

**LEGISLATIVE DECREE N° 662 –APPROVING THE JURIDICAL STABILITY
SYSTEM FOR FOREIGN INVESTMENT**

Legislative Decree published on September 2nd, 1991.

WHEREAS:

The Congress of the Republic, pursuant to the provisions of Article 188° of the Political Constitution of Peru, has delegated upon the Executive Power the power to legislate on private investment growth matters by Law N°25312;

The Congress of the Republic has ratified the Constitutive Agreement for the Multilateral Investment Guarantee Agency (MIGA) by Legislative Resolution N° 25312, in order to create a favorable environment for foreign investment contributing to the expansion of free market economy in this country;

The foreign investment and technology transfer are vital for the economic dynamism required for the development of the country, as a necessary supplement to local investment as provided for by Article 137° of the Political Constitution of Peru;

It is the Government's objective to remove any obstacle and restriction to foreign investment in order to guarantee equal rights and obligations among foreign and local investors;

The Government should grant a juridical stability system to foreign investors by the acknowledgement of certain guaranties securing the continuity of the established rules.

With the approving vote of the Council of Ministers;

The following Legislative Decree has been given:

**TITLE I
FOREIGN INVESTMENT PROMOTION AND GUARANTIES**

Article 1.- The State promotes and guaranties foreign investments made and to be made in the country in all sectors of the economic activities and in any other business or contractual forms allowed by the national legislation.

For these purposes, investments from abroad, carried out in income-generating economic activities will be considered as foreign investments under any of the following forms;

- a) Property contributions from individuals or companies channeled through the National Financial System to the capital of a new or existing company in any of the corporate forms indicated by the General Business Corporations Act, in freely convertible currency or in physical or tangible goods, such as industrial plants, new and reconditioned machinery, new and reconditioned equipment, spare parts, parts and pieces, raw materials and intermediate products;
- b) Investments in local currency derived from resources with the right to be remitted abroad;
- c) The conversion into stock of private obligations with foreign countries;
- d) Reinvestments made pursuant to the legislation in force;
- e) Investments in assets located physically in the territory of the Republic;

- f) Intangible technological contributions such as trademarks, industrial models, technical support and patented or non-patented expertise, which may appear under the form of physical goods, technical documents and instructions;
- g) Investments aimed at the acquisition of titles, documents and financial papers listed at stock exchanges or bank certificates of deposit in local or foreign currency;
- h) Resources aimed at unincorporated association contracts or the like, granting the foreign investor a form of share in the production capacity of the company without implying capital contribution. This share is referred to commercial transactions of contractual nature, whereby the foreign investor provides goods or services to the receiver company in exchange for a share in the physical production volume, the sales lump-sum and net profit of the referred receiver;

The investments comprised in this section should be subject to tax legislation on the matter; and,

- i) Any other form of foreign investment contributing to the country's development;

Article 2.- Foreign investors and the companies in which these participate have the same rights and obligations as the local investors and companies. Such rights and obligations are only limited by the exceptions established in the Political Constitution of Peru and the provisions hereof.

In no case the domestic juridical regulations will discriminate among investors or the companies based on the local or foreign share in the investments.

Article 3.- Foreign investments made in the country are automatically authorized. Once made, they should be registered before the Competent National Organization.

Article 4.- The foreign investors' property rights are only subject to the limitations established in the Political Constitution of Peru.

Article 5.- The foreign investors' intellectual and industrial property right are subject to the same conditions applied to local investors¹

Article 6.- Foreign investors are entitled to the rights to trade and to engage in economic activities, as well as to the right to export and import.

Article 7.- The right of foreign investors to transfer abroad in freely convertible foreign currency without previous authorization from any authority from the Central Government or decentralized public entities, and from the Regional or Municipal Government, prior payment of legal taxes, is hereby guaranteed. Foreign investors may transfer the following:

- a) The total amount of their capital derived from investments included in Article 1° hereof and registered before the Competent National Organization, including the sale of shares, interest shares or rights, and capital reduction or partial or total liquidation of the company; and,

¹ Pursuant to the Fifth Transitory Provision of Legislative Decree N° 757 published on November 13, 1991, it is hereby specified that the provisions included in this Article imply that those administrative fees, charges or tariffs charged to foreign investors should be reduced to the levels of those charged to local investors as from the effective date of Legislative Decree N° 662.

- b) The total amount of dividends or proven net profits derived from their investments, as well as considerations for the use or enjoyment of assets physically located in the country registered before the Competent National Organization, and royalties and considerations for the use and transfer of technology including any other constitutive element of industrial property authorized by the competent National Organization.

Article 8.- The right of foreign investors and companies in which they participate, to acquire shares, interest shares or property rights from local or sub-regional investors is hereby guaranteed. The payment for such acquisitions channeled through the National Financial System will be considered as foreign investment for the purposes hereof.

Article 9.- In those cases in which foreign currency should be converted into local currency, foreign investors will have the right to use the most favorable purchase exchange rate at time of the exchange transaction. In case local currency is converted into foreign currency, they will have the right to use the most favorable sale exchange rate at the time of the exchange transaction.

TITLE II JURIDICAL STABILITY FOR FOREIGN INVESTMENT

Article 10.- The Competent National Organization, on behalf of the State, may execute with foreign investors, prior to the investment and registration thereof, agreements to guarantee the following rights:

- a) Stability of the effective tax system at the time of the agreement's execution.

By virtue of the tax system stability hereby guaranteed, a rate greater than the one established in the appropriate agreement will not be imposed on the foreign investors in the case of the income tax to be paid by the company receiving the investment, or on profits and/or dividends distributed in their favor. Thus, if the income tax to be paid by the company increases, the rate imposed on foreign investors will be reduced accordingly to allow the company's profit they may freely dispose of, to be at least equal to the one guaranteed;

- b) Stability of the free foreign currency disposal system and the rights established in Articles 7° and 9° hereof; and,
- c) Stability of the right to non-discrimination established in Article 2° hereof.

Article 11.- Only those foreign investors who undertake to comply with the actions listed below during a term that should not exceed two years as from the execution date of the appropriate agreement, will be subject to the system established in the foregoing Article.

- a) To make cash contributions, channeled through the National Financial System, to the capital of a company established or to be established under Peruvian Law, or to carry out risk investments with third parties for an amount which should not be less than US\$ 2,000,000.00 (Two million United States dollars); or,
- b) To make cash contributions, channeled through the National Financial System, to the capital of a company established or to be established under Peruvian Law, or to carry out risk investments with third parties for an amount which should not be less than US\$ 500,000.00 (Five hundred thousand United States dollars), provided that:

- i) The investment determines the direct generation of more than twenty permanent work benches; or,
- ii) The investment determines the direct generation of no less than US\$ 2,000,000.00 (Two million United States dollars) as income from foreign currency resulting from exports during the three years following the execution of the Agreement.

The effectiveness of the stability system will be initiated as from the execution date of the Agreement, which will include, under responsibility, the express condition subsequent that any failure to comply with the contributions, as well as any reduction or transfer thereof to third parties, will invalidate such Agreement with the subsequent penalties and payment of outstanding taxes to the Tax Administration.

Article 12.- The companies to be established or the ones already established in Peru with new foreign capital contributions made pursuant to the foregoing Article will be entitled to the following rights:

- a) Stability of the systems for the recruitment of workers under any of their forms; and,
- b) Stability of the special systems aimed exclusively at export activities and temporary admission, as well as to industrial, trade, and tourist free zones, special treatment zones and others to be created in the future.

Such rights will remain in force provided that the foreign investor does not incur in the provisions of the last paragraph of the foregoing Article, and that the appropriate agreements to be executed by the aforementioned companies, foreign investors thereof and the Competent National Organization are not cancelled or terminated pursuant to the provisions of such paragraph.

Article 13.- In order to be entitled to the stability system referred to in Article 10° hereof, foreign investors should file an application before the Competent National Organization with regard to any of the forms indicated in Article 11°.

Article 14.- The State undertakes to keep the stability agreements executed pursuant to the provisions of this Title in force until its termination. They may not be amended unilaterally by Supreme Decree given under section 20 of Article 211° of the Political Constitution of Peru.

Article 15.- The stability agreements will have duration of 10 years as from their execution date.

Article 16.- The State may submit controversies derived from stability agreements to arbitration courts established by virtue of international agreements entered into by Peru.

Article 17.- The rights in this Title do not affect nor limit in any manner the right of foreign investors to access the benefits granted or to be granted by other legal provisions.

Article 18.- This Title will become effective as from January 1, 1992.

TITLE III REGISTRATION OF FOREIGN INVESTMENTS AND TECHNOLOGIES

Article 19.- Foreign investment should be registered before the Competent National Organization upon being made.

The foreign investments formalized by agreement with a Peruvian company, including unincorporated associations or any other form of joint venture should be also registered before the Competent National Organization.

Article 20.- Upon registration before the Competent National Organization, foreign investment grants its holder the rights included in Article 7° and 9° hereof.

Article 21.- The agreements for the use of technology, patents, trademarks or other industrial property rights of foreign origin, as well as technical assistance and basic and detail engineering, management and franchise, which stipulate the payment of royalties calculated on net sales percentages of a determined product or another calculation system are deemed to be automatically registered upon being filed before the Competent National Organization, without any limitation regarding amounts or percentages, and provided that they comply with the requirements established in Article 13° and in the last two paragraphs of Article 14° of Decision N° 291 of the Cartagena Agreement Commission.

The local companies considered as subsidiaries of foreign companies may execute with their main office or other subsidiaries of the same home office, agreements stipulating the payment of royalties under the terms foreseen in this Legislative Decree. Such payment should be deduced as an expense for Income Tax purposes.

The payment of royalties indicated in this Article will be made upon payment of legal taxes.

Article 22.- Registered agreements before the Competent National Organization confer on the licensee or receiver the right to transfer abroad in freely convertible currency using the most favorable exchange rate at the time of the exchange transaction, the royalties or considerations agreed upon, upon payment of legal taxes.

TITLE IV FOREIGN INVESTMENT PROMOTION POLICY FORMULATION

Article 23.- The Competent National Organization will coordinate foreign investment promotion and will centralize foreign investment promotion actions in diverse public sector entities.

Article 24.- The Competent National Organization will coordinate with the Ministry of Foreign Affairs the execution of Investment Promotion and Protection Agreements and Agreements to avoid double taxation.

Article 25.- The Public Sector entities or sections are obliged to supply information and technical assistance required by the Competent National Organization to comply with its functions.

Article 26.- The Competent National Organization will coordinate with the Minister of the Ministry of Foreign Affairs on foreign investment promotion to be made in the country. The commercial and diplomatic agencies abroad will actively support the supply of information and guidance services to the investor.

SUPPLEMENTARY PROVISIONS

Article 27.- The provisions hereof are applied to Andean sub-regional investors pursuant to integration treaties and the Decisions of the Cartagena Agreement Commission.

Article 28.- Foreign individuals and companies making investments in Peru and which have not been registered as from the effective date hereof, may at any time register before the Competent National Organization as foreign investors to conform to the provisions established herein. For such purpose, they may use any pre-established documentary evidence allowed by Law to prove the origin and destination of their investment

Article 29.- No authorities from the Central Government, decentralized public entities, companies or organizations of the Regional or Municipal Government may, under responsibility, provide differentiated treatments between national and foreign investors. Neither may these authorities:

- a) Establish different conditions from the ones established herein;
- b) Grant a differentiated treatment between foreign and local investors; and
- c) Charge differentiated taxes, contributions or tariffs to foreign investors with regard to amounts charged to local individuals or companies²

Article 30.- In order to comply with the provisions hereof, the Competent National Organization is the National Commission of Foreign Investments and Technologies (CONITE)

Article 31.- All Laws setting limitations or restrictions of any kind on foreign investments in economic activity sectors are hereby derogated as from the effective date hereof.

Article 32.- This Legislative Decree will become effective within thirty days as from its publication in "El Peruano" Official Gazette pursuant to the provisions of Law N° 25327, except for Title II, which will become effective as from the date indicated in Article 18°.

² Pursuant to the Fifth Transitory Provision of Legislative Decree N° 757 published on November 13, 1991, it is hereby specified that the provisions included in this Article imply that those administrative fees, charges or tariffs charged to foreign investors should be reduced to the levels of those charged to local investors as from the effective date of Legislative Decree N° 662.