

Agreement on the reciprocal promotion and protection of investments between the Kingdom of Spain and the Republic of Kazakhstan

The Kingdom of Spain and the Republic of Kazakhstan, hereinafter referred to as the contracting parties, "

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

Aiming 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 "investors" means:

a) Natural person who, in the case of the Kingdom of Spain, are resident in Spain under Spanish law, and in the case of investors of the Republic of Kazakhstan natural persons who are nationals of Kazakhstan under its domestic law.

b) Legal entities including companies, associations of companies, corporations and other organizations, which are duly constituted or otherwise organized under the law of that Contracting Party and having their headquarters in the territory of that same Contracting Party.

2 "investment" shall mean assets of every kind, such as property and rights of any kind, acquired in accordance with the laws of the host country to investment and in particular, though not exclusively, the following:

Actions and other forms of participation in companies.

Rights derived from any aportaciones undertaken with the aim of creating economic value; explicitly included all those loans for this purpose, whether or not capitalized.

Movable and immovable property as well as other rights in rem such as mortgages, pledge, usufruct and similar rights.

Any rights in the field of intellectual property, including express patents and trademarks, trade and licensing of manufacture and know-how.

Rights to undertake economic and commercial activities conferred by law or under contract, in particular those relating to prospecting, cultivate, extract or exploit natural resources.

3 The term "investment income refers to the returns derived from an investment in accordance with the definition contained in the preceding paragraph, and includes, expressly, dividends, interest and dividends.

4 The term "" territory means the land territory and territorial sea of each Contracting Party as well as the exclusive economic zone and the continental shelf extends beyond the limits of the territorial waters of each of the Contracting Parties on which they are or may be in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation and preservation of natural resources.

Article 2. Promotion , Admission

1 Each Contracting Party shall promote as far as possible investments made in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws.

2 This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in accordance with the laws of the other Contracting Party in the territory of the latter.

Article 3. Protection

1 Each Contracting Party shall protect within its territory investments made in accordance with its legislation by investors of the other Contracting Party and shall not hinder 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 grant the necessary permits in connection with such investments and within the framework of its laws, enforcement of labour contracts, licence manufacture, technical assistance, commercial, financial and administrative.

3 Each Contracting Party shall also, whenever necessary, the necessary authorizations concerning the activities of consultants and experts appointed 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 contracting party.

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 This treatment shall not apply, however, to privileges which either Contracting Party accords to investors of a third State by virtue of its participation or association with any existing or future free trade area, customs union or common market, under any other international agreement.

4 The treatment granted under the present article shall not extend to deductions and tax exemptions or other similar privileges granted by either contracting party to investors of third countries under an agreement for the avoidance of double taxation or any other arrangement relating to taxation,

5 In addition to the provisions of paragraph 2 of this article, each Contracting Party shall, subject to its domestic law, to investments of investors of the other Contracting Party A treatment no less favourable than that accorded to its own investors. párrafo 2 of this article, each Contracting Party shall, subject to its domestic law, to investments of investors of the other Contracting Party A treatment no less favourable than that accorded to its own investors.

Article 5. Expropriation and Nationalization

1 The expropriation or nationalization or any other measures having similar effects 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. The contracting party to take such measures shall be paid to the investor or its patient, without undue delay, adequate compensation, convertible and freely transferable.

2 The compensation shall be equivalent to the market value of the investment immediately before the date on which the decisions of expropriate or nationalize have been announced or published.

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 or other armed conflict, a national state of emergency, revolt or riot or other similar circumstances, including losses from requisition, shall be accorded to 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. Any payments made under this article shall be made in a prompt, adequate, effective and freely transferable.

Article 7. Transfers

1 Each Contracting Party shall guarantee to investors of the other contracting party, with regard to investments in its territory, the free transfer of the income from other such payments related to investments and in particular, though not exclusively, the following:

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 investments.

The amounts required for the repayment of loans.

The amounts necessary for the acquisition of raw or auxiliary semifinished or finished products, or to replace capital assets or any other amounts necessary for the maintenance and development of the investment.

Salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the other Contracting Party the corresponding work permits in connection with an investment.

2 The Contracting Party accepting the investment shall facilitate the investor of the other contracting party or to society at the market access foreign currency in a non-discriminatory manner, in order to acquire the necessary for currency transfers under this article.

3 The transfers referred to in the present Agreement shall be made in freely convertible currency and in accordance with the tax obligations laid down by the legislation in force in the host contracting party of the investment.

4 The Contracting Parties undertake to facilitate the procedures for making such transfers without undue delay in accordance with the practices of international financial centres. In particular, they shall not exceed three months from the date on which the investor has duly submitted applications necessary for the transfer until the date on which the transfer is made. Each Contracting Party undertakes to fulfil the necessary formalities for the purchase of currency as to their effective transfer abroad prior to the above conclusion.

5 Contracting Parties shall accord to the transfers referred to in this article a treatment no less favourable than that accorded to transfers originating by investors of any third State.

Article 8. More Favourable Terms

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.

Article 9. Principle of Subrogation

In the event that a Contracting Party has provided any financial guarantee on non-commercial risks in connection with an investment made by its investors in the territory of the other contracting party, the latter shall accept the subrogation of the first Contracting Party in the economic rights of the investor, from the first time that the Contracting Party has made a payment under the guarantee granted. The subrogation will ensure that Contracting Party is the first beneficiaries of any direct payments of compensation to the investor might be secured.

As regards property rights, use, enjoyment or any other right, the subrogation shall take place only after obtaining the relevant authorisations in accordance with the legislation of the Contracting Party where the investment was made.

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, 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, the dispute 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 Estes two arbitrators shall select 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 one of the Contracting Parties has not appointed its arbitrator within the deadline, the other Contracting Party may invite the President of the International Court of Justice to make the appointment. Where two arbitrators fail to agree on the appointment of the third arbitrator within the prescribed period, either Contracting Party may invite the President of the International Court of Justice to make the appointment.

5 If in the cases referred to in paragraph 4 of this article, 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 most senior member of the Court who is not a national of any of the Parties
contratantes.párrafo 4 of this article, 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 most senior member of the Court who is not a national of either of the Contracting Parties.

6 The arbitration tribunal shall deliver its opinion on the basis of respect for the law, to 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.

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

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

9 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 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 shall be submitted at the choice of the investor: paragraph 1, at the choice of the investor, be submitted:

The competent courts of the Contracting Party in whose territory the investment was made.

The ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.

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.

The Court of Arbitration of the Paris International Chamber of Commerce.

3 The arbitration shall be based on:

The provisions of this Agreement and any other agreements concluded between the contracting parties.

The rules and the universally accepted principles of International Law.

The national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law.

4 The arbitration awards 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. 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 that their

respective constitutional formalities required for upon Entry into Force of international agreements have been completed. It shall remain in force for an initial period of ten years and shall be renewable, 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 a complaint, the provisions of articles 1 to 11 of this Agreement shall continue to apply for a period of ten years for investments made before the 11 denuncia.artículos 1 of this Agreement shall continue to apply for a period of ten years for investments made before the complaint.

For the Kingdom of Spain,

S. A.

Mr. Javier Solana Madariaga

Minister of Foreign Affairs

For the Republic of Kazakhstan,

Z. abisev syzdyk

Deputy Prime Minister