

# Agreement between the Kingdom of Spain and the Islamic Republic of Mauritania on the Promotion and Reciprocal Protection of Investments

The Kingdom of Spain and the Islamic Republic of Mauritania, hereinafter referred to as the "contracting parties",

Desiring to create favourable conditions for greater economic cooperation between the two States, especially in relation to capital investments by investors of either Contracting Party in the territory of the other contracting party,

Recognizing that the reciprocal promotion and protection of such investments under an international agreement will stimulate economic relations and will contribute to the prosperity of both contracting parties;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "Investor" means any national or company of a contracting party to make investments in the territory of the other Contracting Party:

a) "National" means any natural person possessing the nationality of a Contracting Party in accordance with its legislation.

b) "Company" means any legal person or any other legal entity duly constituted or organized under the laws of that Contracting Party and having its registered office in the territory of that same Contracting Party, such as collective limited liability companies, corporations (SARL) or business associations.

2. "Investments" means every kind of assets that have been invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party, including in particular, though not exclusively, the following:

a) Ownership of movable and immovable goods and other property rights, such as mortgage, lien, usufructs, and similar rights;

b) Titles, stocks, debentures and any other form of participation in companies;

c) Rights to money and to any other provision under contract having an economic value associated with an investment; and

d) Industrial and intellectual property rights, processes, know-how, technical know-how and goodwill;

e) Rights to undertake economic and commercial activities conferred by law or under a contract or concession, including concessions to prospecting, cultivate, extract or exploit natural resources.

The investments made in the territory of one Contracting Party by a company of that same Contracting Party, which is owned or controlled effectively by investors of the other Contracting Party, shall also be considered investments by investors provided that they have been made in accordance with the laws of the first contracting party.

Any change in the form in which assets are invested or reinvested shall not affect their character as investments.

3. "Income" means the amounts yielded by an investment and in particular, though not exclusively, dividends, interests, capital gains, dividends, royalties or fees.

4. "Territory" means the terrestrial land, internal waters and the territorial sea of each Contracting Party as well as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties on which they are or may have jurisdiction or sovereign rights in accordance with international law.

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

1. Each Contracting Party shall promote in its territory, as far as possible investments by investors of the other contracting party. Each Contracting Party shall admit such investments in accordance with its laws.
2. If a Contracting Party has admitted an investment in its territory, it shall grant, in accordance with its laws, the necessary permits for the realization of such an investment and licensing contracts and commercial, administrative or technical assistance. Each Contracting Party shall endeavour, whenever necessary, to grant the necessary authorizations concerning the activities of qualified consultants or staff, whatever their nationality.

## **Article 3. Protection**

1. Investments made by investors of one Contracting Party in the territory of the other contracting party have a fair and equitable treatment and full protection and security in accordance with international law.
2. Neither Contracting Party shall obstruct by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. Each Contracting Party shall observe any written obligation it has assumed with regard to investments made by investors of the other contracting party.

## **Article 4. National Treatment and Most-favoured-nation Clause**

1. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party a treatment no less favourable than that accorded to investments of its own to investors or investments of investors of any third State, whichever is more favourable.
2. Each Contracting Party shall accord to investors of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of investments in its territory treatment no less favourable than that accorded to its own investors to investors or of any third State, whichever is more favourable.
3. The treatment granted under paragraphs 1 and 2 of this article shall not be construed as to oblige either contracting party to extend to the investors of the other contracting party and their investments the benefit of any treatment, preference or privilege resulting from:
  - a) Any association or its participation in existing or future free trade area, customs union, economic or monetary or in any other form of regional economic organization or similar international agreement, or
  - b) Any international agreement or arrangement and any arrangement or domestic legislation relating wholly or mainly to taxation.
4. Nothing in Article 4 shall be without prejudice to the right of the Parties to apply a different treatment to different tax payers in terms of their residence.

## **Article 5. Expropriation and Nationalization**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to any other measure having similar effects (hereinafter expropriation) except for reasons of public interest or social purpose, under due process of law, and provided that such measures are non-discriminatory and are accompanied by payment of prompt, effective and adequate compensation.
2. The compensation shall be equivalent to the fair market value the expropriated investment had immediately before the adoption of the measure of expropriation or before the impending outside the same public knowledge, whichever is earlier (hereinafter "the valuation date").
3. The fair market value shall be calculated in a freely convertible currency at the rate of exchange prevailing for that currency on the valuation date. The compensation shall include, from the date of expropriation until the date of payment, at a commercial interest rate according to the market criteria established for that currency. The compensation shall be paid without delay, be effectively realizable and freely transferable.
4. The Investor affected shall have a right under the law of the contracting party making the expropriation, by a judicial authority or another competent and independent authority of that Contracting Party to prompt review of its case, to determine whether such expropriation and the valuation of its investment has been made in accordance with the principles

set out in this article.

5. If a Contracting Party expropriates the assets of a company which is constituted in its territory in accordance with its applicable legislation and participation in which investors of the other contracting party, the first Contracting Party shall ensure the application of the provisions of this article in order to guarantee such investors to prompt, effective and adequate compensation.

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

1. Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, riot or any other similar event, shall be accorded to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which the latter Contracting Party accords to its own investors to investors or of any third State, whichever is more favourable. Resulting payments shall be freely transferable.

2. Without prejudice to paragraph 1 of this article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- a) The requisitioning of its investment or part thereof by the authorities or forces of the latter Contracting Party, or
- b) The destruction of its investment or part thereof by the authorities or forces of the latter requiring contracting party without the necessity of the situation.

The latter Contracting Party shall be accorded restitution or prompt, effective and adequate compensation. Resulting payments shall be made without delay and shall be freely transferable.

## **Article 7. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments and in particular, though not exclusively, the following:

- a) The initial capital and additional amounts to develop, maintain or increase the investment;
- b) The income, as defined in article 1;
- c) The necessary funds in repayment of loans related to investments;
- d) Compensation and compensation under articles 5 and 6;
- e) The proceeds of the total or partial sale or liquidation of an investment;
- f) Wages and remuneration of other personnel engaged from abroad in connection with an investment;
- g) Payments arising from the settlement of disputes.

2. Transfers referred to in this article shall be made without delay at the official rate of exchange prevailing on the date of transfer.

## **Article 8. Other Provisions**

1. If the provisions of law of either Contracting Party or obligations between the contracting parties, current and future, from international law apart from this agreement results in general or special rules under which shall be granted to investments made by investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the present Agreement.

2. More favourable terms than those of this Agreement which have been agreed to 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 provided for in international treaties dealing with intellectual property rights / Industrial existing on the date of its signature.

## **Article 9. Subrogation**

If a Contracting Party or any other entity designated by it makes a payment to one of its investors under an indemnity, guarantee or a contract of insurance against non-commercial risks given in connection with an investment made in the territory of the other contracting party, the latter shall recognize the right of subrogation or of any action that investor in favour of the first Contracting Party or an entity designated by it, as well as the right of the former Contracting Party or its designated agency to exercise it, by any right or by subrogation action to the same extent as the investor. The subrogation will ensure that the first Contracting Party or an entity designated by it is a direct beneficiary of any payment of compensation or might be entitled to compensation to the investor.

## **Article 10. Settlement of Disputes between 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 diplomatic channels.
2. If the dispute cannot be settled in this way within six months from the beginning of negotiations, it shall upon the request of either of the two contracting parties to an arbitral tribunal.
3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the arbitrators appointed shall appoint a president is a national of a third State. The arbitrators shall be appointed within three months. The Chairman shall be appointed within five months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute to an arbitration tribunal.
4. If the necessary appointments have been made within the periods specified in paragraph 3 of this article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice cannot discharge the function or is a national of either Contracting Party, the Vice-President shall be called to make the necessary appointments. If the Vice-President cannot discharge the said function or is a national of either Contracting Party, the appointment shall be made by the member of the International Court of Justice to continue in seniority who is not a national of either of the Contracting Parties.
5. The arbitral tribunal shall issue its decision on the basis of the provisions of this Agreement and the generally accepted principles of international law.
6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.
7. The tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both contracting parties.
8. Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. The other expenses, including the President, shall be borne in equal parts by both contracting parties.

## **Article 11. Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute concerning an investment which may arise between a Contracting Party and an investor of the other Contracting Party with respect to matters governed by this Agreement shall be notified in writing, including detailed information by the investor of the Contracting Party to the recipient of the investment. To the extent possible, the parties to the dispute shall solve its disputes amicably.
2. If the dispute cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor:
  - to a competent court of the Contracting Party in whose territory the investment has been made; or
  - To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law; or
  - The International Centre International Centre for Settlement of Investment Disputes (I.C.S.I.D.) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, when each State Party to this Agreement has acceded to it. If one of the contracting parties is not a Contracting State to the said Convention, the dispute shall be settled under the additional facility for the administration of conciliation or arbitration proceedings and Fact-Finding by the secretariat of the I.C.S.I.D.
3. The arbitration shall be based on the provisions of this Agreement, under the national law of the Contracting Party in

whose territory the investment was made, including the rules relating to conflicts of law, and in the generally accepted principles and rules of international law.

4. The Contracting Party which is a party to the dispute may not assert that the investor as a defence under a contract of insurance or guarantee, has received or will receive indemnification or other compensation for all or part of its losses.

5. The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

## **Article 12. Scope**

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter.

## **Article 13. Entry Into Force , Duration and Termination**

1. This Agreement shall enter into force when the contracting parties will have notified each other to the fulfilment of their constitutional procedures required for ratification.

2. This Agreement shall remain in force for an initial period of ten years. After the expiry of the initial period of validity, shall continue in force indefinitely unless denounced in writing by either contracting party by written notification to the other contracting party. Denunciation shall take effect twelve months after the notification.

3. With respect to investments made prior to the effective date of denunciation of this Agreement, the provisions of articles of this Agreement shall remain in force for a further period of ten years from the date of termination of this Agreement.

In WITNESS WHEREOF, the respective Plenipotentiaries have signed this Agreement.

Done at Madrid on 24 July 2008, in duplicate in the Spanish, French and Arabic languages, all texts being equally authentic.

For the Kingdom of Spain

Miguel Ángel Moratinos Cuyaubé

Minister of Foreign Affairs and Cooperation

For the Islamic Republic of Mauritania

Abdallahi Hassen Ben Hmeida

Minister of Foreign Affairs and Cooperation