

# Agreement between the Czech Republic and the Kingdom of Morocco for the promotion and reciprocal protection of investments

The Czech Republic and the Kingdom of Morocco, hereinafter referred to as the Contracting Parties.

Desiring to strengthen economic cooperation in the mutual interest of both States.

In order to create and maintain favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party, and

Recognizing that the reciprocal promotion and protection of investments under this Agreement shall encourage business initiatives in this area.

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every asset and any directly invested in all companies or firms in all economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter it shall include in particular, though not exclusively:

- a) movable and immovable property as well as any other property rights such as mortgages, liens, pledges and similar rights;
- b) shares, bonds and debentures of companies or any other form of participation in a company;
- c) monetary claims or to any other performance having an economic value associated with an investment;
- d) intellectual property rights related to an investment including copyrights, trademarks, patents, industrial designs, technical processes, trade secrets, and know-how, trade names and goodwill.
- e) concessions under public law including concessions to search for or exploit extract natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments within the meaning of this Agreement.

2. The term "investor" means any natural or legal person who invests in the territory of the other Contracting Party.

- a) the term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its legislation.
- b) the term "legal person" means any entity having its head office in the territory of one of the Contracting Parties and constituted pursuant to its legislation.

3. The term "income" means the net income tax reported by an investment and in particular, though not exclusively profits, interest income from capital shares dividends and fees.

4. The term "territory" means:

- a) for 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 be subsequently designated by the legislation of the Kingdom of Morocco in accordance with international law as an area within which the Kingdom of Morocco can exercise its rights concerning the seabed and ocean floor.

b) for the Czech Republic: the territory in which the Czech Republic made by virtue of the legislation of the Czech Republic, in accordance with international law and its sovereign rights.

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

1. Each Contracting Party shall encourage and create for investors of the other Contracting Party favourable conditions for investments in its territory and admit such investments in accordance with its laws and regulations.

The modification or conversion of an investment performed in accordance with the laws and regulations in force in the host country shall be regarded as a new investment.

2. Investments of investors of each Contracting Party shall at all times fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

The earnings of investment, and in case of reinvestment in accordance with the law of the Contracting Party in whose territory the investment is made même enjoy protection as the original investment.

## **Article 3. National Treatment and Most Favoured Nation Treatment**

1. Each Contracting Party shall accord in its territory to returns of investments and investors of the other Contracting Party which is fair and equitable treatment and not less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State the most favourable treatment.

2. Each Contracting Party shall accord to investors in its territory of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments treatment which is fair and equitable and not less favourable than that it accords to its own investors or those of any third State the most favourable treatment.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, or it may grant preference benefits under:

a) A customs union, a free trade area or a monetary union or a similar international agreement to establish such institutions or unions or other forms of regional cooperation to which either Contracting Party is or may become a party.

b) Any international agreement or arrangement relating to taxation.

## **Article 4. Compensation for Losses**

1. Where investments made by investors of a Contracting Party suffer losses due to war, armed conflict, national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded fair and equitable treatment by that Party no less favourable than that accorded to its own investors or to investors of any third State with respect to restitution, they shall be accorded fair and equitable treatment by that Party no less favourable than that accorded to its own investors or to the investors of any third State with respect to restitution, compensation, indemnification or other relief, whichever is the more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in connection with the events referred to in that paragraph suffer in the territory of the other Contracting Party loss resulting from:

a) The requisition of their property by the armed forces or authorities.

b) The destruction of their property by the armed forces or authorities not caused in combat operations or was not required by the necessity of the situation,

shall receive fair and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property-related. Payments shall be freely transferable in a freely convertible currency and without delay.

## **Article 5. Expropriation**

Investments of investors of each Contracting Party shall not be expropriated or nationalized, subject to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation) in the territory of the other Contracting Party except for reasons of public interest. The expropriation will take place according to a legal proceeding on a non-discriminatory basis and shall be accompanied by provisions for the payment of just and equitable compensation. The

amount of compensation will correspond to the market value of the expropriated investment immediately before the date of expropriation shall be made public. The compensation shall be made without delay in freely convertible currency and freely transferable. In case of delay in payment of compensation shall include interest from the date of expropriation.

## **Article 6. Transfers**

1. The Contracting Parties shall guarantee the free transfer liquid assets net relating to an investment. Such transfers shall be made in a freely convertible currency, without any restriction or undue delay. Such transfers include in particular though not exclusively:
  - a) Capital and additional amounts to maintain or increase an Investment;
  - b) Profits, dividends, interests and other current income;
  - c) The necessary funds in repayment of loans related to an investment;
  - d) Royalties and fees;
  - e) Proceeds from the sale or liquidation of the investment;
  - f) The compensation pursuant to Articles 4 and 5;
  - g) Wages and other remunerations in accordance with the applicable regulations made by the nationals of one Contracting Party who have been authorised to work in the territory of the other Contracting Party in connection with an investment.
2. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force for the necessary procedural obligations.
3. The guarantees provided for by this article shall be at least equal to those accorded to investors of the most favoured nation in similar situations.

## **Article 7. Subrogation**

1. If under a contractual or legal guarantee of a Contracting Party or its designated agency covering non-commercial risks of investments indemnities are paid to an investor of one Contracting Party and the other Contracting Party shall recognize the subrogation into the insurer of the rights of the investor indemnified.
2. In accordance with the guarantee given to the investment concerned, the insurer shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.
3. The claims or subrogation rights shall not be greater than the original claims or rights of the investor.
4. Any dispute between one Contracting Party and the insurer of an investment in the other Contracting Party shall be settled in accordance with the provisions of article 8 of this Agreement.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party, shall be settled amicably through consultations and negotiations between the parties to the dispute, as far as possible.
2. In the absence of an amicable settlement by direct arrangement between the parties to the dispute within six months from the date of the written notification of the dispute shall be submitted at the choice of the investor:
  - a) Either to the competent court of the Contracting Party in whose territory the investment has been made;
  - b) To arbitration or the International Centre for the Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature at Washington on 18 March 1965.

To this end each Contracting Party gives its consent irrevocable that any investment dispute may be submitted to the arbitration procedure.

3. No Contracting Party to a dispute may object at any stage of the arbitration proceedings or the execution of an arbitral

award to the fact that an investor who is a party to the dispute has received compensation for all or part of its losses under an insurance policy.

4. The Tribunal shall decide on the basis of the national law of the Contracting Party, Party to the dispute in whose territory the investment is situated including the rules relating to conflicts of law, the provisions of this Agreement in terms of the specific agreements to be concluded in connection with investment as well as the Principles of International Law

5. The arbitral awards shall be final and binding on the parties to the dispute each Contracting Party undertakes to execute the award according to its national law.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible between the two Contracting Parties through consultations.

2. If the dispute is submitted to a joint commission composed of the representatives of the Parties, which shall meet without delay upon the request of either Contracting Party.

3. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

4. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.

5. If the periods specified in paragraph (4) above have not been observed, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is unable to perform this function the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is prevented from exercising his mandate the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and rules and principles of international law. The decision of the Tribunal shall be adopted by a majority of votes. It shall be final and binding on the Contracting Parties.

7. The tribunal shall determine its own rules of procedure.

8. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

## **Article 10. Applicable Rules**

Where a matter relating to investment is governed by this Agreement and simultaneously by the national laws of the Contracting Parties or in line with existing international conventions or undertaken by the parties in the future investors of the other Contracting Party may avail itself of the provisions that are most favourable.

## **Article 11. Implementation**

This agreement covers also with regard to its future investments by currency, before its entry into force by investors of line of the Contracting Parties in the territory of the other Contracting Party in accordance with its laws and regulations. However, this Agreement shall not apply to disputes that may arise before its entry into force.

## **Article 12. Validity, Entry Into Force and Termination**

1. This Agreement shall be subject to ratification and shall enter into force 30 days after the date of the latter of the two notifications to the fulfilment by the two contracting parties constitutional procedures in their respective countries.

It will remain in force for a period of ten years unless one of the Contracting Parties denounces it at least six months before the expiry of its period of validity. It shall be tacitly renewed each time for a further period of ten years. Each Contracting Party reserves the right to denounce it by written notification at least six months before the date of expiry of the current

period of validity.

2. Investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from the date of its termination.

In WITNESS WHEREOF the representatives duly authorized thereto, have signed the present Agreement.

Done at Rabat on 11 June 2001

In two originals, each in the Czech, Arabic and French languages, all texts being equally authentic. In the event of any inconsistency, the French text shall prevail.

For the Czech Republic

For the Kingdom of Morocco

## **Additional protocol Between the Kingdom of Morocco and the Czech Republic regarding the amendment of the agreement between the Kingdom of Morocco and the Czech Republic Concerning the Encouragement and Protection of Investments, signed in Rabat on June 11, 2001**

The representatives of the Czech Republic and the Kingdom of Morocco,

Considering the intentions of the Czech Republic and the Kingdom of Morocco to amend the Agreement between the Czech Republic and the Kingdom of Morocco for the Promotion and Protection of Investments, signed in Rabat on June 11, 2001 (hereinafter referred to as "the Agreement"), in order to comply with the obligations of each of the Contracting Parties arising from the Czech Republic's membership in the European Union and the present or future membership of the Kingdom of Morocco in a regional economic union;

Recognizing the fact that the Czech Republic must eliminate, in accordance with Article 307 of the Treaty establishing the European Community, the incompatibilities between Community law and all its international agreements signed, including the those existing in the text of the Agreement ;

Deciding, therefore, on the need to amend the Agreement to remove the existing incompatibilities,

Have agreed as follows:

### **I.**

Paragraph 3 of Article 3 of the Agreement shall be deleted and replaced by new paragraphs 3 and 4 below:

"3. The provisions of Article 3 of the Agreement concerning non-discriminatory treatment and the treatment of nati. The provisions of Article 3 of the Agreement concerning non-discriminatory treatment and treatment of the most favored country shall not apply to privileges and advantages granted by a Contracting Party, by virtue of its present or future participation in or accession to a customs, economic or monetary union, common market or free trade area, to (i) investors of member countries of the Agreement and (ii) investors of member countries of the Agreement: such union, common market or free trade area (ii) investors of a third State by virtue of an agreement or arrangement between that third State and the customs, economic or monetary union, common market or free trade area to which the said Contracting Party belongs or will belong.

The provisions of this paragraph shall apply to the treatment accorded by the Czech Republic by virtue of its obligations as a member of the European Union.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply to privileges granted by a Contracting Party to investors of a third State under a double taxation convention or any other reciprocal agreement on taxation."

### **II.**

Article 6 of the Agreement shall be amended by adding, after the first paragraph, the wording of which shall remain unchanged, two new paragraphs as follows:

"2. Notwithstanding the provisions of paragraph 1 of this Article, and having regard to its obligations regarding the transfer of capital arising from its membership in a regional economic grouping, each Contracting Party reserves the right to limit the free transfer of net liquid assets relating to investments. Safeguard measures provided for in this paragraph include:

- measures adopted by the European Community which the Czech Republic is bound to respect by virtue of its obligations as a member of the European Union;

- measures taken by a Contracting Party in the following situations:

(a) in the event of serious balance-of-payments difficulties and external financial difficulties or the threat thereof; or

(b) where, in exceptional circumstances, capital movements cause, or threaten to cause, serious difficulties for the implementation of macroeconomic policy.

3. Measures taken by a Contracting Party in accordance with paragraph 2 of this Article:

(a) shall be impartial, non-arbitrary and taken in good faith;

(b) shall not exceed the period of time necessary to deal with the circumstances for which they were taken;

(c) shall be promptly notified to the other Contracting Party".

Paragraphs initially numbered 2 and 3 of Article 6 will become, respectively, paragraphs 4 and 5 and their content will remain unchanged.

### **III.**

A new Article numbered 10 and entitled "Essential security interests" is introduced after Article 9 on "Settlement of disputes between Contracting Parties". The content of the new Article will be worded as follows:

"Nothing in this Agreement shall be interpreted so as to prevent any Contracting Party from taking such measures as it deems necessary for the protection of its essential security interests, including the protection of public morals, the maintenance of public order and the safeguarding of public health and the environment.

2. The essential security interests of a Contracting Party may include the essential security interests which each of the Contracting Parties must protect by virtue of its obligations as a member of a customs, economic or monetary union, a common market or a free trade area.

### **IV.**

The Articles following Article 9 of the Agreement will be renumbered to reflect the introduction of the new Article 10.

### **V.**

This Additional Protocol is an integral part of the Agreement and shall be subject to the legal procedures required by the respective laws of the Contracting Parties for its entry into force.

### **VI.**

This Additional Protocol shall take effect on the ninetieth (90) day from the date of receipt of the last of the two written notifications indicating the fulfillment of the conditions required by the internal regulations of each of the Contracting Parties for its entry into force and shall remain in force for as long as the Agreement between the Czech Republic and the Kingdom of Morocco for the Promotion and Protection of Cross Investment.

Done at Rabat on 19 March 2010 in two originals, each in Czech, Arabic and French languages, all texts being equally authentic. In case of divergence of interpretation, the French text shall prevail.

For the French Republic

Eduard JANOTA

Minister of Finance

For the Kingdom of Morocco

Salaheddine MEZOUAR

Minister of the Economy and Finance