

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Morocco and the Government of the Italian Republic referred to hereinafter as the contracting parties;

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting Party in the territory of the other contracting party;

Recognising that the encouragement and reciprocal protection on the basis of international agreements, such investments will stimulate business initiative and increasing prosperity of both contracting parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1) The term "investment" means all categories of assets invested after the entry into force of this Agreement by a natural or legal person, including the Government of a Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of that Party. The term "investment" includes but is not limited to:

a) Movable and immovable property, as well as any other property rights, such as mortgages, liens, pledges, usufruits related to investment;

b) Shares, bonds, and debentures or other rights or interests and titles of State or Government agencies;

c) Capitalized claims, including reinvested income, as well as the rights to any performance under contract having an economic value;

d) Copyrights, trademarks, patents, technical and industrial processes, and other intellectual property rights, know-how, trade secrets, trade names, and goodwill;

e) An economic nature of any right conferred by law or under contract and any licences and concessions in accordance with the laws and regulations in force, including the right to prospecting, extraction, and exploitation of natural resources;

f) Contributions of capital and additional capital for the maintenance and/or increase of the investment;

g) The elements listed in (c), (d), and (e) above shall be the subject of contracts approved by the competent authority.

2) The term "investor" means any natural or legal person of one Contracting Party in accordance with its legislation that makes investments in the territory of the other Contracting Party.

a) The term natural person shall mean, with respect to each of the Contracting Parties, a natural person having the nationality of the Party concerned, in accordance with its legislation.

b) The term legal person shall mean, with respect to each of the Contracting Parties, any entity having its seat in the territory of one of the Contracting Parties and recognized by the Authority in accordance with its legislation. The term juridical person includes public bodies, corporations or associations, foundations, capital, regardless of whether or not they are limited.

3) The term "income" includes sums obtained from an investment, including, but not limited to, profits, interest, capital gains, stock dividends, and royalties.

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 to the intéreur which the rights of the Kingdom of Morocco concerning the marine seabed or the subsoil and natural resources may be exercised.

b) For the Italian Republic: the territory of the Italian Republic, delimited by its land borders, including maritime areas. These include the underwater marine areas under the sovereignty of Italy and upon which it exercises, in accordance with international law, sovereign rights and jurisdiction.

Article 2. Promotion and Protection of Investments

1) Each Contracting Party shall encourage investors of the other contracting party to make investments in its territory and allow such investments in accordance with its laws and regulations in vvgueur.

2) Each Contracting Party shall ensure fair and equitable treatment to investments of investors of the other Contracting Party. Each Contracting Party shall ensure the management, maintenance, use, enjoyment, or disposition of investments of investors in its territory of the other Contracting Party against any unjustified or discriminatory measures.

Article 3. The Most-favoured-nation Clause and National Treatment

1) Each Contracting Party shall accord in its territory to returns of investments and investors of the other Contracting Party treatment no less favourable than that accorded to investments and returns of its own to investors or investments of investors and returns of any third State.

2) Each Contracting Party to the investors of the other Contracting Party, as regards the management, maintenance, transfer, use or enjoyment of their investments, treatment no less favourable than that accorded to its own investors to investors or of any third State.

3) Investors of either Contracting Party may not rely on national treatment to receive aid, grants, loans, insurance, and guarantees granted by the Government of either Contracting Party exclusively to its own nationals or companies in the framework of the activities of national development programmes.

4) Investors of either Contracting Party cannot be accorded preferential treatment accorded to the investors of a third State by both contracting parties within the framework of a customs union, a common market or a free trade area, regional or subregional agreement, a multilateral international economic agreement, an agreement between a Contracting Party and a third State to avoid double taxation or frontier for facilitating trade.

Article 4. Compensation for Damage or Loss

1) When investments made by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of emergency, or other similar events in the territory of the other Contracting Party, they shall receive fair and adequate compensation for the loss suffered by the Contracting Party in whose territory the investment has incurred loss.

2) Investors of either Contracting Party shall enjoy, with respect to matters referred to in this article of this Agreement, the same treatment accorded to investors of the Contracting Party or, in any event, a treatment no less favourable than that accorded to investors of a third State.

Article 5. Nationalisation or Expropriation

1) Investors of either Contracting Party shall not be subject to any permanent or temporary measure which restricts the right of ownership, possession, or control or enjoyment of their investments unless the laws and regulations in force or a judicial decision otherwise provides.

2) Investments of the two contracting parties or their investors shall not be expropriated or nationalized, subject to measures having an effect equivalent to nationalization or expropriation in the territory of both contracting parties, unless such measures are taken.

- for public purposes;
- on a non-discriminatory basis and in accordance with due process;
- and against prompt, fair and adequate compensation.

Article 6. Transfer of Capital and Income

1) Each Contracting Party shall guarantee, within the framework of its laws and regulations in force, and after the fulfilment of tax obligations, the transfer in convertible currency at the rate of exchange applicable on the date of transfer, as follows:

- a) Proceeds from the sale or the total or partial liquidation of an investment;
- b) The net profits, dividends, interests, remuneration for technical assistance and services, or other benefits derived from the investment flows;
- c) The repayment of loans (and interest thereon);
- d) The savings on salaries and wages paid to the nationals of other Contracting Party as a result of labour and services carried out in connection with an investment;
- e) The compensation referred to in article 4 (1) and article 5 (2) (1); and

f) Any payments made under article 7 7.

2) Without prejudice to the provisions of article 3 of this Agreement, the Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this article, the same treatment to transfers in respect of investments made by a third State.

3) The transfers referred to in paragraph 1 shall be effected without undue delay and in any case within a period of six months from the date on which the request for transfer and provided that the tax obligations have been discharged.

Article 7. Subrogation

If a Contracting Party accords a guarantee against non-commercial risks to an investment made by its investors in the territory of the other contracting party, and shall pay to such investors on the basis of the security, the other Contracting Party shall recognize the transfer of the right of such investors to the former Contracting Party and the subrogation thereof will not be in addition to the original rights of investors. For the transfer of payments to the contracting party by virtue of subrogation, it shall be governed by articles 4, 5, and 6.

Article 8. Settlement of Disputes on Investments

1) All disputes or differences, including disputes relating to the amount of compensation payable in cases of expropriation, nationalization or similar measures, between a Contracting Party and an investor of the other contracting party concerning an investment of that investor in the territory of the first Contracting Party shall, as far as possible, be settled amicably.

2) If the dispute cannot be settled amicably within six months from the date of the request, in writing, the investor concerned may submit the dispute either to:

- a) The competent court of the Contracting Party concerned;
- b) To an ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law;
- c) The International Centre for the Settlement of Investment Disputes (ICSID) for the implementation of the arbitral proceedings, covered by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

3) Both Contracting Parties shall refrain from addressing through diplomatic channels any matter relating to arbitration or judicial proceeding, as long as these procedures will not be completed and that a Party has complied with the ruling of the arbitral tribunal or the Ordinary Court appointed within the time frames set out in the judgement or otherwise within the time frame to establish, on the basis of the rules of international law applicable in the national or *espèce*.

Article 9. Settlement of Disputes between the Contracting Parties

1) Disputes between the contracting parties concerning the interpretation and application of this agreement should, as far as possible, be settled amicably through consultations between the two Contracting Parties through diplomatic channels.

2) If these disputes cannot be settled within six months from the date on which either of the two Contracting Parties has notified the other Contracting Party in writing, they will be submitted, on demand by one of the two parties, to an ad hoc

arbitral tribunal in accordance with the provisions of this article.

3) The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member of the Tribunal within two months from the date of receipt of the request for arbitration. The two members shall then select a national of a third State, who shall act as Chairperson (hereinafter called the Chairperson). The Chairperson shall be appointed within a period of three months from the date of appointment of the two members.

4) If, within the time limits specified in paragraph (3) of this Article, one of the two Parties has not appointed its arbitrator or if the arbitrators have not agreed on the president, the President of the International Court of Justice shall, at the request of either Party, make the appointment. If the President is a national of one of the two Contracting Parties, or if he is unable to perform this function, the Vice-President shall make the appointment. 5i If the Vice-President is himself a national of one of the two Contracting Parties, or if he is unable to perform this function, the member of the International Court of Justice next in order of seniority who is a national of a third State shall make the appointment.

5) The arbitral tribunal shall decide by a majority of votes. Its decisions shall be binding on the Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and propore costs relating to its consultation during any arbitral proceedings. The costs related to the Chair and any remaining costs shall be borne equally by the two contracting parties. The arbitral tribunal shall establish its own procedures.

Article 10. Relationship between the Contracting Parties

The provisions contained in this Agreement shall be applied unaffected by of the existence of diplomatic or consular relations between the contracting parties.

Article 11. Application of other Standards

1) Where a situation is governed both by this Agreement and by another international agreement to which both Contracting Parties are parties, or by international law in general, this Agreement shall not prevent either Contracting Party or its investors from benefiting from the treatment that is more favorable in that situation.

2) In the event that the treatment provided by a Contracting Party to the investors of the other contracting party, in accordance with its laws and regulations or other specific provisions or contracts is more favourable than that provided for by the present Agreement, the most favourable treatment shall apply except for the exceptions stipulated in paragraphs 3 and 4 of article 3 of this Agreement.

Article 12. Entry Into Force

This Agreement shall enter into force on the date on which either Contracting Party notifies the other Contracting Party of the completion of the constitutional procedures necessary for its entry into force.

Article 13. Duration and Expiry Date

1) This Agreement shall remain in force for a period of ten (10) years and may be renewed for a period or equivalent periods unless one of the Contracting Parties denounces it in writing one year before its expiration.

2) In respect of investments made prior to the date of this Agreement, the provisions of articles 1 to 11 shall remain in force for a further period of ten years from the date of this Agreement.

Done at Rabat on 18 July 1990 in two originals in the Arabic and English languages, all texts being equally authentic. in case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Morocco

For the Government of the Italian Republic