

# Agreement between Spain and Malaysia for the Promotion and Reciprocal Protection of Investments

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Spain and Malaysia, hereinafter referred to as the contracting parties, "

Desiring to increase and enhance the economic cooperation and long-term industrial and, in particular, create favourable conditions for investments by investors of one Contracting Party in the territory of the other party;

Recognizing the need to protect investments made by investors of the two contracting parties and to stimulate the flow of capital and individual business initiatives with a view to the economic prosperity of both contracting parties;

Have agreed as follows:

## Article I. Definitions

"investors" means:

a) Any natural person who is a national of either Contracting Party, in accordance with its laws;

b) Any legal entity including companies, corporations, companies, trusts (trusts), temporary unions, business firms or associations, organisations or formades duly constituted in accordance with the applicable legislation of that Contracting Party.

2. "investment" means every kind of asset and in particular, though not exclusively:

a) Movable and immovable property as well as other rights in rem, such as mortgages, liens and pledges;

b) Shares and debentures of companies or interests in the property of such companies;

c) Rights derived from monetary inputs or to any benefit rights having an economic value;

d) Industrial and intellectual property rights including rights relating to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, processes, know-how, technical know-how and goodwill; know-how and goodwill;

e) Business concessions conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit natural resources.

3. Investment income "" means income deriving from an investment and in particular, though not exclusively, profits, dividends, interests, capital gains (fees, royalties or royalties).

4. "territory" means the Territory of the Contracting Parties has sovereignty or jurisdiction in accordance with international law and the laws and regulations of the Parties contratentes.

5. "freely convertible currency means any currency that is widely used to make payments for international transactions and is subject to negotiation widespread in key money markets.

6. The term "investments as defined in paragraph 2. shall relate only to all investments in accordance with the laws, regulations and national policies in the legislation of the Contracting Parties and in accordance with ella.apartado 2. shall relate only to all investments in accordance with the laws, regulations and national policies in the legislation of the Contracting Parties and in accordance with it.

7. Any change in the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the approvals granted, if any, to the originally invested assets.

## **Article II. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other contracting party to invest in its territory and shall admit such investments in accordance with its laws and regulations.
2. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded at all times fair and equitable treatment and shall enjoy full protection and security in the territory of that Contracting Party.
3. 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, a treatment which is fair and equitable and not less favourable than that accorded to investors of any third State.

## **Article III. Most-favoured-nation Clause**

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party, shall be accorded fair and equitable treatment.
2. This treatment shall not be less favourable than that granted by each contracting party to investments made in its territory by investors of any third country.
3. Les provisions of this Agreement relating to the grant of not less favourable treatment than that accorded to investors of any third State shall not be construed as to oblige either contracting party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which are the result of:
  - a) A customs union, free trade area, Common Market or monetary union existing or future international agreement or any similar or other forms of regional cooperation to which either of the contracting parties is or becomes a party; or
  - b) An international agreement or arrangement relating wholly or mainly to taxation matters.
4. Each Contracting Party, in accordance with its laws, regulations and national policies basades in conformity with their legislation and it shall accord to investments of investors of the other Contracting Party A treatment no less favourable than that accorded to its own investors.

## **Article IV. Compensation for Losses**

Investors of one Contracting Party whose investments or returns of investments in the territory of the other contracting party suffer losses owing to war or other armed conflict, a national state of emergency, rebellion, insurrection, riot or other similar situations in the territory of the latter, shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which the latter Contracting Party accords to investors of any third State. any payments made under this article shall be prompt, adequate and effective and freely transferable.

## **Article V. Expropriation and Nationalization**

Neither of the Contracting Parties shall take measures of expropriation, nationalization or dispossession, having other effect equivalent to the investment against expropriation or nationalization of investors of the other contracting party except when the following conditions are met:

- a) Where the measures are taken for a public or lawful purpose and shall follow the relevant legal procedures;
- b) Where the measures are not discriminatory;
- c) Where the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation to the investor or their successors. such compensation shall be equivalent to the market value of the investments have affected immediately before the measure of dispossession outside public knowledge, and shall be freely transferable in freely convertible currency from that Contracting Party. any unreasonable delay in payment of compensation shall entail the payment of interest at the prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

## **Article VI. Transfers**

1. Each Contracting Party shall in any freely convertible currency transfer of:
  - a) The net profits, dividends, royalties (royalties) asistencie, technical and technical fees, interest and other current income

- accruing from any investment of the investors of the other contracting party;
- b) The proceeds of the total or partial liquidation of any investment made by investors of the other contracting party;
  - c) Funds in repayment of loans given by investors of one Contracting Party to investors of the other Contracting Party which both contracting parties have recognized as investments;
  - d) Profits, wages, salaries and other remunerations of investors of the other Contracting Party who are employed and allowed to work in connection with any investment in the territory of the other contracting party; and
  - e) The compensation provided for in articles IV and v.artículos IV and V.
2. The exchange rate applicable to transfers referred to in paragraph 1 of this article shall be in effect at the time the remesa.apartado 1 of this article shall be in effect at the time the consignment.
3. The Contracting Parties undertake to accord to transfers referred to in paragraph 1 of this article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third estado.apartado 1 of this article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.
4. The Contracting Parties undertake to facilitate the procedures for making such transfers without delay and within a maximum period of three months.

## **Article VII. Application of other Special Rules and Commitments**

1. Where a matter is governed by this Agreement and simultaneously by another international agreement to which both parties are contracting parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other contracting party benefit from the rules which are more favourable to his case.
2. If the treatment to be accorded by investors of one Contracting Party to the other contracting party, in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

## **Article VIII. Settlement of Investment Dispute between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other contracting party in connection with an investment in the territory of the latter, shall be subject to negotiations between the parties to the dispute.
2. If the dispute cannot be thus be within a period of three months, and if the investor so requests, each party contratente consent to submit the dispute to:
- a) The International Centre International Centre for Settlement of Investment Disputes (ICSID having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965, in case both contracting parties have become parties to this Convention; or
  - b) An ad hoc arbitrator or arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL .ad hoc established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL.
3. A company established or constituted under the law in force in the territory of a Contracting Party and which, before a dispute arises the majority of shares are owned by investors of the other Contracting Party, shall be treated in accordance with article 25 (2) (b) of the Convention, and for purposes of the same as a company of the other contracting party.
4. The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute them in accordance with its national legislation.
5. Both Contracting Parties shall respect the independence of the arbitral proceedings.

## **Article IX. Settlement of Disputes between the Contracting Parties**

1. Disputes between the contracting parties concerning the interpretation or application of this Agreement shall be settled

as far as possible through diplomatic channels between the two contracting parties.

2. In the event of it not being possible to settle the dispute between the two Contracting Parties within a period of six months, it shall, at the request of either of the contracting parties to an arbitration tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. the member then thus appointed shall select a national of a third State who on approval of the two Contracting Parties shall be chairman appointed within two months from the date on which they have been appointed the first two members.

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 is a national of either Contracting Party or for any other reason cannot discharge the said function, the Vice-President shall be invited to make the necessary appointments. if the Vice-President is a national of either Contracting Party or if it could play that role, shall be invited to make the necessary appointments to the member of the International Court of Justice to continue in seniority who is not a national of any of the Parties contratantes. apartado 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 is a national of either Contracting Party or for any other reason cannot discharge the said function, the Vice-President shall be invited to make the necessary appointments. if the Vice-President is a national of either Contracting Party or if it could play that role, shall be invited 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 arbitration tribunal shall take its decision by majority of votas. such decision shall be binding on both contracting parties. each of these shall bear the costs of the member of the tribunal appointed by itself and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. however, the Tribunal shall decide which one of the Contracting Parties at a higher proportion of costs, and this decision shall be binding on both contracting parties. the tribunal shall determine its own procedure.

## **Article X. Subrogation**

If a Contracting Party or its designated agency makes a Pego by any of its investors under a guarantee it has accorded in respect of an investment, the other Contracting Party shall recognize, without prejudice to the rights of the first or its designated agency by virtue of article VIII, and subject to its laws and regulations, the transfer of any right or title to the former investor of that Contracting Party or to its designated agency as well as the subrogation in this right or title.

## **Article XI. Implementation of Investments**

This Agreement shall apply to efectuades investments in the territory of either Contracting Party, in accordance with its laws and regulations by investors of the other contracting party, both before and after the Entry into Force of the Agreement.

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

1. This Agreement shall enter into force thirty days after the latter of the dates on which the contracting parties will have notified each other to the fulfilment of their constitutional requirements and internal procedures for the Entry into Force of this Agreement.

2. This Agreement shall remain in force for a period of ten years and shall continue in vigor. unless terminated in accordance with paragraph (3) of this artículo. apartado (3) of this article.

3. Either Contracting Party may terminate this Agreement by written notification to the other contracting party one year before the end of the initial ten year period or at any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other articles of this Agreement shall remain in force for a further period of ten years from such date of termination.

Done in duplicate at Kuala Lumpur on 4 April 1995, in English, Malay and English languages, all texts being equally authentic. in case of divergence of interpretation, the English text shall serve as a reference.

Spain:

Mr. Javier Solana Madariaga,

Minister of Foreign Affairs

For Malaysia:

Rafidah, Aziz

Minister of International Trade and Industry