

# **Treaty between the Federal Republic of Germany and the Kingdom of Morocco concerning the encouragement of investment capital**

The Federal Republic of Germany and the Kingdom of Morocco,

DESIRING to intensify economic cooperation between the two States,

DESIRING to create favourable conditions for the investment of capital by nationals and companies of one of the two States in the territory of the other State, and

RECOGNIZING that the encouragement of such investment is likely to stimulate private business initiative and will increase prosperity of both nations -

Have agreed as follows:

## **Article 1.**

(1) Each Contracting Party shall admit in its territory, in accordance with the laws, capital investments made by companies and nationals of the other Contracting Party shall promote as far as possible investments and treat favourably the granting of the necessary authorizations.

(2) One of the Contracting Parties shall not treat in its territory capital investments which are owned or influenced by nationals or companies of the other Contracting Party, less favourably than capital investments made by its own nationals and companies, or investments made by nationals and companies of third States.

## **Article 2.**

One of the Contracting Party shall not subject nationals and companies of the other Contracting Party in connection with the capital investment made by them, to less favourable conditions in its territory, in the professional or economic fields, than those that are subject its own nationals or companies or nationals and companies of third States, as well as regards the management, use and disposal of these capital investments.

## **Article 3.**

(1) The investments made by companies and nationals of a Contracting Party shall enjoy in the territory of the other contracting party of a full protection and security.

(2) Nationals and companies of one Contracting Party shall not be expropriated of their investments in the territory of the other Contracting Party that for reasons of public purpose and against compensation. Compensation shall correspond to the market value of the expropriated investment be effectively realisable and freely transferable and shall be paid without delay. At the moment of the expropriation at the latest, it should be provided with an appropriate way to the establishment and the payment of compensation. The legality of the expropriation and the amount of compensation shall be audited by judicial proceedings.

(3) If nationals and companies of a contracting party, due to suffer under a war or any other armed conflict, revolution or riot in the territory of the other Contracting Party, loss of investment capital is located, they shall receive from this latter Contracting Party, as regards compensation, restitution or compensation autrc-s treatment, which shall not be less favourable than that accorded to nationals and companies of that Party. With regard to the transfer of such payments, the Contracting Parties shall provide each other to grant rights of nationals and companies of the other contracting party a treatment which shall not be less favourable than that accorded to similar rights of nationals and companies of any third State.

(4) The provisions of paragraphs 1, 2 and 3 above shall also apply to the product of investment capital.

(5) With respect to the matters governed by this article, nationals and companies of one Contracting Party shall enjoy in the territory of the other contracting party of the most-favoured-nation treatment.

#### **Article 4.**

Each Contracting Party shall guarantee to nationals and companies of the other Contracting Party and the transfer of capital invested the capital and, in the event of liquidation, to the proceeds from the liquidation.

#### **Article 5.**

In the event of a claim against a Contracting Party which has acted as guarantor of a capital investment, that Party shall be entitled, without prejudice to its rights under Article 11 of this Treaty, to exercise, under the same conditions as the person making the claim, the rights devolving upon it by the force of law or assigned to it by the person making the claim (transmitted rights). As regards the transfer of payments to be made to the Contracting Party by virtue of the transfer of rights, the provisions of Article 3, paragraphs 2, 4 and 5, and Article 4 shall apply mutatis mutandis.

#### **Article 6.**

(1) Provided that the persons concerned have not agreed otherwise agreed with the approval of the competent authorities of the Contracting Party in whose territory the investment of capital, remittances under Article 3 (2) (3) or (4), article 4 or article 5 shall be effected without delay and at the rate of exchange applicable on the date of transfer for routine business.

(2) The rate applicable to the day-to-day operations shall be based on the combined (by value) agreed with the International Monetary Fund and shall not exceed the margin of oscillation, allowed under the provisions of Article IV, section 3 of the Agreement of the International Monetary Fund, should be on both sides of parity.

(3) If one of the Contracting Parties, there are not at the date of transfer, currency within the meaning of paragraph 2 shall apply the official prices determined by that Contracting Party to its national currency, U.S. dollar, or another freely convertible currency or gold. If such a rate is not fixed either, the competent authorities of the Contracting Party in whose territory the capital is invested shall accept a fair and equitable rate of exchange.

#### **Article 7.**

If the legislation of either Contracting Party or international obligations existing at present or future basis between the Contracting Parties in addition to this Treaty, a regulation that it is granted to investments made by nationals or companies of the other contracting party to more favourable treatment than that provided for in this Treaty, the latter shall not affect the rules in question. each Contracting Party shall observe H all other obligations relating to investments made in its territory by nationals or companies of the other Contracting Party, which it has undertaken.

#### **Article 8.**

(1) The term "investment" includes all categories of goods, including but not limited to:

- a) Ownership of movable property and property and any other property rights such as mortgages, liens, usufruct rights etc.;
- b) The rights of participation in companies and other kinds of interests;
- c) Claims to money or to any performance having an economic value;
- d) Copyrights, industrial property rights, technical processes, trade names and goodwill;
- e) The concessions under public law, including concessions to search and extraction.

The alteration of the form in which assets are invested does not affect their status as investment.

(2) The term "products" means the amounts made by way of profit or interest on capital investment for a specified period.

(3) The term "nationals" means:

- a) In respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of

Germany;

b) In respect of the Kingdom of Morocco:

Within the meaning of the Moroccan dahir of 21 Safar 1378 (6 September 1958) Educating Moroccan Nationality Code.

(4) The term "companies" means:

a) In respect of the Federal Republic of Germany:

Any legal person as well as any other trading company or company or association with or without having legal personality, its seat in the territory of the Federal Republic of Germany and comprising right in accordance with the laws, that the liability of its members and associate participants is limited or unlimited and that its work has profit or not.

b) In the case of the Kingdom of Morocco:

Any legal person as well as any other trading company or company or association with or without legal personality having its seat in the territory of the Kingdom of Morocco and formed in accordance with the legislation in force, that the liability of its members and associate participants is limited or unlimited and that its work has profit or not.

## **Article 9.**

Are subject to the provisions of this Treaty capital investments by companies or nationals of either Contracting Party, in accordance with the legislation of one Contracting Party effected within the territory of the latter immediately before the entry into force of this Treaty. This provision shall not affect the agreement of 27 February 1953, on the external debts of Germany.

## **Article 10.**

Within the framework of this Treaty, diaque contracting party grants to the other national treatment by virtue of the fact that this treatment shall also apply in the mômes materials by the other contracting party.

## **Article 11.**

(1) Disputes concerning the interpretation or application of this agreement should, if possible, be settled by the Governments of the two contracting parties.

(2) If a dispute cannot be settled in this way it will be submitted to an arbitral tribunal of arbitrage on request of either of the two Contracting Parties.

(3) The arbitral tribunal shall be constituted ad hoc; each Contracting Party shall appoint one member and these two members as Chairperson shall agree to select a national of a third State to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months and the Chairman within three months after the date on which either Contracting Party has notified the other that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 have not been observed and in the absence of any other agreement, each Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President is a national of either of the contracting parties or if he is otherwise prevented, the Vice-President should make the necessary appointments. If the Vice-President is also a national of either Contracting Party or if he is also prevented, the member of the Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. these decisions shall be binding. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the proceedings before the arbitral tribunal; the cost of the Chairman and the remaining costs shall be borne in equal parts by both contracting parties. The arbitral tribunal may fix a different regulation concerning costs. The arbitral tribunal shall address its own procedure.

## **Article 12.**

The provisions of this Treaty shall continue in force even in case of disputes arising between the contracting parties, without prejudice to the right to take interim measures permitted under the general rules of law; the measures shall be repealed at the latest by the time of the effective cessation of hostilities , have diplomatic relations been restored or not.

## Article 13.

Except as provided in paragraph 8 of the Agreement relating to Air Navigation, this Treaty shall also apply to Berlin except as otherwise declared made by the Government of the Federal Republic of Germany to the Government of the Kingdom of Morocco within three months following the entry into force of this Treaty.

## Article 14.

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of instruments of ratification. It shall remain in force for a period of ten years and shall be extended indefinitely unless is denounced in writing by either contracting party one year before its expiration. At the end of the period of ten years, this treaty may be denounced at any time, but it shall remain in force for a period of one year from the date of its termination.

(3) In respect of investments made before the date of expiry of the Treaty, the provisions of Articles 1 to 13 shall continue to apply for a further period of twenty years from the date of termination of this Treaty.

Done at Rabat on 31 August 1961 in six copies, including two in German, two in Arabic and two in French. In case of divergence of interpretation the French text is authentic.

For the Federal Republic of Germany:

Müller-Roschach

For the Kingdom of Morocco:

M'Hamed Douiri

Protocol

Upon signature of the Treaty concerning the promotion of investment capital, concluded between the Federal Republic of Germany and the Kingdom of Morocco, the undersigned Plenipotentiaries have agreed, in addition, the following arrangements which shall be treated as an integral part of the Treaty:

(1) The contracting parties will commence within one year from the date of this day of the conclusion of negotiations for the establishment of a treaty to resolve issues relating to the following matters: entry and stay exit, temporary and permanent access to protection against expulsion and exercise of economic activities and enterprises, Foundation for an unlimited capital and participation in such enterprises, work permits for staff director and technical staff; the protection and security of person and property, free access to courts, the freedom to enter into contracts, acquisition of real estate funds and other assets, admission to as an arbitrator.

(2) The following are considered as conditions in the sense of article 2, including: restrictions on for the acquisition of raw materials, or driving force and auxiliary fuel or of means of production or operation of any kind, interference with the sale of products within the country and abroad as well as any other measures having similar effects. The measures taken for reasons of public order, public safety and health or morality shall not be considered as conditions within the meaning of article 2.

(3) Article 2 shall not apply to the entry, stay and employment as an employee.

(4) The provisions of article 3 (2) shall also apply to the transfer of an investment of capital in public ownership at placing under its control or similar public interventions State expropriation shall mean the withdrawal or restriction of any property rights constituting an investment of capital, alone or in combination with other rights.

(5) Liquidation shall also be regarded as within the meaning of article 4 any alienation with a view to a full or partial renunciation investment.

(6) It shall be deemed to be made without delay within the meaning of article 6. paragraph 1 above, any transfer which

normally takes place within the period necessary for the observance of transfer formalities. the period shall begin to run from the date of submission of an requôto relating thereto and shall in no case exceed two months.

(7) In respect of capital investments do by nationals or companies Germans within the territory of the Kingdom of Morocco, the provisions of article 9 shall only apply to investments made by Dahir No. 1-60-383 of 12 Rejeb 1380 (31 December 1960). The provisions of this article shall also apply to an investment of capital determined by the German nationals and companies in Morocco prior to the entry into force of the Dahir referred to above, provided that the applicant so requests and the Government of the Kingdom of Morocco shall give its approval.

(8) Each Contracting Party shall refrain from taking any action that is contrary to the principles of free competition and likely to eliminate or limit the participation of the maritime and air navigation of the other Contracting Party for the transport of goods; investment of capital within the meaning of this Treaty. This provision shall also apply to goods acquired in the territory of a Contracting Party or of any third State with funds of an enterprise in which assets are invested within the meaning of this Treaty.

(9) Without prejudice to other means of identification of nationality, shall be treated as a national of a Contracting Party means any person who is a national passport issued by the competent authorities of the Contracting Party in question.

Done at Rabat on 31 August 1961 in six copies, including two in German, two in Arabic and two in French. In case of divergence of interpretation the English text is authentic.

For the Federal Republic of Germany:

Müller-Roschach

For the Kingdom of Morocco:

M'Hamed Douiri

Ambassador

The Federal Republic of Germany

Rabat on 31 August 1961

Sir,

With reference to the Treaty signed this day of the Federal Republic of Germany and the Kingdom of Morocco and on the promotion of investment capital, I have the honour to confirm that during our negotiations it has been agreed as follows:

The term "investment" in this Treaty, in respect of the Kingdom of Morocco in Morocco, means investments by nationals or companies and approved at the request of the person concerned by the competent Moroccan services. In respect of the Federal Republic of Germany the term refers to all investments made by nationals or companies of Morocco under the legislation of the Federal Republic of Germany.

I should be grateful, Sir, if you would confirm your agreement with the above.

Please accept, Sir, the assurances of my highest consideration.

Müller-Roschach

The President of the delegation,

His Excellency Mr. M'hamed douiri,

Minister of National Economy and Finance

Rabat

Morocco

Ministry National Economy and Finance

The Minister

Rabat. on 31 August 1961

Sir,

I have the honour to acknowledge receipt of your letter of today's date I I agree on the following:

"with reference to the Treaty signed this day of the Federal Republic of Germany and the Kingdom of Morocco and on the promotion of investment capital, I have the honour to confirm that during our negotiations it has been agreed as follows:

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I would be grateful if you, Sir, if you would confirm your agreement on the foregoing.

I have the honour to give my full agreement on its content.

Please accept, Sir, the assurances of my highest consideration.

The Minister of Finance and National Economy

M'hamed Douiri

His Excellency Ambassador of the Federal Republic of Germany President of the German Delegation

Ambassador

The Federal Republic of Germany

Rabat on 31 August 1961

Sir,

With reference to the Treaty signed this day of the Federal Republic of Germany and the Kingdom of Morocco and on the promotion of investment capital, I have the honour to confirm that during our negotiations it has been agreed as follows:

"Each contracting party may in the interest of its national economy, at the time of acceptance of an investment by nationals or companies of the other contracting party, in acts of admission lay down conditions regarding the administration and management, use or enjoyment of an investment and on the training and employment of its nationals. These standards may be, by way of derogation from the provisions of article 2, less favourable than would have its own nationals and companies, but shall not directly or indirectly affect the other provisions of this Treaty ".

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Müller-Roschach

The President of the Delegation,

His Excellency Mr. M'hamed Douiri,

Minister of National Economy and finance

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Rabat on 31 August 1961

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The Minister of Finance and National Economy

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Your Excellency Ambassador of the Federal Republic of Germany President of the German Delegation

Ambassador

The Federal Republic of Germany

Rabat on 31 August 1961

Sir,

With reference to the Treaty signed this day of the Federal Republic of Germany and the Kingdom of Morocco and on the promotion of investment capital, I have the honour to confirm that during our negotiations it has been agreed as follows:

"Aiming to facilitate operations and encourage the development of capital investments made by nationals or companies Germans within the territory of the Kingdom of Morocco and the Government of Morocco, even before the entry into force of the Treaty of Establishment which is envisaged, shall accord to German nationals who in connection with investments made by nationals or companies, wish to enter, stay and / or carry out an activity employed persons in the territory of the Kingdom of Morocco, the necessary authorizations, unless reasons of security, public health or morality shall not oppose"

Sir, I would be grateful if you would confirm your agreement with the above.

Please accept, Sir, the assurances of my highest consideration.

Müller-Roschach

The President of the Moroccan Delegation.

His Excellency

Mr. M'hamed Douiri,

Minister of National Economy and Finance

Rabat

Morocco

Ministry of National Economy and Finance

The Minister

Rabat on 31 August 1961

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I have the honour to acknowledge receipt of your letter of today's date I I agree on the following:

"with reference to the Treaty signed this day of the Federal Republic of Germany and the Kingdom of Morocco and on the promotion of investment capital, I have the honour to confirm that during our negotiations it has been agreed as follows:...

Aiming to facilitate and promote the development of capital investments made by nationals or companies Germans within the territory of the Kingdom of Morocco and the Government of Morocco, even before the entry into force of the Treaty of Establishment, which is envisaged grant to German nationals. in connection with investments made by nationals or companies, wish to enter, stay and / or carry out an activity employed persons in the territory of the Kingdom of Morocco, the necessary authorizations, unless reasons of security, public health or morality shall not oppose

I would be grateful if you, Sir, if you would confirm your agreement with the above ".

I have the honour to give my full agreement on its content.

Please accept, Sir, the assurances of my highest consideration.

The Minister of Finance and National Economy

M'hamed Douiri

His Excellency

Ambassador

The Federal Republic of Germany

Chairman of the Delegation