breaches an obligation under this Chapter may be submitted to, or if already submitted continue in, arbitration under this Chapter if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article X-04 or Article X-06.

3. Subject to paragraph 2, an investor of the other Party may not submit a claim under this Chapter that a restructuring of debt issued by a Party breaches an obligation under this Chapter (other than Article X-04 or X-06) unless two hundred and seventy (270) days have elapsed from the date of the events giving rise to the claim.

## ANNEX 2 EXPROPRIATION

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Expropriation may be either direct or indirect:

(a) direct expropriation occurs when a state takes an investor's property outright, including by nationalisation, compulsion of law or seizure;

(b) indirect expropriation occurs when a state takes an action or series of actions that have an effect equivalent to direct expropriation, in that it deprives the investor in substance of the use of the investor's property, although the means used fall short of those specified in subparagraph (a) above.

3. In order to constitute indirect expropriation, the action or series of actions must be:

(a) either severe or for an indefinite period; and

(b) disproportionate to the public interest.

4. In addition to Paragraph 3, the determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred.

5. A deprivation of property shall be particularly likely to constitute indirect expropriation where it is either:

(a) discriminatory in its effect, either as against the particular investor or against a class of which the investor forms part; or

(b) in breach of the state's prior binding written commitment to the investor, whether by contract, licence, or other legal document.

6. Except in rare circumstances to which paragraph 5 applies, such measures taken in the exercise of a state's regulatory powers as may be reasonably justified in the protection of the public welfare, including public health, safety and the environment, shall not constitute an indirect expropriation.