

# **AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Kingdom of Spain and the People's Democratic Republic of Algeria, hereinafter referred to as the "Contracting Parties,"

Desiring to intensify economic cooperation in the mutual interest of both countries;

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

And convinced that the promotion and protection of investments contribute to stimulate the transfer of capital and technology between both countries for the benefit of their economic development.

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means every kind of assets or rights relating to an investment, whatever their nature, invested in accordance with the laws of the host country to investment and in particular, though not exclusively:

- a) Shares and any other form of participation in companies;
- b) Rights derived from any contributions with the aim of creating economic value;
- c) Movable and immovable property as well as other rights in rem, such as mortgages, usufructs, pledges and similar rights;
- d) Intellectual property rights, such as patents, trademarks, trade and licensing of manufacture and know-how;
- e) Rights conferred by law or under contract, in accordance with the laws of the host country and in particular relating to prospecting concessions, cultivate, extract and exploit natural resources.

Any alteration of the form of investment or reinvested shall not affect their classification as investment provided that such alteration is not contrary to the legislation of the Contracting Party in whose territory the investment has been made.

2 The term "investor" means:

- a) Any natural person having the nationality of a Contracting Party according to its applicable law and making an investment in the territory of the other contracting party.
- b) Any legal entity companies including associations of companies, corporations, as well as any other form of company incorporated or organized in accordance with the legislation of one Contracting Party and having its registered office in the territory of that Contracting Party.

3 The term "income" designates the investment returns yielded by an investment made in accordance with the definition contained in paragraph 1 of this article, and includes in particular benefits, dividends and interest.

4 The term "territory" means, in addition to the areas identified by the land boundary, the maritime areas including the soil and subsoil maritime, under the sovereignty of the contracting parties or over which it exercises, in accordance with international law, sovereign rights or jurisdiction relating to prospecting, exploration and preservation of natural resources.

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

1. Each Contracting Party shall admit and encourage investments made in its territory by investors of the other Contracting Party in accordance with its laws and the provisions of this Agreement.

2. This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other contracting party. however, the provisions of this Agreement shall not apply to disputes whose origin is prior to the date of its Entry into Force.

### **Article 3. Protection**

1. Each Contracting Party shall protect investments made in its territory in accordance with its legislation by investors of the other contracting party, and not obtaculizará unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, extension and sale or, where appropriate, the liquidation of such investments.

2. Each Contracting Party shall endeavour to grant, within the framework of its laws, the necessary permits in connection with investments made in its territory by investors of the other contracting party.

### **Article 4. Treatment**

1. Each Contracting Party shall in its territory a fair and equitable treatment to investments by investors of the other party.

2. This treatment shall not be less favourable than that granted by each contracting party to investments made within its territory by its own investors to investors or of any third country, who enjoy the most favoured nation treatment.

3. This treatment shall not apply, however, to privileges which either Contracting Party accords to investors of a third State by virtue of its participation in a free trade area, customs union or common market, other regional economic aid organization or by virtue of an agreement concluded with a third country to avoid double taxation or any other arrangement relating to taxation.

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

1. The expropriation or nationalization or any other measures having similar characteristics and effects of that may be taken by the authorities of one Contracting Party against investments of investors of the other contracting party in its territory, it shall be applied only for reasons of public purpose in accordance with the laws and in no case shall be discriminatory.

2. The expropriation or nationalization or any other measures having similar effects that could be taken shall give rise to payment of adequate compensation, in convertible currency and without undue delay. the amount of compensation shall be equivalent to the real value of the investment was on the day before the date on which the measures taken or are publicly known.

3. At the request of the investor, affected the legality of expropriation, nationalization or any other measures having similar effects and the amount and terms of payment of compensation may be reviewed by any competent jurisdiction, in accordance with the legislation of the Contracting Party in the territory of which the investment has been made.

### **Article 6. 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, armed conflict, a state of emergency or national revolt in the territory of any of the latter shall be entitled to compensation or reparation, compensation, a treatment no less favourable than that which the latter Contracting Party accords to its own investors to investors or of any third State.

Any payments made under this article in restitution, indemnification, compensation or shall be prompt, adequate and effective freely transferable.

### **Article 7. Transfers**

Each Contracting Party shall accord to investors of the other contracting party, in accordance with its legislation and once all their tax obligations in relation to investments in its territory, the free transfer of payments relating to their investments and in particular:

The investment income as defined in article 1;

The compensation provided for in article 5.

The compensation referred to in article 6;

The proceeds from the sale or the total or partial liquidation of an investment;

## **Article 8. More Favourable Terms**

1. 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.
2. Each Contracting Party shall at all times respect the obligations of investors of the other Contracting Party.

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

1. If one contracting party or its designated agency makes payment to one of its investors against non-commercial risks under a guarantee given pursuant to its own regulations in connection with an investment in the territory of the other contracting party, the latter shall recognize the subrogation of the first Contracting Party or its agency in the rights of the said investor.
2. Such subrogation shall not exceed the original rights of the said investor and payments referred to above shall not affect the right of the collateral taker to resort to arbitration mechanisms provided for in article 11. with regard to the transfer of payments made to the other contracting party or its agency it shall apply the provisions of Articles 5, 6 and 7 of this Agreement.

## **Article 10. Disputes of Interpretation of the Agreement 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, by the Governments of the two contracting parties.
2. If the dispute cannot be settled in this way within six months from the beginning of negotiations, shall be submitted, at the request of either of the two contracting parties to an arbitration tribunal.
3. The arbitration 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 (3) months and the Chairman within five months (05) 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 one of the Contracting Parties has not appointed its arbitrator within the deadline, the other Contracting Party may request the Secretary-General of the United Nations to make the appointment. if the two arbitrators cannot reach an agreement on the appointment of the third arbitrator within the prescribed period, either Contracting Party may request the Secretary-General of the United Nations to make the appointment. if the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from carrying out the said function, the Under-Secretary-General to continue in seniority who is not a national of either Contracting Party shall make the necessary appointments.
5. The arbitration tribunal shall deliver its opinion on the basis of respect for the Law, the rules contained in this Agreement or in other agreements in force between the contracting parties and on the universally recognized 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 equally by the contracting parties.

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

1. Disputes between a Contracting Party and an investor of the other Contracting Party 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

shall endeavour 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 an arbitral tribunal in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce,
- The Court of Arbitration of the Paris International Chamber of Commerce;
- The ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.
- 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.

## **Article 12. Entry Into Force , Extension and Termination**

1. This Agreement shall enter into force on the day on which the contracting parties have notified each other of the completion of the procedures required by its domestic constitutional enters into force. it shall remain in force for an initial period of ten years and shall be extended by tacit renewal, for periods of two consecutive years.

Each Contracting Party may denounce this Agreement by a written notification, six months before the date of expiry.

2. In the event of termination of this Agreement, the provisions of articles 1 to 11 shall continue to apply for a period of ten years for investments made before the denunciation.

Done at Madrid on 23 December 1994 each one in two originals in English, French and Arabic, the three texts are equally authentic.

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