AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF KINGDOM OF MOROCCO FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Turkey and the Government of the Kingdom of Morocco hereinafter referred to as the «Contracting Parties»,

Desiring to create favourable conditions for greater economic cooperation between them and in particular through investments by investors of one State in the territory of the other State;

Recognising the importance of the reciprocal encouragement and protection of investments and its contribution to stimulate inflows of capital and business initiative and to increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) «investment» means every kind of assets invested in accordance with legislation and regulations in force in the territory of each of the Contracting Parties, and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, pledges and liens and any other similar rights as defined in conformity with the laws and regulations of the party in whose territory the property is situated;

(ii) Shares; stocks or any other form of participation in companies;

(iii) Returns reinvested, claims to money or any other rights having financial value related to an investment;

(iv) Intellectual and industrial property rights, patents, industrial marks and designs , trademarks , goodwill, know-how and any other similar rights;

(v) Business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

Any change in the legal form in which assets are invested or reinvested does not affect their character as investments in the meaning of this Agreement.

(2) «investors» means in respect of each Contracting Party:

(a) Any physical person having Turkish or Moroccan nationality under the law in force in each of the Contracting Parties;

(b) Corporations, firms or business associations incorporated or constitued under the law in force of either of the Contracting Parties, and having their headquarters in the territory of that Party;

Whenever the above mentioned investors invest in the territory of the other Contracting Party.

(3) «returns» means the amounts free of tax yielded by such investments and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

(4) «territory» means:

(i) In respect of the Republic of Turkey: the territory of the Republic of Turkey, territorial sea as well as maritime areas over which it has jurisdiction or sovereign rights for the purpose of exploring, exploiting , conserving and managing natural resources, pursuant to international law.

(ii) In respect of the Kingdom of Morocco: the territory of the Kingdom of Morocco , including any maritime area situated beyond the territorial waters of the Kingdom of Morocco and which has been or might in the future be designated by the laws of the kingdom of Morocco in accordance with international law as an area within which the Kingdom of Morocco may exercise rights with regard to the sea-bed and subsoil and the natural resources.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall permit and encourage in its territory, investments of the investors of the other Contracting Party, and activities associated therewith, on a basis no less favorable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.

(2) Each Contracting party shall ensure fair and equitable treatment and subject to the strictly necessary measures to maintain the public order provide full protection and security for investments of investors of the other Contracting Party. Neither Contracting Party shall impair by discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of other Contracting Party.

Extension, alteration or change of an investment made according to law and regulation in force in the reception country are considered as a new investment. Each of the Contracting Parties shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

(3) Investments ruled by provisions of a particular agreement between one of the Contracting Parties and investors of the other Contracting Party shall be governed by the terms of that particular agreement in so far as it contains provisions more favourable than those set out in this Agreement.

Returns of investments, in case of their reinvestment in accordance with the law in force in each of the Contracting Parties, shall enjoy the same protection accorded to the initial investment.

Article 3. Treatment of Investments

(1) Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party treatment no less favourable than that it accords to investments of its own investors or to investments of investors of any third State, the most favourable treatment being retained.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that it accords to its own investors or to investors of any third State, the most favourable treatment being retained.

(3) The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any economic or customs union or a free trade area or a common market, or any similar international agreement or any form of regional economic organisation to which either of the Contracting Parties is or may become a party;

(b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

(1) Measures of nationalization, expropriation or any other measures having an equivalent effect, hereinafter referred to as expropriation, that might be taken by one of the Contracting Parties against the investments of investors of the other Contracting Party must be neither discriminatory nor taken other than for a public purpose.

(2) The contracting Party that takes such measures shall, give to the beneficiaries a fair and equitable compensation which shall amount to the market-value of the concerned investment on the day before the one the said measures were taken or became public knowledge.

(3) The amount of the said compensation shall be effectively realizable, and shall be paid without delay. In case of a late payment the interest determined by law shall be calculated from the due date until the date of payment. Compensation shall be paid to investors in convertible currency and be freely transferable.

Article 5. Compensation for Losses

Investors of one of the Contracting Parties whose investments are affected by losses as a result of, war or armed conflict, revolution, a state of national emergency, revolt, insurrection or other similar events in the territory of the other Contracting Party, shall receive treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State; whichever is the more favourable treatment being adopted as regards restitution, indemnification, compensation or other settlement in respect of the said losses

Article 6. Transfers

(1) Each Contracting Party shall permit to investors of the other Contracting Party the free transfer , after discharge of fiscal obligations, of their assets invested. Such transfers, in particular, though not exclusively, include:

(a) Capital invested and any additional amount used to maintenance or extention of the investment;

(b) Profit, dividends, interests , royalties or other current revenue;

(c) Amounts necessary to reimbourse loans accorded in connection with investments;

(d) Proceeds from sale or liquidation of all or any part of an investment;

(e) Compensation payable pursuant to articles 4 and 5;

(f) Salaries, wages and other remunerations received by the nationals of one Party who have obtained in the territory of the other Party the corresponding work permits relative to an investment.

Pursuant to the exchange regulations in force in each Contracting Party.

(2) Transfers mentioned in paragraph (1) shall be effected without delay in convertible currency at the rate of exchange applicable on the date of transfer, and under the current exchange regulations.

(3) Guaranties provided by this article are at least equal to those accorded to investors of the most favoured nation who are in similar situations .

Article 7. Subrogation

(1) If a payment under an indemnity has given to an investor of one of the Contracting Party under a legal insurance against non-commercial risks in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise to the insurer the subrogation to the investor in all the indemnified rights and claims.

(2) In vertue of the insurance accorded to the concerned investment, the insurer is entitled to exercise all rights which the investor would have been entitled to exercise.

(3) Disputes between one of the Contracting Parties and an insurer of an investment of the other Contracting party shall be settled in accordance with the provisions of Article 8 of this Agreement.

Article 8. Settlement of Disputes Relating to Investments

(1) Disputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with investment, shall be settled, as far as possible amicably, by consultations and negotiations between the parties in dispute.

(2) If these disputes cannot be settled in this way within six months following the date of a written notification, the dispute can be submitted, as the investor may choose:

(a) Either to a competent court of the Contracting Party in whose territory the investment was made;

Or to:

(b)

(i): The International Center 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 March 18th 1965.

Or:

(ii): An ad-hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).

(3) Neither of the Contracting Parties may raise an objection at any stage of proceedings or enforcement of an arbitral award .

(4) The arbitral tribunal shall base its decision on the national law of the Contracting Party involved in dispute in whose territory the investment was made, including the rules relative to conflicts of law, the provisions of this Agreements; the provisions of particular agreements relative to investment and the provisions of international law.

(5) The arbitration award shall be final and binding for all parties in dispute. Each Contracting Party commits itself to execute the award according to its national law.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot be settled after a period of six months from the date of beginning of negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Arbitral tribunal shall be constituted as follows:

Each Contracting Party shall appoint one member of the tribunal, and the two members shall then select jointly third arbiter from, a national of a third State as Chairman of the tribunal. The two members shall appoint within three months, the Chairman shall be appointed within five months from the date of the notification from one Party to the other Party his attention to submit the dispute to an arbitral tribunal.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may 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 shall be invited to make the necessary appointment. 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 International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall base its decisions on the provisions of this Agreement and the rules and principals of the international law, and shall reach its decision by a majority of votes. Such decision shall be final and binding for the both Contracting Parties.

(6) The arbitral tribunal shall determine its own rules of proceedings.

(7) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 10. Application

This Agreement shall also covers, concerning its future application, investments made in convertible currencies before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the law and regulation of this later. But this Agreement shall not apply to disputes which would arise before its entry into force.

Article 11. Entry Into Force, Duration and Termination

(1) This Agreement shall be submitted to ratification and shall enter into force within thirty days from the date of reception of the later of the two written notifications relating to fulfilling by both Contracting Parties of constitutional requirements in their respective countries.

It shall remain into force for a period of ten years, and shall continue in force unless terminated by one of the Contracting Parties . Each Contracting Party having the right to terminate it by written notifications at least six months before the date of the end of the current period.

(2) In the event of termination, the provisions of this agreement shall remain applicable for a period often years to investments made at any time before termination, without prejudice to the application thereafter of the rules of general international law.

Done at Rabat on the day of 8 April 1997 in duplicate each one in the Arabic, Turkish and English languages, all texts being equally authoritative.

In case of divergence, the English text shall prevail.