

# AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF HAITI ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Haiti and the Kingdom of Spain, hereinafter referred to as "the Contracting Parties":

DESIRING to intensify economic cooperation for the mutual benefit of both countries;

CONSCIOUS of the need to create favorable conditions for investments by investors of each Contracting Party in the territory of the other;

RECOGNIZING that the key promotion and protection of investments in accordance with this Agreement will stimulate initiatives in this field and increase prosperity in both countries;

CONVINCED that these objectives can be achieved without harming health, safety and environmental measures and their general application,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement;

1. The term "investment" refers to any form of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the recipient country in particular, and Not exclusively, the following:

- a) ownership of movable and immovable property, and other rights in rem, such as mortgages, rights of warranties, usufructs and similar rights;
- b) shares, securities, bonds and other forms of participation in companies;
- c) monetary claims and rights to any other performance under a contract having economic value and being associated with an investment;
- d) intellectual and industrial property rights; Technical processes, know-how and customers;
- e) rights to carry out economic and commercial activities granted by law or under a contract, in particular concessions for the cultivation, exploration, extraction or exploitation of natural resources.

Investments made in the territory of one Contracting Party by a company of the same Contracting Party but owned or controlled by investors of the other Contracting Party shall also be considered as investments of the latter Contracting Party if they had been In accordance with the laws and regulations of the first Contracting Party.

Any change in the form of investment or reinvestment of the assets does not affect their qualification as an investment.

2. "Investor" means any national or company of one Contracting Party which makes investments in the territory of the other Contracting Party:

- a) "national" means any natural person having the nationality of one of the Contracting Parties in accordance with the legislation of that Party;
- b) "company" means any legal person or other legal entity constituted or duly organized in accordance with the law of the Contracting Party in question and having its registered office in the territory of that Party, such as joint-stock companies or associations of companies.

3. The term "investment income" refers to returns from an investment and includes, but is not limited to, profits, dividends, interest, capital gains, royalties and fees.

4. "Territory" of each Contracting Party means the land area, internal waters, territorial sea and the airspace covering them, as well as the exclusive economic zone and the continental shelf, shall extend out of the territorial sea of each of the Contracting Parties and upon which, in accordance with international law and its national law, the Contracting Party concerned has, or may have, jurisdiction or sovereign rights.

## **Article 2. Promotion and Admission of Investments**

1. Each Party shall encourage in its territory, to the extent possible, the investments of investors of the other Contracting Party, and shall admit such investments in accordance with its legal provisions.

2. When one of the Contracting Parties has accepted an investment in its territory, it shall issue, in accordance with its legislation, the necessary authorizations for the realization of the investments and, within the framework of its legislation,, Technical, commercial or administrative assistance. Each Contracting Party shall endeavor to issue the necessary permits for the activities of consultants and other qualified persons irrespective of their nationality.

## **Article 3. Protection**

1. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in accordance with international law.

2. Neither Contracting Party shall hinder, by unjustified or discriminatory measures, the management, maintenance, enjoyment, use and disposal of such investments. Each Contracting Party shall comply with any obligations assumed by it in writing relating to investments of investors of the other Contracting Party.

## **Article 4. National Treatment and Most-favored Nation Treatment**

1. Each Party shall guarantee to investments made in its territory by investors of the other Contracting Party treatment no less favorable than that it accords to investments made by its own investors or to investments made by investors of any third State, the most favorable of the two for the investor concerned.

2. Each Party shall, within its territory, guarantee investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favorable than that which it grants to its own investors or investors of any third State, whichever is more favorable to the investor concerned.

3. The treatment granted in accordance with the provisions of paragraphs 1 and 2 of this Article shall not oblige the Contracting Parties to extend to investors of the other Contracting Party and their investments the benefit of the privileges resulting from:

a) its association or its participation, present or future, in a free trade area, a customs union, an economic or monetary union or any other similar international agreements including other forms of regional economic organization, or

b) an international agreement or arrangement wholly or mainly related to taxation or any national legislation which is wholly or partly related to taxation.

4. The provisions of this Article shall be without prejudice to the rights of one of the Contracting Parties to apply different tax treatment to different taxpayers on the basis of their tax residence.

## **Article 5. Expropriation**

1. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subject to other forms of measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") for reasons of public interest or social interest, in accordance with the legal provisions, and provided that such measures are not discriminatory. The Contracting Party adopting such measures shall pay adequate and effective compensation without delay.

2. This compensation shall be equal to the market value of the expropriated investment immediately before the expropriation or before the date of expropriation is known to the public, whichever is the earlier (hereinafter referred to as the "Valuation Date").

3. Such market value shall be expressed in a freely convertible currency at the prevailing market exchange rate for that currency on the valuation date. The allowance shall include interest at a commercial market rate for the valuation currency from the date of expropriation to the date of payment. The compensation shall be paid without delay and shall be effectively realizable and freely transferable.

4. The investors concerned shall have the right, under the legislation of the expropriating Contracting Party, to prompt examination of their case, including the valuation of their investment and the payment of compensation, by Judicial authority or other competent and independent authority of that Contracting Party in accordance with the principles set out in this Article.

5. When a Contracting Party expropriates the assets of a company established or constituted under the laws in force in any part of its territory and in which the investors of the other Contracting Party own shares, Shall the provisions of this Article be applied in order to ensure prompt, adequate and effective compensation for investors of the other Contracting Party owning such shares.

## **Article 6. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party have suffered losses as a result of war, armed conflict, national emergency, revolution, civil disobedience or similar events shall receive as compensation, compensation or other agreement, treatment no less favorable than that which the last Contracting Party grants to its own investors or investors of a third State, the most favorable of the two to the investor concerned. Any payment made under this Article shall be freely transferable.

2. Without prejudice to paragraph 1, where an investor of one Contracting Party who, in one of the situations referred to in that paragraph, suffers losses in the territory of the other Contracting Party resulting from:

- a) the requisition of its investments or part of its investments by the authorities or forces of the latter Contracting Party;
- b) the destruction, not necessitated by the necessity of the situation, of its investments or of part of its investments, by the authorities or forces of the latter Contracting Party.

Such investor shall be entitled to prompt, adequate and effective restitution or settle - ment by the latter Contracting Party. Payments relating thereto shall be made without delay and shall be freely transferable.

## **Article 7. Transfers**

1. Each Party shall accord to investors of the other Contracting Party the free transfer of all payments in respect of their investments, and in particular but not exclusively:

- a. Initial capital and additional amounts for maintaining and increasing investments;
- b. Investment income, as defined in Article 1:
- c. Loan repayment funds related to an investment;
- d. The compensation provided for in Articles 5 and 6;
- e. The proceeds from the sale or liquidation, in whole or in part, of the investments;
- f. Salaries and other remuneration of personnel recruited abroad in connection with an investment;
- g. Payments resulting from the settlement of a dispute.

2. Transfers shall be made without delay in a freely convertible currency at the exchange rate applicable on the market on the date of transfer.

3. In the event of serious balance-of-payments difficulties and external financial difficulties or the threat thereof, a Contracting Party may temporarily adopt or maintain restrictions on transfers. These restrictions:

- I. shall be notified immediately to the other Contracting Party;
- II. Must comply with the Articles of Agreement of the International Monetary Fund;
- III. Shall not exceed those necessary to meet the circumstances described in paragraph 3 of this Article;

IV. Should be applied in a fair, non-discriminatory and bona fide manner.

## **Article 8. Application of other Provisions**

1. If the legislation of a Contracting Party in which, in addition to this Agreement, obligations under international law existing at the present time or adopted later between the Contracting Parties contain regulations, whether general or specific, treatment more favorable to investments made by investors of the other Contracting Party than that provided for in this Agreement, such regulation shall, to the extent that it is more favorable, prevail over this Agreement.

2. Conditions more favorable than those of this Agreement which have been accepted by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect the provisions of international conventions relating to intellectual and industrial property to which the Contracting Parties have acceded.

## **Article 9. Principle of Subrogation**

1. Where a Contracting Party or its designated agency has granted a payment in the form of compensation, insurance or contract of insurance against non-commercial risks in connection with an investment made by its investors in the territory of the other Contracting Party, The other Contracting Party, the latter Contracting Party shall accept:

- The subrogation of the economic rights of the investor to the first Contracting Party or its designated agency, and

- The right of the first Contracting Party or its designated agency to exercise by virtue of the principle of subrogation the same economic rights as the predecessor of the title.

2. Such subrogation shall mean that the first Contracting Party or its designated agency shall be the direct beneficiary of any kind of compensation payments or other compensation to which the original investor would be entitled.

## **Article 10. Disputes In the Interpretation of the Agreement by the Contracting Parties**

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

2. If the dispute can not be resolved in this manner within six months from the beginning of the negotiations, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The arbitral tribunal shall thus be constituted: each Contracting Party shall appoint one arbitrator, and the two arbitrators shall select a national of a third State as arbitrator. The two arbitrators shall be appointed within three months and the arbitrator shall be appointed within five months from the date on which either Contracting Party notifies the other Contracting Party of its intention to bring the dispute before an arbitration tribunal.

4. In the event that either Contracting Party fails to appoint an arbitrator within the period specified in paragraph 3 of this Article, the other Contracting Party may, in the absence of any other Agreement, request the President of The International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or is unable to perform that function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President is in the same position, the member of the Highest International Court of Justice in the hierarchy after the Vice-President who is not a national of one of the Contracting Parties shall be invited to make the appointments required.

5. The arbitral tribunal shall render its decision on the basis of compliance with the standards contained in this Agreement and the applicable rules and principles of international law.

6. Unless the Contracting Parties decide otherwise, the tribunal shall establish its own procedure.

7. The tribunal shall adopt its decision by a majority of votes and the latter shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the cost of the arbitrator appointed by it and of its representation in the arbitration proceedings. Other costs, including those of the President, shall be shared equitably between the two Contracting Parties.

## **Article 11. Settlement of Disputes between a Contracting Party and Investors of the other Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party relating to the obligations of the latter Contracting Party in accordance with the provisions of this Agreement in relation to the investment of the latter shall be notified in writing by the latter Contracting Party, to the Contracting Party receiving the investment. To the extent possible, the parties to the dispute will try to resolve these disputes through an amicable settlement.

2. If the dispute can not be resolved in this manner within six months from the date of the written notification, as mentioned in paragraph 1, the dispute may be submitted, at the option of the investor:

a) the competent court of the Contracting Party in whose territory the investment was made; or

b) an ad hoc arbitral tribunal established by the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL); or

c) Arbitration by the International Center for the Settlement of Investment Disputes (ICSID) established by the Convention for the Settlement of Investment Disputes between States and Nationals of Other States, open for signature in Washington since 18 March 1965, if both Contracting Parties become members of this Convention; or

d) Arbitration under the Additional ICSID Facilitation Rules, if only one of the Contracting Parties is a member of the Convention referred to in (c) of this Article.

2. Each Contracting Party hereby gives its unconditional agreement to submit disputes between it and investors of the other Contracting Party to arbitration in accordance with the provisions of this Article.

3. The arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment was made, including rules relating to conflicts of laws and rules and principles of international law which may be applicable.

4. A Contracting Party shall not assert as a defense that compensation or other compensation for all or part of the alleged damages has been received or will be received by the investor under a guarantee or contract insurance.

5. Arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party shall undertake to enforce the sentences adopted in accordance with its national legislation.

## **Article 12. Transparency**

Each Contracting Party shall promptly publish, or otherwise make available to the public, its laws, regulations, procedures and administrative rulings and judicial decisions of general application and international agreements which may affect investments of investors of the other Contracting Party On its territory.

## **Article 13. Consultations**

Each Contracting Party may propose to the other Contracting Party consultations on any matter concerning the interpretation or application of the Agreement. The other Contracting Party shall be receptive to the proposal and shall provide adequate opportunities for such consultations.

## **Article 14. Scope of Application**

This Agreement shall apply to investments made in the territory of one Contracting Party by investors of the other Contracting Party, both before and after its entry into force, but shall not apply to a dispute which Arises in respect of an investment or any claim that has been settled before its entry into force.

## **Article 15. Entry Into Force, Duration and Expiration**

1. The Contracting Parties shall notify each other of the completion of their respective constitutional procedures for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. It shall remain in force for an initial period of ten years. After the expiration of the initial ten-year period, this Agreement shall remain in force indefinitely unless either of the Contracting Parties notifies the other Contracting Party in writing of its decision to terminate this Agreement. This decision shall be effective one year after the date of notification.

3. In respect of investments made prior to the date of denunciation of this Agreement, the provisions of Articles 1 to 14 of this Agreement shall continue to apply for an additional period of 10 years from the date of termination of the Agreement.

Done at Cadiz on 17 November 2012 in duplicate in the French and Spanish languages, both texts being equally authentic.

For the Kingdom of Spain, a.r.

José Manuel Garcia-Margallo y Marfi

Minister for Foreign Affairs and Cooperation

For the Republic of Haiti

Pierre Richard Casimir

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