

Kingdom Of Saudi Arabia



المملكة العربية السعودية

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

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

Desiring to intensify economic cooperation between both countries, intending to create favourable conditions for investments by investors of either country in the territory of the other country, recognising that the reciprocal promotion and protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations, have agreed as follows:

**Article 1**

For the purpose of this Agreement;

1. The term "investment" means every kind of asset owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation and in particular, but not exclusively includes:

- a) movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufructs and similar rights;
- b) shares, stocks and debentures of companies and other kinds of rights or interest in companies as well as securities issued by a Contracting Party or any of its investors



- c) claims to money such as loans or to any performance having an economic value, associated with an investment;
- d) intellectual property rights, technical processes, know-how and good-will;
- e) any right to undertake economic and commercial activities conferred by law or by virtue of a contract, including licenses, permits or concessions issued according to law.

Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment.

2. The term "returns" means the amounts yielded by an investment, in particular although not exclusively, includes profit, dividends, royalties, capital gains or any similar fees or payments.

3. The term "investor" means:

- a) in respect of the Kingdom of Saudi Arabia:
  - I. natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with its law;
  - II. any entity having or having no legal personality and constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of 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 existing in Saudi Arabia.

- b) in respect of the Kingdom of Spain:
  - I. natural persons who, according to the law of the Kingdom of Spain, are considered to be its nationals;
  - II. juridical persons or any other legal entity constituted or otherwise duly organized in accordance with the laws of the Kingdom of Spain and having its seat in the territory of the Kingdom of Spain such as corporations, partnerships or business associations.

4. The term "territory" designates the land territory, internal waters of each of the Contracting Parties, 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 jurisdiction and/or sovereign rights, pursuant to international law.

## **Article 2**

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

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



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

### **Article 3**

1. Each Contracting Party shall grant investments once admitted and investment returns of investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third State.

2. In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its investors.

3. Each Contracting Party shall , in its territory, accord the investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of their investments or with the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of a third State, whichever is more favourable.

4. The provisions in paragraph 1, 2 and 3 of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third State by virtue of its membership of, or association with a free trade area, a customs union, an economic union, a common market or any other regional economic organization.



5. The treatment granted 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 subject to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest, in accordance with due process of law, on a non discriminatory basis and against 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 impending expropriation has become publicly known, whichever is the earlier.

3. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate of return from the date of expropriation until the date of payment; it shall be effectively realizable and freely transferable.

4. The investor affected shall have the right to review, by due process of law, the legality of any such expropriation, nationalization or comparable measure and the amount of compensation.



#### **Article 5**

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or to other armed conflict, revolution, a state of general emergency, or revolt, shall be accorded treatment not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

#### **Article 6**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments in connection with investments they hold in the territory of the other Contracting Party, in particular, though not exclusively:

- a) the initial capital and additional amounts to maintain or increase the investment;
- b) the investment returns;
- c) the repayment of loans;
- d) the proceeds from the liquidation or the sale of the whole or any part of the investment;
- e) the compensation provided for in Articles 4 and 5;
- f) earnings and other remuneration of personnel engaged from abroad in connection with an investment;
- g) payments arising out of the settlement of a dispute.



2. Transfers under this Article shall be made without delay at the prevailing rate of exchange applicable on the date on which the investor applies for the related transfer.

3. In the absence of a market for foreign exchange, the rate of exchange shall correspond to the cross-rate obtained from those rates which would be applied by the International Monetary Fund for conversions of the currencies concerned into Special Drawing Rights.

#### **Article 7**

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement in this context.

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

#### **Article 8**

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation. However, this Agreement shall not apply to claims



or disputes which, prior to its entry into force, are either settled or under legal procedure of settlement.

#### **Article 9**

If a 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 by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency and the right of the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right or claim to the same extent as its predecessor in title.

#### **Article 10**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled amicably by the two Contracting Parties through diplomatic channels.

2. If the dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

3. Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their Chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within three months from the date on which either Contracting Party has





informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

5. The arbitration tribunal shall issue its decision on the basis of respect for the law, the provisions contained in this Agreement or in other agreements in force between the Contracting Parties, as well as the generally accepted principles of international law.

6. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counselling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.



#### **Article 11**

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party, in connection with these investments in the territory of the former Contracting Party should be amicably settled as far as possible.

2. If the dispute cannot be settled in the way prescribed in paragraph 1 of this Article within six months from the date when the written request for the amicable settlement has been submitted, it shall at the choice of the investor be filed to the competent court of law of the Contracting Party in whose territory the investment was made, or filed for arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States. The selection of one of the procedures under this paragraph operates the exclusion of the other.

3. A Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the alleged damages has been received or will be received by the investor pursuant to a guarantee or insurance contract.

4. If the dispute is filed for arbitration, the award shall be final and binding on the parties in the dispute and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.



## **Article 12**

1. This Agreement shall enter into force thirty days after the date on which both Contracting Parties have notified each other, in writing through diplomatic channels, that their respective internal legal procedures have been fulfilled. It shall remain in force for an initial period of ten years and shall continue in force thereafter. After the expiration of the initial period of ten years, this Agreement may be denounced at any time by either Contracting Party giving twelve months' notice.

2. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 11 shall continue to be effective 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 11<sup>th</sup> Rabi'l 1427H corresponding to 9<sup>th</sup> April 2006, in duplicate in the Spanish, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**FOR THE KINGDOM OF SAUDI ARABIA**

**AMR A. AL-DABBAGH  
GOVERNOR OF SAUDI ARABIAN  
GENERAL INVESTMENT AUTHORITY  
(SAGIA)**

**FOR THE KINGDOM OF SPAIN**

**JOSÉ MONTILLA AGUILERA  
MINISTER FOR INDUSTRY,  
TOURISM AND TRADE**