

# **Agreement between the Kingdom of Spain and the Republic of Ghana on the Promotion and Reciprocal Protection of Investments**

The Government of the Kingdom of Spain and the Government of the Republic of the Ghana (hereinafter referred to as the "Contracting Parties")

Desiring to create favorable conditions to promote investments from investors of each State in the territory of the other;

Reconizing that the reciprocal promotion and protection of investments under an international agreement will stimulate private initiatives and contribute to the prosperity of both States,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this agreement:

1. The term "investment" refers to every kind of asset and in particular, though not exclusively, the followings:

- i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- ii) participation, shares and obligations of a company or business enterprise and any other form of participation in a company or business enterprise;
- iii) Rights to monetary contributions or any type of contribution under contract having economic value and associated with an investment;
- iv) intellectual and industrial property rights; trade funds, technical processes and technical knowlege (know-how);
- v) Commercial concessions granted by law or by virtue of a contract, including concessions to search, cultivate, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any company of the same Contracting Party in which investors of the other Contracting Party have participation shall likewise be considered as investments made by investors of the other Contracting Party if these have been made in accordance with the laws and regulations of the first Contracting Party.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that that change is not contrary to the national legislation of the Contracting Party in which territory the investment has been made.

2. The term "investor" refers to any national or company of on eof the Contracting Parties who invest in the territory of the other contracting party:

- a. "National" means any person who, according to the laws of either contracting Party, are considered to be its national.
- b. "Company" means legal persons or any other legal entity constituted or duly organized in accordance to the applicable legislation of that contracting party and having its seat in the territory of that contracting party.

3. The term "returns" means the amounts yielded by an investment and includes, in particular although not exclusively, profit, dividends, interest, capital gains, royalties and fees.

4. The term "territory" designates the territorial territory, the internal waters and the territorial sea of each contracting party, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial sea of each of the contracting parties over which they have or may have jurisdiction and/or sovereign rights in accordance with

international law.

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

1. Each Party shall promote and create favorable conditions to encourage investors from the other Contracting Party to invest capital in its territory and shall admit such investments in accordance with its laws and regulations.
2. Each Party will try, in accordance with its laws and regulations, to admit the authorized personnel expatriated and grant the necessary authorizations concerning the execution of an investment project.

## **Article 3. Protection of Investments**

1. Investments made by investors of each contracting party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other contracting party.
2. Neither contracting party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments made in its territory by investors from the other contracting party.
3. Each Party shall observe any obligation it may have entered into with regard to investments of investors of the other contracting party.

## **Article 4. National Treatment and Most Favourable Nation Treatment**

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

## **Article 5. Exceptions**

1. The clauses of this agreement related to the grant of a treatment no less favourable than that accorded to investors of each contracting party or to the investors of any third state shall not be construed so as to oblige one contracting party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:
  - a) any customs union, common market, free trade area or any existing or future regional economic organization, or measures aimed at the formation of a custom union or free trade area from which any of the contracting parties is or will be a member; or
  - b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or
  - c) any extraordinary measure or incentive granted by a contracting party to its own nationals or companies pursuant the creation or the growth of the local industry or to reach its objectives of development, provided that those measures or incentives are adopted in good faith and no with the aim for to obstruct investment of investors of the other contracting party.

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

Investors of one contracting party whose investments in the territory of the other contracting party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection or civil disturbance in the territory of the second contracting party, the latter contracting party shall grant, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

## **Article 7. Expropriation**

1. Investments of investors of either contracting party in the territory of the other contracting party shall not be nationalized,

expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest related to its own internal necessities, in accordance with due process of law, on a non discriminatory basis and with the payment of a prompt, adequate and effective compensation, and under the following conditions:

- a) The measures shall be annex to the forecast of the payment of a compensation equivalent to the total and real value of the expropriated investment immediately before the expropriation or before the impending expropriation became publicly known, whichever is earlier;
- b) Such compensation will be paid in a freely convertible currency and without undue delay. If the compensation is not paid within the next five following months to the date on which it was the same, interest will accrue at the normal market rate from that date until the date of the payment.

2. The investor affected shall have the right, under the law of the contracting party making the expropriation, to prompt review, by a judicial authority or other competent authority of that contracting party, of its investment, in accordance with the principles set out in the paragraphs 1 and 2 of this article.

3. When a contracting party expropriates the assets of a company which is constituted under the law in force in any part of its own territory, and in which investors of the other Party own shares, it shall ensure that the provisions of this article are applied.

## **Article 8. Repatriation of Investments and Rents**

1. Each contracting party shall guarantee to the investors of the other contracting party the freely transfer of all the payments related to its investments. Those transfers will include, although not exclusively:

- a) the initial capital and additional amounts to maintain or increase the investment;
- b) the returns of an investment in accordance with the definition of article 1;
- c) Funds in repayment of loans related to an investment;
- d) Compensations established under articles 6 and 7;
- e) Proceeds from the sale and/or liquidation of all or part of an investment;
- f) Sums paid pursuant the settlement of disputes.

2. Transfers under the present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange applicable on the date of transfer.

3. Although, those transfers will be subject to the right of either contracting party to impose in an equitable manner, no discriminatory and in good faith, during a period of six months, the necessary measures to guarantee the integrity and independency of its currency, its external financial situation and its balance of payments. The contracting parties accord to consult each other, at a request of any of those, any matter related to the postponement period established in this article.

## **Article 9. Subrogation**

1. If one contracting party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made in the territory of the other contracting party, the latter party shall recognize the assignment, by law or any contract, to the former contracting party or its designated Agency of all the rights and credits from the compensated party and the said former contracting party or its Agency designated shall have a right, by virtue of subrogation, to exercise those rights and claim those credits to the same extent as the compensated party.

2. The first contracting party or its designated Agency will have the right to receive under any circumstance, in relation to the rights and credits that will acquire by virtue of the cession and in respect of any payment made in accordance to those rights and credits, the same treatment that the compensated party would receive, under this agreement, in relation to the investment and its related rents.

## **Article 10. Settlement of Disputes Related to Investments between a Contracting Party and the Investors of the other Contracting Party**

1. If any dispute arises between an investor of one contracting party and the other contracting party with respect to the obligations in virtue of the this agreement, the investor of the host contracting party will notify the other party by a written statement. As far as possible the parties shall endeavour to settle the dispute in an amicable manner through negotiation.
2. If the dispute were not possible to be settled amicable within six months from the date of the written notification mentioned in the first paragraph, either of them may refer the dispute to:
  - a) The competent courts of the contracting party in whose territory the investment has been made; or
  - b) An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission for the International Trade Law; or
  - c) The International Centre for the Settlement of Investment Disputes (ICSID) established under the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", opened to signature in Washington on March 18th, 1965.
3. If the period of six months, from the date of written notification of the claim, has elapsed and no agreement is reached in relation of the alternative mechanisms mentioned above, the disputing parties could submit its dispute to arbitration under the arbitration rules of the United Nations Commission for the International Trade law in force at that moment. Parties could change those rules by agreement.
4. If, however, there is a disagreement between the investor and the contracting party in respect to the election of the forum, the option of the investor will prevail.
5. A contracting party shall not argue as exception the investor has accepted or will receive, by virtue of a guarantee or an insurance contract, a compensation or other type of compensation for all or part of the damages in dispute.
6. The arbitral decisions will be definitive and mandatory to the parties in dispute. Each contracting party undertakes to execute the decisions in accordance with its national legislation.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. Disputes arising between the contracting parties relating to the interpretation or application of this Agreement shall, if it is possible, be settled amicably by diplomatic channels.
2. In case the dispute between the parties could not be solved within six months, it will be subjected to an arbitral tribunal at the request of any of the contracting parties.
3. The arbitral tribunal shall be set up in the following way: Within the following two months of the receipt of the notice of arbitration, each contracting party shall appoint one arbitrator. These two arbitrators shall elect a national of a third country, who after the approval of both contracting parties, would act as Chairman. The president will be appointed within two months since the date of the arbitrators shall be appointed within three months and the appointment of the other two arbitrators.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, 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 Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall issue its decision in majority on the basis of the provisions contained in this Agreement and its decision will be binding to both contracting parties.
6. Unless the Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.
7. Each Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman and the remaining expenses, shall be borne in equal parts by the two Parties.

## **Article 12. Amendments**

At the moment of entry into force of this agreement or at any later moment, its clauses may be amended based on the

agreement of the contracting parties. Each contracting party will notify the other contracting party on the fulfillment of the constitutional requirements in its territory for the entry into force of those amendments. These will enter into force on the date of the last of the two notifications.

### **Article 13. Application of other Rules**

If the national legislation of any of the contracting parties or the obligations from international law, current or any obligation that will emerge between the contracting parties besides this agreement, have rules, general or specific, in virtue of which the investment made by investors of the other contracting party shall be granted a more favourable treatment than the treatment under this agreement, those rules shall prevail over this agreement in the extent it is more favourable.

### **Article 14. Scope of Application**

This Agreement shall apply to investments made before and after its entrance into force by investors of any of the contracting parties in the territory of the other contracting party. Although, the rules of this agreement will not be applicable to the claims derived from facts or the claims already solved before the entry into force of this agreement.

### **Article 15. Consultations**

The contracting parties agree to consult each other, at the request of any of them, any matter related to investments between the two States or that otherwise affect the application of this agreement.

### **Article 16. Entry Into Force, Duration and Termination**

1. Each contracting party shall notify the other contracting party of the compliance with the constitutional formalities required in its territory to the entry into force of this agreement. This agreement will enter into force on the date of the last of the two notifications.
2. This Agreement shall remain in force for an initial period of ten (10) years. Thereafter it shall continue in force unless any of the contracting parties notify the other contracting party by written of its decision to denounce the agreement. The notification shall take effects after one year from the date of notification.
3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 15 shall remain in force for a further period of ten years from the date of that notification.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE in duplicate at Madrid the 6 day of October 2006, in Spanish and English languages, all texts being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF SPAIN

Pedro Mejía Gómez

Secretary of State of Tourism and Commerce

FOR THE GOVERNMENT OF THE REPUBLIC OF ALBANIA

Alan Kyerematen

Minister of Commerce, Industry, Development of the private sector and Special presidential initiatives.