

No. 32902

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**SPAIN  
and  
PAKISTAN**

**Agreement on the reciprocal promotion and protection of  
investments (with exchange of notes dated 19 December  
1994 and 16 January 1995). Done at Madrid on 15 Sep-  
tember 1994**

*Authentic texts: Spanish and English.*

*Authentic text of the exchange of notes: Spanish.*

*Registered by Spain on 25 June 1996.*

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**ESPAGNE  
et  
PAKISTAN**

**Accord relatif à la promotion et la protection réciproques  
des investissements (avec échange de notes en date des  
19 décembre 1994 et 16 janvier 1995). Fait à Madrid le  
15 septembre 1994**

*Textes authentiques : espagnol et anglais.*

*Texte authentique de l'échange de notes : espagnol.*

*Enregistré par l'Espagne le 25 juin 1996.*

AGREEMENT<sup>1</sup> ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE ISLAMIC REPUBLIC OF PAKISTAN

*THE KINGDOM OF SPAIN and the ISLAMIC REPUBLIC OF PAKISTAN hereinafter referred to as "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 Contracting Party,*

*AND*

*RECOGNIZING that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,*

*HAVE AGREED as follows :*

*ARTICLE I*

*DEFINITIONS*

*For the purposes of the present Agreement,*

*1. The term "investor" means:*

- (a) any individual who is a national of a Contracting Party according to its law.*
- (b) any legal entity, including companies, associations of companies, trading corporate entities and other*

<sup>1</sup> Came into force on 26 April 1996, the date on which the Contracting Parties notified each other (on 22 January and 26 April 1996) of the completion of the respective constitutional formalities, in accordance with article 12 (1).

*organisations which is incorporated or, in any event, is properly organised under the law of that Contracting Party and is actually managed from the territory of that Contracting Party.*

2. *The term "investment" means all kinds of assets, such as goods and rights of all sorts, and in particular, although not exclusively, the following:*

- *Shares and other forms of participation in companies;*
- *rights arising from all types of contributions made for the purpose of creating economic value, including every loan granted for this purpose, whether capitalized or not;*
- *movable and immovable assets and any other rights such as mortgages, liens or pledges;*
- *any rights in the field of intellectual property, including patents and trademarks, as well as manufacturing licences, know-how and goodwill;*
- *rights to engage in economic and commercial activities authorized by law or by virtue of a contract, particularly those rights to search for, cultivate, extract or exploit natural resources.*

3. *The term "returns" refers to income deriving from an investment in accordance with the definition contained above, and includes, in particular although not exclusively, profits, dividends and interests.*

4. *The term "territory" designates the land territory and territorial waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extends outside the limits of the territorial waters of each of the*

*Contracting Parties, over which they have or may have jurisdiction and sovereign rights for the purposes of exploitation, and conservation of natural resources, pursuant to international law.*

## ARTICLE 2

### PROMOTION, ACCEPTANCE

1. *Each Contracting Party shall encourage, in so far as possible, the investments made in its territory by investors of the other Contracting Party and shall accept such investments pursuant to its law.*
2. *This Agreement shall likewise be applicable to investments made by investors of one Contracting Party under the legal provisions of the other Contracting Party in the territory of the latter on or after 1st September, 1954.*

## ARTICLE 3

### PROTECTION

1. *Each Contracting Party shall protect in its territory the investments made in accordance with its laws and regulations, by investors of the other Contracting Party and shall not hamper, by means of unjustified or discriminatory measures, the management, development, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments.*
2. *Each Contracting Party shall endeavour to grant the necessary permits relating to these investments and shall allow, within the framework of its law, the execution of work permits and contracts related to manufacturing-licences and technical, commercial, financial and administrative assistance.*
3. *Each Contracting Party shall also grant, whenever necessary, the permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.*

## ARTICLE 4

### TREATMENT

1. *Each Contracting Party shall guarantee in its territory fair and equitable treatment for the investments made by investors of the other Contracting Party.*
2. *This treatment shall not be less favourable than that which is extended by each Contracting Party to the investments made in its territory by investors of any third country.*
3. *However, this treatment shall not extend to the privileges that one Contracting Party may grant to investors of a third country by virtue of its membership or association with any existing or future free-trade area, customs union, common market or similar international agreement to which any of the Contracting Parties is or may become a Party.*
4. *The treatment given pursuant to this article shall not extend to tax deductions and exemptions or other similar privileges granted by either of the Contracting Parties to investors of third countries by virtue of a double-taxation avoidance agreement or any other taxation agreement.*
5. *In addition to the provisions of paragraph 2 of this article, each Contracting Party shall apply, under its own law, no less favourable treatment to the investments of investors of the other Contracting Party than that granted to its own investors.*

## ARTICLE 5

### NATIONALIZATION AND EXPROPRIATION

1. *The nationalization, expropriation or any other measure of similar characteristics or effects that may be applied by the authorities of one Contracting Party against the investments in its own territory of investors of the other Contracting Party must be applied exclusively for reasons of public interest,*

*pursuant to the law, and shall in no case be discriminatory. The Contracting Party adopting such measures shall pay to the investor or his legal beneficiary, without unjustified delay, an adequate indemnity in convertible and freely transferable currency.*

2. *Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge.*

## ARTICLE 6

### COMPENSATION FOR LOSSES

*Investors of one Contracting Party whose investments or returns in the territory of the other Contracting Party suffer losses owing to war, other armed conflicts, a state of national emergency, rebellions, riots or other similar circumstances, including losses arising out of requisitioning measures, shall be accorded as regards restitution, indemnification, compensation or other settlement, 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 under this Article shall be prompt, adequate, effective and freely transferable.*

## ARTICLE 7

### TRANSFER

1. *With regard to the investments made in its territory, each Contracting Party shall grant to investors of the other Contracting Party the free transfer of the income deriving therefrom and other payments related thereto, including particularly but not exclusively, the following :*

- *investment returns, as defined in Article 1;*
- *the indemnities provided for under Articles 5 and 6 ;*

- *the proceeds of the sale or liquidation, in full or partial, of an investment ;*
- *funds in repayment of loans ;*
- *payments for maintaining or developing the investment, such as funds for acquiring raw or auxiliary materials, semi-finished or finished products as well as for replacing capital assets ;*
- *the salaries, wages and other compensation received by the citizens of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits in relation to an investment.*

2. *The host Contracting Party of the investment shall allow the investor of the other Contracting Party, or the company in which he has invested, to have access to the foreign-exchange market in a non-discriminatory manner so that the investor may purchase the necessary foreign currency to make the transfers pursuant to this article.*

3. *The transfers shall be made in freely-convertible currencies and in accordance with tax regulations in host Contracting Party of the investment.*

4. *The Contracting Parties undertake to facilitate the procedures needed to make these transfers without delays, according to the practices in international financial centres. In particular, no more than three months must elapse from the date on which the investor properly submits the necessary applications in order to make the transfer until the date on which the transfer actually takes place. Therefore, both Contracting Parties undertake to carry out the required formalities, both for the acquisition of foreign currency*

*and for its effective transfer abroad, within that period of time.*

5. *The Contracting Parties agree to accord to transfers referred to in the present Article a treatment no less favourable than that accorded to transfers originated from investments made 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

### SUBROGATION

1. *In case one Contracting Party, or its designated Agency, has granted a financial guarantee relative to non-commercial risk in respect of an investment made by its investors in the territory of the other Contracting Party, the latter shall accept the subrogation of the former Contracting Party or its designated Agency in respect of the economic rights of the investors from the time when the former Contracting Party or its designated Agency made a first payment charged to the guarantee issued. This subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of all the payments for compensation of which the initial investor could be a creditor.*

2. *In respect of property rights, use, enjoyment or any other property right, subrogation will only take place after having met the relevant legal requirements of the host Contracting Party.*



## ARTICLE 10

### SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. *Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.*
2. *If it were not possible to settle the dispute in this way within six months from the start of the negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to a court of arbitration.*
3. *The court of arbitration shall be set up in the following way: each Contracting Party shall appoint an arbitrator and these two arbitrators shall elect a citizen from a third country as President. The arbitrators shall be appointed within three months and the President within five months from the date on which either of the two Contracting Parties inform the other Contracting Party of its intention to submit the dispute to a court of arbitration.*
4. *If one of the two Contracting Parties does not appoint its arbitrator before the established deadline, the other Contracting Party may request the President of the International Court of Justice to make such appointment. In the event that the two arbitrators do not reach an agreement on the appointment of the third arbitration before the established deadline, either of the Contracting Parties may in turn call on the President of the International Court of Justice to make the appropriate appointment.*
5. *If, in the case provided for in paragraph 4 of this Article, the President of the International Court of Justice is prevented from discharging 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 is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments.*

6. *The court of arbitration shall issue its decision on the basis of respect for the law, of the rules contained in this Agreement or in other agreements in force between the Contracting Parties, and as well as of the universally recognized principles of international law.*

7. *Unless the Contracting Parties decide otherwise, the court shall lay down its own procedure.*

8. *The court shall take its decision by majority vote and that decision shall be final and binding on both Contracting Parties.*

9. *Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those connected with representing it in the arbitration proceedings. The other expenses, including those of the President, shall be borne in equal parts by the two Contracting Parties.*

## ARTICLE 11

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

1. *Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including detailed information, by the investor to the host Contracting Party of the investment. As far as possible, the parties concerned shall endeavour to settle these differences by means of a friendly agreement.*

2. *If these disputes cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor, to ;*

- *the competent court of the Contracting*

*Party in whose territory the investment was made;*

- *the ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law;<sup>1</sup>*
- *the International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18th March 1965,<sup>2</sup> in case both Contracting Parties become signatories to this Convention;*
- *the Court of Arbitration of the Paris International Chamber of Commerce;*

3. *The arbitration shall be based on :*

- *the provisions of this agreement and of the other agreements in force 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 decisions shall be final and binding on the parties in the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.*

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<sup>1</sup> United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 39, volume I (A/31/39)*, p. 182.

<sup>2</sup> *Ibid.*, *Treaty Series*, vol. 575, p. 159.

## ARTICLE 12

### *ENTRY INTO FORCE, EXTENSION AND TERMINATION*

1. *This Agreement shall enter into force on the date on which Contracting Parties shall have notified each other that the respective constitutional formalities required for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and, by tacit renewal, for consecutive two-year periods.*

*Either Contracting Party may terminate this Agreement by prior notification in writing, six months before the date of its expiration.*

2. *With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.*

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

*DONE in originals in Spanish and English, all of which are equally authentic, in Madrid on 15th September, 1994.*

For the Kingdom  
of Spain:



JAVIER GOMEZ NAVARRO  
Minister of Commerce and Tourism

For the Islamic Republic  
of Pakistan:



SARDAR ASSEF AHMED ALI  
Minister of Foreign Affairs

## EXCHANGE OF NOTES

## I

## MINISTRY OF FOREIGN AFFAIRS

No. R.E.I.

*Note verbale*

The Ministry of Foreign Affairs presents its compliments to the Embassy of the Islamic Republic of Pakistan in Spain and has the honour to refer to the Agreement on the reciprocal promotion and protection of investments between Spain and Pakistan, signed at Madrid on 15 September 1994 on the occasion of the visit of the Prime Minister of Pakistan, Mrs. Benazir Bhutto.

Several errors have been noted in the original Spanish text, the correction of which requires an exchange of notes between the two States. The errors are as follows:

*Article 1.1 (b):* The phrase “and has its headquarters in the territory” should read “and is actually managed from the territory”.

*Article 2.2:* This paragraph should read: “This Agreement shall likewise be applicable to investments made by investors of one Contracting Party under the legal provisions of the other Contracting Party in the territory of the latter on or after 1st September, 1954”.

*Article 3.2:* “Each Contracting Party shall grant the (...) permits” should be replaced by “Each Contracting Party shall endeavour to grant the (...) permits”.

*Article 4.2 and 4.3:* “State” should be replaced by “country”.

*Article 5.2:* “Actual value” should be replaced by “market value”.

*Article 7.1:* The phrase “the amounts necessary for repayment of loans” should be replaced by “funds in repayment of loans”.

The phrase “the amounts necessary for maintaining” should read “payments for maintaining”. At the end of the same paragraph the phrase “or any other amount necessary” should be deleted.

*Article 7.4:* The phrase “without excessive delays or restrictions, according to” should read “without delays, according to”.

If the authorities of the Islamic Republic of Pakistan are in agreement with these corrections, which concern only the Spanish-language text, and express that agreement through a Note Verbale, the present exchange of notes shall be understood to form part of the Agreement and shall constitute a correction to the Spanish text thereof.

The Ministry of Foreign Affairs takes this opportunity, etc.

Madrid, 19 December 1994

Embassy of the Islamic Republic of Pakistan  
Madrid

## II

EMBASSY OF PAKISTAN  
(COMMERCIAL SECTION)  
MADRID

No. CS-3(3)/94

*Note verbale*

The Embassy of the Islamic Republic of Pakistan presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to its Note Verbale No. R.E.I. 45/18 of 19 December 1994 concerning the Agreement on the reciprocal promotion and protection of investments between Spain and Pakistan.

The Embassy of the Islamic Republic of Pakistan has no objection whatsoever to the amendments to the Spanish text proposed by the Ministry of Foreign Affairs.

Accordingly, the Ministry of Foreign Affairs may make the necessary amendments to its Spanish text, sending us a complete copy of the amended text for transmission to the competent authorities in Pakistan for information and archiving.

The Embassy of the Islamic Republic of Pakistan takes this opportunity, etc.

Madrid, 16 January 1995

Ministry of Foreign Affairs  
Madrid

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