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Japan and Peru

Agreement between Japan and the Republic of Peru for the promotion, protection and liberalisation of investment (with annexes). Lima, 21 November 2008

Entry into force: 10 December 2009 by notification, in accordance with article 29

Authentic texts: English, Japanese and Spanish

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Only the authentic English, Japanese and Spanish texts of the Agreement with a translation into French are published herein. The content of the Annexes I-IV is not published herein, in accordance with article 12 (2) of the General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations, as amended, and the publication practice of the Secretariat.

Japon et Pérou

Accord entre le Japon et la République du Pérou pour la promotion, la protection et la libéralisation des investissements (avec annexes). Lima, 21 novembre 2008

Entrée en vigueur : 10 décembre 2009 par notification, conformément à l'article 29

Textes authentiques : anglais, japonais et espagnol

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[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN
JAPAN AND THE REPUBLIC OF PERU
FOR THE PROMOTION, PROTECTION
AND LIBERALISATION OF INVESTMENT

Japan and the Republic of Peru,

Desiring to further promote investment in order to strengthen the economic relationship between the two countries;

Intending to further create stable, equitable, favourable and transparent conditions for greater investment by investors of one country in the Area of the other country;

Recognising the growing importance of the progressive liberalisation of investment for stimulating initiative of investors and for promoting prosperity in both countries;

Recognising the importance of observance and fulfilment of the obligations that one country may have entered into with regard to investments and investment activities of investors of the other country;

Recognising that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Recognising the importance of the cooperative relationship between labour and management in promoting investment between both countries;

Wishing that this Agreement will contribute to the strengthening of international cooperation with respect to the development of international rules on foreign investment; and

Believing that this Agreement marks the beginning of new economic partnership between the two countries;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement,

(1) The term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, including:

- (a) an enterprise and a branch of an enterprise;
- (b) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
- (c) bonds, debentures, loans and other forms of debt, including rights derived therefrom:
 - (i) where an enterprise which owes such debt is affiliated with the investor; or
 - (ii) where the original maturity of such debt is at least 12 months,

but does not include a debt of, regardless of original maturity, a Contracting Party or a state enterprise.

Note: Notwithstanding subparagraph (c):

- (A) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by a Contracting Party in whose Area the financial institution is located; and
- (B) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in (A), is not an investment;

for greater certainty:

- (C) a loan to, or debt instrument issued by, a Contracting Party or a state enterprise thereof is not an investment; and

- (D) a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution referred to in (A), is an investment if such loan or debt instrument meets the criteria for investments set out elsewhere in this subparagraph.
- (d) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- (e) claims to money and to any performance under contract having a financial value;
- (f) intellectual property rights, including copy rights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
- (g) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorisations and permits, including those for the exploration and exploitation of natural resources; and
- (h) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Investments include the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments;

but investments do not mean,

- (i) claims to money that arise solely from:
 - (i) commercial contracts for the sale of goods or services by a national or enterprise in the Area of a Contracting Party to an enterprise in the Area of the other Contracting Party; or

- (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (c); nor
- (j) any other claims to money,
that do not involve the kinds of interests set out in subparagraphs (a) through (h).
- (2) The term "investor of a Contracting Party" means:
 - (a) a natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations; or
 - (b) an enterprise of that Contracting Party,
that seeks to make, is making or has made investments in the Area of the other Contracting Party.

Note: It is understood that an investor of a Contracting Party seeks to make investments in the Area of the other Contracting Party only when the investor has taken concrete steps necessary to make investments, such as when the investor has made an application for a permit or license which authorises the establishment of investments.

- (3) An enterprise is:
 - (a) "owned" by an investor if more than 50 percent of the equity interest in it is owned by the investor;
 - (b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions; and
 - (c) "affiliated" with an investor when it controls, or is controlled by, the investor; or when it and the investor are both controlled by the same investor.