

# Agreement between the Republic of Austria and the Kingdom of Morocco on the promotion and protection of investments

The Republic of Austria and the Kingdom of Morocco,

Hereinafter referred to as the 'Contracting Parties'

Desiring to strengthen economic cooperation between the two States,

Recognizing the important role of foreign investment in the economic development process and the right of each Contracting Party to define this role and the conditions under which foreign investment may participate in this process,

Recognizing the importance of a satisfactory investment climate for initiating and maintaining an adequate international capital flow,

In the endeavor to create favorable conditions for investments in the two States and to intensify cooperation between investors of the two countries, particularly in the fields of technology, industrialization and productivity,

Recognizing the need to protect the investments of the investors of the two States and to promote the transfer of capital in view of the economic prosperity of the two States;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" includes all assets and, in particular, but not exclusively:

- a) Movable and immovable property and other rights in rem, such as mortgages, liens, rights in rem, rights of use and similar rights;
- b) Shares and other types of participations in companies;
- c) Claims on money or claims on a service having an economic value;
- d) Copyrights, industrial property rights, such as inventor's patents, trade marks, industrial designs and utility models, technical procedures, know-how, trade names and goodwill;
- e) Public-law concessions for the exploration and extraction of natural resources;

Such investment must be in accordance with the legislation in force in the host countries;

(2) The term "investor" means:

For the Republic of Austria

- a) Any natural person who is a national of the Republic of Austria and who makes an investment in the territory of the other Contracting Party;
- b) Any legal person or company governed by commercial law, established in accordance with the legislation of the Republic of Austria, has its seat on the territory of the Republic of Austria and makes an investment in the territory of the other Contracting Party; For the Kingdom of Morocco

- a) Any natural person having Moroccan nationality in accordance with the legislation in force in the Kingdom of Morocco and making an investment in the territory of the other Contracting Party;

b) Any legal person, partnership, association or body whose statute is based on Moroccan legislation established in the territory of the Kingdom of Morocco and which makes an investment in the territory of the other Contracting Party;

(3) The term "income" means the amounts that an investment provides and, in particular, but not exclusively, profits, interest, dividends, royalties, royalties, the contractual basis of which is authorized by the competent authorities to the extent necessary under the legislation of the host country ,

## **Article 2. Promotion and Protection of Investment**

(1) Each Contracting Party shall, as far as possible, promote investment in its territory from investors of the other Contracting Parties, shall allow such investments in accordance with its legislation and shall treat them fairly and fairly.

(2) Investments pursuant to paragraph 1 and their income shall enjoy the full protection of this Agreement. The same shall apply, without prejudice to the provisions of paragraph 1, in the event of the reinvestment of such income. Paragraph 1 and its income shall enjoy the full protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the event of the reinvestment of such income.

(3) The extension, modification or conversion of an investment made in accordance with the legislation in force in the host country shall be considered a new investment.

## **Article 3. Treatment of Investment**

(1) Each Contracting Party treats the investors of the other Contracting Parties and their investments no less favorably than third country investors and their investments.

(2) The provisions of this Agreement to grant no less favorable treatment than to investors of a third country and its investment can not be construed as requiring a Contracting Party to give the investors of the other Contracting Parties the present or future advantage of a treatment, A preference or a privilege which results from

a) A customs union, a common market, a free trade area or membership of an economic community,

b) A national equal treatment granted under a bilateral investment protection agreement;

c) An international agreement or bilateral agreement on the basis of reciprocity on tax issues;

d) Arrangements to facilitate border traffic;

e) All grants, grants, loans, insurances and guarantees reserved to their own nationals or companies under the activities and programs of national development.

## **Article 4. Expropriation**

(1) For the purposes of this article, the concept of expropriation also means a nationalization or any other measure equivalent to its expediency and nature.

(2) The expropriation of investments by investors of a contracting party may only be carried out by the other contracting party in a non-discriminatory manner and in the public interest only on the basis of a legal procedure, against compensation. The Contracting Party which has taken such a measure shall provide the entitled party with reasonable and effective compensation within a reasonable period of time which shall correspond to the value of the investment immediately prior to the date on which the expropriation was made public. At the latest at the time of expropriation, appropriate provisions must be made for the setting and performance of the compensation.

(3) If a Contracting Party acquires the assets of a company which is to be regarded as its own company pursuant to Article 1 (2) of this Agreement and in which an investor of the other Contracting Parties holds shares, it shall apply the provisions of paragraph 1 of this Article in such a way that the appropriate compensation Provided that such investor is ensured. Paragraph 2 of this Agreement is to be regarded as its own company and in which an investor of the other Contracting Parties holds shares, it shall apply the provisions of paragraph 1 of this Article in such a way as to ensure the appropriate compensation of that investor.

(4) The investor has the right to have the legality of the expropriation reviewed by the competent organs of the contracting party which caused the expropriation.

(5) The investor has the right to have the amount of the compensation reviewed by either the competent organs of the

contracting party which caused the expropriation or by the International Center for the Settlement of Investment Disputes.

## **Article 5. Transfers**

(1) Each Depositor's Section guarantees to the investors of the other Contracting Parties without undue delay the transfer in the convertible currency of the payments connected with an investment, in particular but not exclusively:

- a) The investment;
- b) Of income;
- c) Repayment of loans granted in foreign exchange;
- d) Of the proceeds in case of complete or partial liquidation or disposal of the investment;
- e) Of compensation under Article 4 (2), second subparagraph.

(2) The transfers pursuant to this Article shall be made in convertible currency at the exchange rates applicable on the day of the transfer.

## **Article 6. Subrogation**

Where a Contracting Party or an institution authorized by the Contracting Party makes payments to an investor on the basis of a guarantee for an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize, without prejudice to the rights of the investor of the former Contracting Party pursuant to Article 8 and the rights of the former Contracting Party Article 9, the transfer of all rights or claims of this investor by law or by virtue of a legal transaction to the former Contracting Party. The second Contracting Party shall also recognize the right of entry of the former Contracting Party into all such rights or claims which such Contracting Party may exercise to the same extent as the former beneficiary. Article 4 and Article 5 shall apply mutatis mutandis to the transfer of payments to the Contracting Party in question on the basis of the rights transferred.

## **Article 7. Other Obligations**

(1) Where, under the law of a Contracting Party or international obligations which exist between the Contracting Parties or which are established in the future, a general or specific rule whereby the investments made by the investors of the other Contracting Parties shall be accorded more favorable treatment than under this Agreement The provisions of this Agreement shall apply to the present Agreement in so far as it is more favorable.

(2) Each Contracting Party shall comply with any contractual obligation which it has assumed in respect of investments authorized in its territory by the investors of the other Contracting Party.

## **Article 8. Differences of Opinion from Investments**

(1) If disputes arise from an investment between a contracting party and an investor of the other Contracting Parties, they are, as far as possible, settled amicably between the parties.

(2) If such a disagreement can not be settled within six months from the date of the written notification of claims, the disagreement at the request of the Contracting Party or the investor of the other Contracting Party to conduct a conciliation or arbitration proceedings shall be notified to the International Center for the Dispute Resolution of Investment Disputes, Which was opened for signature on 18 March 1965 in Washington on the settlement of disputes between States and nationals of other States. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, even without the existence of an individual arbitration agreement between a Contracting Party and an investor by means of this Agreement, to submit such disagreements to the Center and to recognize the arbitration award as binding. Such consent shall include waiving the requirement that national administrative or judicial proceedings have been exhausted.

(3) The decision is final and binding; It is enforced under national law; Each Contracting Party shall ensure the recognition and enforcement of arbitration in accordance with its relevant legislation.

(4) A Contracting Party which is a party to the dispute shall not make an objection at any stage of the settlement or arbitration proceedings or the enforcement of an arbitration award that the investor forming the other Contracting Party has been indemnified for any or all of its losses.

## **Article 9. Disagreements between the Contracting Parties**

- (1) Differences of opinion between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by friendly negotiations.
- (2) If such a disagreement can not be settled within six months, it may be submitted to an arbitration tribunal at the request of a contracting party.
- (3) The arbitral tribunal shall be formed from case to case. Each Contracting Party shall appoint one member. These two members, appointed in this way, elect a third-country national to serve as chairman of the court. The members shall be appointed by the chairman within a further two months within two months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.
- (4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of one of the Contracting Parties or if he is prevented from doing so for any other reason, the Vice-President or, if he is unable to do so, the most senior member of the International Court of Justice may be invited under the same conditions as the appointments. In the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of one of the Contracting Parties or if he is prevented from doing so for any other reason, the Vice-President or, if he is unable to do so, the most senior member of the International Court of Justice may be invited under the same conditions as the appointments make.
- (5) The arbitral tribunal shall regulate its procedure itself.
- (6) The arbitral tribunal shall decide on the basis of this Agreement as well as on the basis of generally accepted rules of international law. It decides with multiple votes; The decision is final and binding.
- (7) Each Contracting Party shall bear the costs of its member and its representation in the arbitration proceedings. The costs of the chairman and the other costs are borne equally by the two contracting parties. However, the court may adopt a different system of charges in its decision.

## **Article 10. Entry Into Force and Duration**

- (1) This Agreement shall be ratified and shall enter into force on the first day of the third month following the month in which the instruments of ratification have been exchanged.
- (2) The Agreement shall remain in force for ten years; After which it shall be extended indefinitely unless one of the Contracting Parties terminates the Agreement in writing twelve months before its expiry.
- (3) For investments made before the date of expiry of this Agreement, Articles 1 to 9 shall continue to apply for a further ten years from the date of expiry of the Agreement. Articles 1 to 9 for a further ten years from the date of expiry of the Agreement ,

DONE at Rabat, this 2nd day of November 1992, in two originals, each in German, Arabic and French, each text being equally authentic. In case of divergent interpretation, the French text shall prevail.

For the Republic of Austria:

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For the Kingdom of Morocco:

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