

# Agreement between the Kingdom of Spain and the Republic of Senegal for the Promotion and Reciprocal Protection of Investments

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

Desiring to intensify economic cooperation in the mutual benefit of both countries, endeavouring to create favourable conditions for investments by investors of either Contracting Party in the territory of the other party; and

Recognizing that the promotion and protection of investments under this Agreement stimulates initiatives in this field,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement,

1. "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 shall include, in particular, though not exclusively:

- a) Ownership of movable and immovable property as well as any other rights in rem, such as mortgages, pledge, usufructs and similar rights;
- b) Shares, securities, debentures and any other form of participation in companies;
- c) Claims and rights to any other provision under contract having an economic value associated with an investment; and
- d) Industrial and intellectual property rights, technical processes, know-how and goodwill;
- e) The 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 that 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 affect their character as an investment provided that such alteration is in conformity with the legislation of the Contracting Party where the investment is made.

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

- a) "National" shall mean any natural person having 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, including companies, business associations or collective.

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

4. "territory" means the land territory, internal waters and the territorial sea and the airspace 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 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 shall be accorded fair and equitable treatment and shall enjoy full protection and security in accordance with international law.
2. Neither Contracting Party shall by arbitrary or discriminatory measures hinder the management, maintenance, use, enjoyment and the assignment or liquidation of such investments. Each Contracting Party shall observe any written obligation assumed with regard to investments of investors of the other contracting party.

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

1. Each Contracting Party shall accord in its territory to investments of investors of the other Contracting Party 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 to the investor.
2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment, the sale or liquidation 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 to the investor.
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 international agreement or similar
  - b) Any international agreement or arrangement relating wholly or mainly to taxation or any other 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. Nationalization and Expropriation**

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be subjected to any expropriation or nationalization or any other measures 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 accompanied by payment of prompt, effective and adequate compensation.
2. The compensation shall be equivalent to the market value of the expropriated investment was immediately before taking the measure of expropriation or before the impending outside the same public knowledge, whichever is earlier "(hereinafter the valuation date).
3. The 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 at a commercial interest rate according to market criteria established for that currency from the date of expropriation until the date of payment. 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, to prompt review of their case by a judicial authority or another competent and independent authority of that Contracting Party to determine whether such expropriation and the valuation of its investment, have been adopted 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 laws and in which there is participation of investors of the other Contracting Party, the first Contracting Party shall ensure that the provisions of this Article are applied so as 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 have suffered losses due to war or any other armed conflict, revolution, state of national emergency, revolt, riot or any other similar event, shall be accorded to restitution, compensation, or other settlement, 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 to the investor concerned. resulting payments shall be freely transferable.

2. Without prejudice to paragraph 1 of this article, investors of one Contracting Party who suffer losses in any of the situations referred to in that paragraph 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 not required by the necessity of the situation of their investment, or part thereof by the authorities or forces of the latter Contracting Party,

shall be accorded by the latter Contracting Party 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 needed for the maintenance, expansion and development of the investment;

b) The investment income as defined in Article 1;

c) The necessary funds in repayment of loans related to an investment;

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. The transfers referred to in this article shall be made without delay in a freely convertible currency, at the official rate of exchange applicable on the date of transfer.

## **Article 8. Other Provisions**

1. If the legal provisions of one of the Contracting Parties or the obligations between the Contracting Parties, present or future, arising from the right international agreements outside of this Agreement, general regulations or in particular that it should be granted to investments made by investors of the other Contracting Party more favourable treatment than that provided for in this Agreement, such regulations shall take precedence over this Agreement.

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

3. Nothing in this Agreement shall affect the provisions of the Treaties International agreements governing intellectual/industrial property rights in force in the date of your signature.

## **Article 9. Subrogation**

1. If a Contracting Party or its designated agency makes a payment in by virtue of an indemnity, a guarantee or an insurance contract granted against non-commercial risks in connection with an investment by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognise

- (a) the subrogation of any right or title of that investor to the first Contracting Party or its designated agency, and
- (b) the right of the first Contracting Party or its designated agency to exercise, by virtue of subrogation, any right or title to the same extent as its former headline.
2. This subrogation shall enable the first Contracting Party or the agency to she designated will benefit directly from any compensation payments or compensation to which the initial investor may be entitled.

## **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, the dispute shall be submitted, at 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 these two arbitrators shall elect a national of a third State as Chairman. The arbitrators shall be appointed within three months and the Chairman 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 within the periods specified in paragraph 3 of this article have not been completed the necessary appointments, 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 said function or is a national of either Contracting Party, the Vice-President shall be invited 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 next in seniority who is not a national of either of the Contracting Parties.
5. The arbitration tribunal shall take its decisions under 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 it 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 Investors and a Contracting Party 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 Contracting Party to the recipient of the investment. To the extent possible, the parties to the dispute seek to settle the dispute by means of a friendly settlement.
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 may, at the choice of the investor, be submitted to:
  - The competent courts of the Contracting Party in whose territory the investment was made; or
  - To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
  - The International Centre International Centre for Settlement of Investment Disputes (ICSID), 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 may be settled under the additional facility for the administration of conciliation or arbitration proceedings and Fact-Finding by the secretariat of the ISCID.
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 the rules relating to conflicts of law, and 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 of Application**

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. However, this Agreement shall not apply to disputes arising before its Entry into Force.

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

1. Each Contracting Party shall notify the other in writing of the completion of the constitutionally required procedures for entry into force of this Agreement. The Agreement shall enter into force thirty days after the date of receipt of the latter of the two notifications.

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 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 date on which the denunciation of this Agreement, the provisions contained in the other 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 Dakar, on 22 November 2007, in two originals in the Spanish and French languages, equally authentic.

For the Kingdom of Spain,

Joan Clos i Matheu,

A.R.

Minister of Industry, Tourism and Trade

For the Republic of Senegal

Cheik Tidiane Gadio,

Minister of State, Minister of Foreign Affairs