

# **AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE KINGDOM OF SAUDI ARABIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Kingdom of Spain and the Kingdom of Saudi Arabia, hereinafter referred to as "the Contracting Parties"

Desiring to intensify economic cooperation between the two countries, with a view to creating favorable conditions for the investment of each country's investors in the territory of the other country, recognizing that the promotion and mutual protection of such investments will stimulate private sector initiatives and Prosperity for both nations,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. "Investment" means any type of asset owned or controlled by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation, including, but not limited to, the following:

- a) ownership of movable and immovable property, as well as other real rights, such as mortgages, liens and pledges, usufructs and similar rights;
- b) shares, shares and obligations of companies and other rights or interests in companies, as well as securities issued by a Contracting Party or by any of its investors;
- c) the right to monetary contributions, such as those derived from a loan, or to any benefit that has an economic value and which is related to an investment;
- d) intellectual property rights, technical processes, know-how and goodwill;
- e) rights to carry out economic and commercial activities granted by law or under a contract, including licenses, permits or concessions granted in accordance with the laws.

No change in the way the assets are invested or reinvested will affect their investment character.

2. "Income" means the amounts produced by an investment and shall include, but not exclusively, profits, dividends, royalties, capital gains and other fees or similar payments.

3. "Investor" means:

a) in respect of the Kingdom of Spain:

I. any natural person who, in accordance with the legislation of the Kingdom of Spain, considers himself a national of the same;

II. Any legal entity or any other legal entity constituted or duly organized otherwise in accordance with the law of the Kingdom of Spain and having its seat in the territory of the Kingdom of Spain, such as public limited companies, corporations or business associations;

b) in respect of the Kingdom of Saudi Arabia:

I. any natural person who, in accordance with the legislation of the Kingdom of Saudi Arabia, considers himself a national of the same;

II. Means any entity, whether legal entity or not, established in accordance with the law of the Kingdom of Saudi Arabia and

having its principal place of business in its territory, such as corporations, companies, cooperatives, companies, corporations, offices, establishments, funds, Organizations, business associations and other similar entities, regardless of whether or not they are limited liability;

III. The Government of the Kingdom of Saudi Arabia and its financial institutions and authorities, such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions in Saudi Arabia.

4. "territory" means the land territory, the internal waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extend beyond the territorial sea limits of each of the Parties Contracting Parties over which they have jurisdiction and / or sovereign rights in accordance with international law.

## **Article 2.**

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

2. Fair and equitable treatment and full protection and security shall be accorded at all times to investments made by investors of one Contracting Party in the territory of the other Contracting Party.

3. Neither Contracting Party shall in any way obstruct, through arbitrary or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

## **Article 3.**

1. Each Contracting Party shall accord to investments which have been admitted as well as to investment income of investors of the other Contracting Party treatment no less favorable than that accorded to investments and investment income of investors of the other Contracting Party. Any third State.

2. In accordance with its laws and regulations, each Contracting Party shall accord to investments which have been admitted as well as to investment income of investors of the other Contracting Party, treatment no less favorable than that accorded to investments And the investment income of its investors.

3. Each Contracting Party shall grant in its territory to investors of the other Contracting Party in respect of the management, maintenance, use, enjoyment or disposal of its investments or the manner of securing its rights to such investments, such as transfers And any other activity associated with the foregoing in its territory, treatment no less favorable than that accorded to its investors or investors of a third State, whichever is more favorable.

4. The provisions of paragraphs 1, 2 and 3 of this Article shall not, however, apply to the privileges granted by either Contracting Party to investors of a third State by virtue of their membership or association in any free zone Trade, customs union, economic union, common market or any other regional economic organization.

5. The treatment accorded under this article shall not apply to tax matters.

## **Article 4.**

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 service, in accordance with due process of law, in a non-discriminatory manner and by the payment of prompt, adequate and effective compensation.

2. Such compensation shall be equivalent to the market value of the investment expropriated immediately before the expropriation or imminence of the same is public knowledge, whichever occurs first.

3. The compensation shall be paid without delay and shall include interest at the prevailing market interest rate from the effective date of the expropriation to the date of payment; The compensation will be effectively realizable and freely transferable.

4. The affected investor shall have the right to have the legality of any expropriation, nationalization or other comparable measure, as well as the amount of compensation, reviewed with due process of law.

## **Article 5.**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflict, revolution, general state of emergency or insurrection, the latter Contracting Party shall grant them, as restitution, compensation, Compensation or other economic consideration, treatment no less favorable than that accorded to its own investors or to investors of any third State, whichever is the most favorable to the investor concerned. Payments arising therefrom shall be freely transferable.

## **Article 6.**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transference of all payments related to investments held in the territory of the other Contracting Party and in particular, but not exclusively:

- a) initial capital and other additional amounts to maintain or expand investment;
- b) income from investment;
- c) repayment of loans;
- d) proceeds from the sale or liquidation, total or partial, of the investment;
- e) the compensation provided for in Articles 4 and 5;
- f) the income and other remuneration of the personnel contracted abroad in connection with an investment;
- g) payments arising from the settlement of a dispute.

2. The transfers referred to in this Article shall be made without delay and at the rate of exchange applicable on the date on which the investor has requested the transfer in question.

3. In the absence of a foreign exchange market, the exchange rate shall correspond to the exchange rate obtained from the rates applied by the International Monetary Fund for the conversion of the currencies concerned into Special Drawing Rights.

## **Article 7.**

1. If the legislation of either Contracting Party or obligations under international law already existing or subsequently established between the Contracting Parties, in addition to this Agreement, contain rules, whether general or specific, by virtue of which it must Investments by investors of the other Contracting Party may be accorded treatment more favorable than that provided for in this Agreement, such rules shall prevail over this Agreement to the extent that they are more favorable.

2. Nothing in this Agreement shall affect the provisions established by international agreements in relation to the intellectual and industrial property rights in force in the two Contracting Parties.

## **Article 8.**

This Agreement shall also apply to investments made prior to their entry into force by investors of either Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation. However, this Agreement shall not apply to claims or disputes which, prior to their entry into force, have been resolved or are already the subject of a proceeding for its resolution.

## **Article 9.**

In the event of a Contracting Party or its designated body making a payment under an indemnity, guarantee or insurance contract against non-commercial risks in connection with an investment by one of its investors in the territory of the other Contracting Party, The latter shall recognize the assignment of any right or credit of such investor to the first Contracting Party or to its

And the right of the first Contracting Party or its designated body to exercise, by subrogation, such right or credit to the same extent as its predecessor in the title.

## **Article 10.**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible amicably between the two Contracting Parties through diplomatic channels.
2. If the dispute can not be settled in that way within a period of six months, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.
3. The arbitral tribunal shall be constituted in each case as follows: each Contracting Party shall designate one member and those two members shall elect as president a national of a third State, to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within a period of two months and the chairman shall, within three months of the date on which either Contracting Party has informed the other Contracting Party of its intention to refer the dispute to an arbitral tribunal.
4. If the time limits set out in paragraph 3 above have not been observed, any Contracting Party, in the absence of any other agreement, may urge the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is unable to perform that function for other reasons, the Vice-President shall make the necessary appointments. If the Vice-President is a national of one of the Contracting Parties or is not able to perform such function, the member of the Court who is a senior citizen who is not a national of either Contracting Party shall make the necessary appointments.
5. The arbitral tribunal shall issue its decision on the basis of respect for the law, the provisions contained in this Agreement or other agreements in force between the Contracting Parties, as well as generally accepted principles of international law.
6. The arbitral tribunal shall adopt its decisions by a majority of votes. These decisions shall be final and binding. Each Contracting Party shall bear the expenses of its own member and those related to its own representation in the arbitral proceedings. All other expenses, including those of the President, shall be borne equally by the two Contracting Parties. The arbitral tribunal may adopt other rules in relation to expenses. For all other purposes, the arbitral tribunal shall establish its own procedure.

## **Article 11.**

1. Disputes concerning investments between one Contracting Party and an investor of the other Contracting Party in respect of such investments in the territory of the first Contracting Party shall be settled as far as possible in an amicable manner.
2. If the dispute can not be settled in accordance with paragraph 1 of this Article within six months of the date on which the request for amicable settlement was made in writing, it may, at the option of the investor, be submitted to the court Competent authority of the Contracting Party in whose territory the investment was made or to arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965. The choice of one of the procedures in this section will mean the exclusion of the other.
3. A Contracting Party may not claim as an exception that the investor has received or will receive, under a guarantee or an insurance contract, compensation or other compensation for all or part of the damages in question.
4. If the dispute is submitted to arbitration, the award shall be final and binding on the parties to the dispute and shall not be subject to appeal except as provided in the said Convention. The award shall be executed in accordance with national law.

## **Article 12.**

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing and through diplomatic channels that they have complied with the provisions of this Agreement.

Respective internal legal formalities. It shall remain in force for an initial period of ten years and shall remain in force after said period. After the expiration of the initial period of ten years, this Agreement may be denounced at any time by either Contracting Party and shall be notified twelve months in advance.

2. With respect to investments made before the date of termination of this Agreement, the provisions of Articles 1 to 11 shall remain in force for a further period of ten years from the date of termination of this Agreement.

In witness whereof, the respective plenipotentiaries have signed this Agreement.

Done at Riyadh on 9 April 2006, in duplicate, in English, Arabic and Spanish, all texts being equally authentic. In case of discrepancy in interpretation, the English text shall prevail.

For the Kingdom of Spain,

José Montilla Aguilera,

Minister of Industry, Tourism and Trade.

For the Kingdom of Saudi Arabia,

Amr A. Al-Dabbagh,

Governor of the Saudi Arabian General Investment Authority (Sagia)