

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN THE KINGDOM OF SPAIN AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

Intending to create favourable conditions for investments made by investors of each Contracting Party in the territory of the other Party, and

Convinced that the promotion and protection of investments will help stimulate transfers of capital and technology between the two countries and foster their economic development,

Have agreed as follows:

*Article 1*

For the purposes of this Agreement:

1. The term "investments" means any kind of assets, property or rights relating to an investment, of any kind, invested in accordance with the legislation of the host country of the investment and, in particular, but not exclusively:

- (a) Shares and all other forms of participation in companies;
- (b) Rights derived from any kind of contribution made with the intention of creating economic value;
- (c) Movable and immovable property and other real estate rights such as mortgages, usufructs, sureties and similar rights;
- (d) Intellectual property rights such as patents, trade marks, manufacturing licences and know-how;
- (e) Concessions granted by law or by virtue of a contract, in accordance with the legislation of the host country of the investment and, in particular, those related to the prospection, cultivation, extraction and exploitation of natural resources.

Changes in the form of the investment or reinvestment shall not affect its standing as an investment, provided that the change in question is not contrary to the legislation of the Contracting Party in whose territory the investment was made.

2. The term "investor" means:

- (a) Any individual who has the nationality of one of the Contracting Parties under the legislation currently in force and who makes an investment in the territory of the other Contracting Party;

<sup>1</sup> Came into force on 17 January 1996, the date on which the Contracting Parties notified each other of the completion of the required internal constitutional procedures, in accordance with article 12 (1).

(b) Any legal entity, particularly companies, groups of companies, trading companies, and any other type of company constituted and organized according to the legislation of one of the Contracting Parties which has its head office in the territory of that Contracting Party.

3. The term “investment income” means returns on an investment made in accordance with the definition contained in paragraph 1 of this article, and includes, in particular, profits, dividends and interest.

4. The term “territory” means, in addition to the zones delimited by land boundaries, the maritime zones, including the maritime soil and subsoil, under the sovereignty of the Contracting Parties or over which they exercise, under international law, sovereign or jurisdictional rights relating to the prospection, exploration and conservation of natural resources.

### *Article 2*

#### PROMOTION AND ACCEPTANCE

1. Each Contracting Party shall accept and promote investments made in its territory by investors of the other Contracting Party in accordance with its legislation and the provisions of this Agreement.

2. This Agreement shall apply equally to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party. Nevertheless, the provisions of this Agreement shall not apply to disputes which began before the date of its entry into force.

### *Article 3*

#### PROTECTION

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

2. Each Contracting Party shall endeavour to grant, in the context of its legislation, the necessary permits in connection with the investments made in its territory by investors of the other Contracting Party.

### *Article 4*

#### TREATMENT

1. Each Contracting Party shall guarantee in its territory fair and equitable treatment of the investments made by investors of the other Party.

2. Such treatment shall be no less favourable than that accorded by each Contracting Party to investments made in its territory by its own investors or by investors of a third country enjoying most-favoured-nation status.

3. Such treatment shall not, however, extend to the privileges which either Contracting Party may grant to investors of a third State by virtue of its membership

in a free-trade area, a customs union, a common market or any other regional economic assistance organization or by virtue of an agreement concluded with a third country in order to avoid double taxation or by virtue of any other tax agreement.

#### *Article 5*

##### NATIONALIZATION AND EXPROPRIATION

1. Nationalization, expropriation or any other measure having similar characteristics or effects that may be adopted by the authorities of one Contracting Party against investments made in its territory by investors of the other Contracting Party shall be effected only in the public interest, in accordance with the law, and shall in no case be discriminatory.

2. Nationalization, expropriation or any other measure having similar effects that may be adopted shall entail payment of adequate indemnification, in convertible currency and without unjustified delay. The amount of indemnification shall be equal to the real value of the investment on the day before the date on which the aforementioned measures are adopted or made public.

3. At the request of the investor concerned, the legality of any nationalization, expropriation or other measures having similar effects, and the amount and form of payment of compensation may be reviewed by any competent authority, in accordance with the existing legislation of the Contracting Party in whose territory the investment was made.

#### *Article 6*

##### COMPENSATION FOR LOSSES

Investors of one Contracting Party who, on account of war, armed conflict, a state of national emergency, or revolt in the territory of the other Contracting Party, suffer losses on their investments or investment income in the territory of the latter Contracting Party, shall be granted by way of restitution, indemnification or compensation, treatment no less favourable than that which the latter Contracting Party grants to its own investors or to investors of any third State.

Any payment made in accordance with this article for restitution, indemnification or compensation shall be prompt, adequate and readily and freely transferable.

#### *Article 7*

##### TRANSFER

Each Contracting Party shall enable investors of the other Contracting Party, in accordance with its legislation and provided all tax obligations have been met, to transfer freely income and other payments relating to those investments and, in particular:

- The investment income provided for in article 1;
- The indemnization provided for in article 5;
- The compensation provided for in article 6;
- The proceeds from the sale or total or partial liquidation of an investment;

— The salaries, wages and other remuneration received by the workers of one Contracting Party who have obtained in the other Contracting Party the corresponding work permits in relation to an investment.

Transfers shall be made in freely convertible currency at the official rate of exchange applicable on the date of the transfer, within a period of no more than three (3) months.

#### *Article 8*

##### MORE FAVOURABLE TERMS

1. More favourable terms than those of this Agreement which have been agreed by one Contracting Party 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 undertaken with investors of the other Contracting Party.

#### *Article 9*

##### PRINCIPLE OF SUBROGATION

1. If either Contracting Party or an agent designated by it makes payments to one of its investors under a guarantee it has given, under its own regulations, in respect of non-commercial risks relating to an investment made in the territory of the other Contracting Party, the latter shall recognize that the former Contracting Party or its agent is entitled by virtue of subrogation to exercise the rights and hold the shares of the indemnified investor.

2. This subrogation shall not exceed the original rights of the aforementioned investor, and the payments in question shall not affect the right of the beneficiary of the guarantee to have recourse to the arbitration mechanisms provided for in article 11. The provisions of articles 5, 6 and 7 of this Agreement shall apply to any transfer of payments to be made to the other Contracting Party or its agent.

#### *Article 10*

##### DISPUTES BETWEEN THE CONTRACTING PARTIES RELATING TO INTERPRETATION OF THE AGREEMENT

1. Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement shall as far as possible be settled by the Governments of the two Contracting Parties.

2. If a dispute cannot be thus settled within six months from the start of negotiations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint an arbitrator and these two arbitrators shall appoint a citizen from a third State as President. The arbitrators shall be appointed within three (3) months and the President within five (5) months from the date on which either Contracting

Party informs the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If one Contracting Party fails to appoint its arbitrator within the period specified, the other Contracting Party may request the Secretary-General of the United Nations to make such appointment. If the two arbitrators fail to reach agreement on the appointment of the third arbitrator within the period specified, either Contracting Party may call on the Secretary-General of the United Nations to make the appointment concerned. If the Secretary-General is a national of either Contracting Party or if for any other reason he is unable to fulfil that function, the next most senior Under-Secretary-General who is not a national of either Contracting Party shall proceed to make the necessary appointments.

5. The arbitral tribunal shall issue its ruling on the basis of respect for the law, the provisions of this Agreement or of other agreements in force between the Contracting Parties and the universally recognized principles of international law.

6. Unless the Contracting Parties decide otherwise, the tribunal shall establish its own procedures.

7. The tribunal shall take its decision by a majority of votes and such decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall defray the expenses of the arbitrator appointed by it and the expenses relating to its representation in the arbitral proceedings. The remaining expenses, including those of the President, shall be shared equitably by the two Contracting Parties.

### Article 11

#### DISPUTES BETWEEN A CONTRACTING PARTY AND INVESTORS OF THE OTHER CONTRACTING PARTY

1. Notification of any dispute between a Contracting Party and an investor of the other Contracting Party, including detailed information, shall be communicated in writing by the investor to the host Contracting Party of the investment. As far as possible, the parties shall endeavour to settle their differences amicably.

2. If a dispute cannot be thus settled within six months from the date of the written notification referred to in paragraph 1, it may, at the request of the investor, be submitted to:

- An arbitral tribunal in accordance with the Rules of Procedure of the Arbitration Institute of the Stockholm Chamber of Commerce;
- The arbitral tribunal of the Paris International Chamber of Commerce;
- The *ad hoc* arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law;
- The International Centre for Settlement of Investment Disputes (ICSID) set up by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature in Washington on 18 March 1965,<sup>1</sup> after both States Parties to this Agreement have acceded to it.

<sup>1</sup> United Nations, *Treaty Series*, vol. 575, p. 159.

3. The arbitration shall be based on:
- The provisions of this Agreement;
  - The national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law;
  - The universally accepted rules and principles of international law.
4. The arbitral award shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the award in accordance with its national legislation.

*Article 12*

ENTRY INTO FORCE, RENEWAL AND TERMINATION

1. This Agreement shall enter into force on the day on which the Contracting Parties notify each other that their respective constitutional formalities for its entry into force have been completed. It shall remain in force for an initial period of 10 years, and shall be tacitly renewed for consecutive periods of two years.

Either Contracting Party may terminate this Agreement by giving written notification six months before the date of its expiration.

2. In the event of termination of this Agreement, the provisions of articles 1 to 11 shall continue to apply, for a period of 10 years, to investments made before its termination.

DONE at Madrid, on 23 December 1994, in two originals each in Spanish, Arabic and French, all three texts being equally authentic.

For the Kingdom  
of Spain:

For the People's Democratic Republic  
of Algeria:

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