

AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

The Kingdom of Spain

And

The Great Socialist Libyan Arab Jamahiriya's people

Hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation in the mutual benefit of both States;

Aiming to create favourable conditions for investments by investors of one Contracting Party in the territory of the other contracting party,

Taking into account the concerns that shared by the Environment, the Contracting Parties agree that these objectives can be achieved without prejudice to measures of general application in health, safety and environment;

And

Recognizing that the promotion and protection of investments under this agreement will stimulate initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "investment means every kind 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 latter Contracting Party, including in particular, though not exclusively, the following:

- (a) ownership of movable and immovable property as well as other rights in rem, such as mortgages, liens, pledges and similar rights;
- (b) stocks, shares and debentures of a company and any other form of participation in a company or business enterprise;
- (c) the right to money or to any other provision under a contract having an economic value associated with an investment; and
- (d) Intellectual Property Rights, processes, know-how, technical know-how and goodwill;
- (e) rights to undertake economic and commercial activities conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit resources naturales.

The investments made in the territory of a Contracting Party by any company of that Contracting Party that is owned or controlled effectively by investors of the other Contracting Party shall also be considered as investments made by investors of the second Contracting Party provided that have been made in accordance with the laws and regulations of the former Contracting Party.

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

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

"national" means any natural person who is a national according to the laws of that Contracting Party;

"undertaking" means any legal person or any other entity constituted or organized under the applicable law of that Contracting Party and having its registered office in the territory of that same Contracting Party, including companies,

partnerships or business associations;

3. "Income" means the amounts yielded by an investment and shall include 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 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 which have jurisdiction or sovereign rights or may be taken in accordance with international law.

5. "Environmental Law" means the laws and regulations, or the provisions contained therein, in force in the Contracting Parties, the primary purpose of which is the protection of the environment or the prevention of risks against the life or health of humans, animals or plants.

Article 2. Promotion and Admit Investments

1. Each Contracting Party shall, to the extent possible, promote investments in its territory by investors of the other contracting party. each Contracting Party shall admit such investments in accordance with its laws and regulations.

2. If a Contracting Party has admitted an investment in its territory, it shall grant, in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance. each Contracting Party shall endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified personnel of any particular nationality.

Article 3. Protection

1. Investments made by investors of each Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security.

2. Neither Contracting Party shall in any way by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. each Contracting Party shall execute all commitments in writing in connection with investments of investors of the other contracting party.

Article 4. National Treatment and Most-favoured-nation Treatment

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 made by its own investors to investors or of any third State, which is more favourable to the investor concerned.

2. Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded to its own investors to investors or of any third State, which is more favourable to the investor concerned.

3. The treatment granted under paragraphs 1 and 2 of this article shall not be construed as to oblige one 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) Its membership or association with a free trade area, customs union, economic or monetary existing or future or other similar international agreements, including other forms of regional economic organization, or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation

1. Investments of investors of each Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation) except for a public purpose and under due process of law, on a non-discriminatory basis and against payment of prompt, effective and adequate compensation.

2. Such compensation shall correspond to the market value of the expropriated investment would immediately before the impending expropriation or outside the same public knowledge, whichever occurs earlier (hereinafter referred to as the valuation date).

3. Such market value shall be expressed in a freely convertible currency at the prevailing market rate of exchange for that currency on the valuation date. the compensation shall include interest at a rate established commercial market on the basis for the valuation of 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, by a judicial authority or another competent and independent authority of that Contracting Party to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the principles set out in this article.

5. When a Contracting Party shall expropriate assets of a corporation incorporated under the laws in force in any part of its own territory, and in which investors have participation of the other Contracting Party, shall ensure the application of the provisions of this article to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

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, civil disturbance or other similar events shall be accorded by the latter Contracting Party, by way of 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, apply the treatment that is more favourable to the investor concerned. the resulting payments shall be freely transferable.

2. Notwithstanding paragraph 1, 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; or
- b) The destruction of its investment or part thereof by the authorities or forces of the latter, without requiring the necessity of the situation,

The latter Contracting Party shall be accorded restitution or compensation which shall in any case be prompt, adequate and effective. the 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. such transfers shall include in particular, though not exclusively:

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

2. The transfers referred to in the present Agreement shall be made without delay in a freely convertible currency and at the market exchange rate applicable on the date of transfer.

Article 8. Other Provisions

1. If the legislation of either Contracting Party or existing obligations under international law or subsequently arise between the Contracting Parties in addition to this Agreement contain rules whether general or specific, which is to 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 this agreement to the extent that they are more favourable.

2. More favourable terms than those of this Agreement which one of the Contracting Parties has agreed to investors of the other Contracting Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect the provisions laid down by international agreements relating to intellectual and industrial property rights in force on the date of its signature.

4. Recognizing the right of each contracting party to establish its own levels of domestic environmental protection and environmental development policies and priorities, nothing in this Agreement shall be construed as preventing the Contracting Parties to amend or adopt measures consistent with this Agreement to ensure that investment activity is carried out taking into account environmental concerns, provided that such measures are not applied in an arbitrary or unjustifiable and do not impair the substance of the rights under this Agreement. accordingly, each Contracting Party shall endeavour to ensure that its laws provide for high levels of environmental protection and to continue to improve those laws.

5. The Contracting Parties recognise that it is inappropriate to encourage investment to the detriment of domestic environmental laws. therefore, each Contracting Party shall strive to ensure that it does not waive such laws or establishes exemptions to its implementation, or offer to waive or establish such exceptions to encourage investments in its territory or encourage expansion or maintenance.

Article 9. Subrogation

If a Contracting Party or its designated agency made a payment under an indemnity, guarantee or contract of insurance against non-commercial risks with regard to an investment by one of its investors in the territory of the other contracting party, the latter shall recognise the assignment of any such right or claim of the investor to former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency by subrogation to exercise such right or claim to the same extent as the investor. the subrogation will ensure that the first Contracting Party or its designated agency is direct beneficiary of any payment of compensation or other redress that might be entitled 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, 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 president is a national of a third State. 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 arbitral tribunal.

4. If the necessary appointments have been made within the periods specified in paragraph 3 of this article, a Contracting Party may call, in the absence of any other agreement, the President of the International Court of Justice to make the necessary appointments. if the President is a national of either Contracting Party or unable to perform this function for other purposes, it shall ask the Vice-President to make the necessary appointments. if the Vice-President is a national of one of the contracting parties or nor to perform this function would be encouraged to make the necessary appointments to 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 reach its decision on the provisions of this Agreement and the generally recognized principles of international law.

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

7. The arbitral tribunal shall reach its decision by a majority of votes and shall be final and binding on both contracting parties.

8. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. all other costs, including the President, shall be borne in equal parts by the two contracting parties.

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

1. Any dispute which may arise between an investor of one Contracting Party and the other contracting party concerning an obligation of the latter under this Agreement in relation to an investment of that investor shall be notified by the investor of the latter Contracting Party, in written form. to the extent possible, the parties concerned shall endeavour to settle these disputes amicably through negotiations.

2. If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1 may, at the choice of the investor, be submitted:

The 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 (UNCITRAL); or

The International Centre International Centre for Settlement of Investment Disputes (ICSID) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, in case both contracting parties become members of this Convention. if a Contracting Party which is party in the dispute has not become a Contracting State to the Convention mentioned above, the dispute shall be settled in accordance with the rules of the additional facility for the administration of arbitration and conciliation procedures, ICSID fact-finding.

3. The arbitration shall be based on the provisions of this Agreement in 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 as may be applicable.

4. A Contracting Party shall not assert as a defence that the investor has received or will receive a guarantee or under a contract of insurance, indemnification or other compensation for all or part of the damage in question.

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 either Contracting Party in the territory of the other contracting party. however, this Agreement shall not apply to any dispute that arose before its Entry into Force.

Article 13. Amendments

Any provision of this Agreement may be amended by agreement between the contracting parties. amendments shall enter into force when the contracting parties will have notified each other to the fulfilment of their respective legal procedures.

Article 14. Entry Into Force , Duration and Termination

1. This Agreement shall enter into force on the first day of the second month following the date of the last notification by the Contracting Parties which have notified each other of the completion of the legal procedures necessary for the Entry into Force of international agreements.

2. This Agreement shall remain in force for an initial period of ten years. after the expiry of the initial period of ten years and shall continue in force indefinitely unless either contracting party notifies the other Contracting Party in writing of its decision to terminate the agreement. the notice of termination shall become effective one year after the date of such notification.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 13 shall continue to have effect for a period of ten years from the date of termination thereof.

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

Done in duplicate at Madrid on 17 December 2007, in the English and Arabic and English languages, all texts being equally authentic. in case of divergence, the English text shall prevail,

For the Kingdom of Spain,

Miguel Ángel Moratinos Cuyaubé,

Ministry of Foreign Affairs and Cooperation

For the Great Socialist Libyan Arab Jamahiriya's people

Abdelrahman Mohamed Shalgam,

Secretary of the General People's Committee for Foreign Affairs and International Cooperation

This agreement entered into force on 1 August 2009, the first day of the second month following the date of the last notification exchanged between the parties inform the fulfilment of the necessary legal procedures as set out in its article 14.1.

The general public knowledge.

Madrid, 17 September 2009.-el Technical Secretary General of the Ministry of Foreign Affairs and Cooperation, Antonio Cosano Perez.