

# Agreement between the Government of the Kingdom of Morocco and the Government of the Republic of Tunisia on the Promotion and Protection of Investments

The Government of the Kingdom of Morocco and the Government of the Republic of Tunisia, referred to hereinafter as the Contracting Parties;

With the goal of achieving economic integration of the countries of the Arab Maghreb Union;

Desiring to enhance their economic relations, intensify cooperation and bolster development in both countries;

Convinced that the mutual protection of investments under a bilateral agreement will advance private economic initiatives and bolster the prosperity of both countries;

And sensing the necessity of granting fair and equitable treatment to the investments of nationals of each of the Contracting Parties made in the territory of the other Contracting Party;

Have agreed as follows:

## Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset established or recognized in the territory of the host Party according to its laws and regulations, including but not limited to:

a) Movable property and real estate, as well as every other in-kind right, such as mortgages, property mortgages, liens, guarantees and other similar rights.

b) Stocks, bonds, securities, and any other forms of participation in companies.

c) Debts and services under a contract.

d) Intellectual property rights as well as non-material elements related to commercial assets.

e) Commercial concessions granted by law or under contract, including right to explore, extract and exploit natural resources.

Any alteration in the form an investment shall not affect its classification as an investment, provided that this alteration is not in breach of the legislation of the Contracting Party in whose territory the investment was made.

2. The term "returns" means the net amounts yielded by an investment, such as profits, dividends, surplus, royalties and fees.

3. The term "Investor" means:

a) Any natural person holding the nationality of one of the Contracting Parties in accordance with its laws, and who invests in the territory of the other Contracting Party.

b) Any legal person established in accordance with the applicable laws of each of the Contracting Parties, whose headquarters are located in the territory of that Party, and who invests in the territory of the other Contracting Party.

4. The term "territory" means, for each of the Contracting Parties, the territory under its jurisdiction, including territorial waters, the deep seabed, and other maritime areas over which it exercises its sovereignty and jurisdiction rights in accordance with International Law.

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

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory, and shall admit such investments in accordance with its legislation.
2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy fair and equitable treatment as well as full protection and security. Each Contracting Party commits to ensure that the disposal, use, enjoyment, or management of investments made by investors of the other Contracting Party in its territory are not impaired by arbitrary or discriminatory measures.
3. Investment returns, and, in the event of their reinvestment, shall enjoy the same protection as the original investment.

## **Article 3. National Treatment and Most-favored-nation Treatment**

1. Neither of the Contracting Parties shall subject investments made by investors of the other Contracting Party in its territory, to treatment less favorable than that accorded to its own investors or to investors of any third state, whichever is more favorable.
2. Neither of the Contracting Parties shall subject investments made by investors of the other Contracting Party in its territory, and the activities related to their investments, to treatment less favorable than that accorded to its own investors or to investors of any third state, whichever is more favorable.
3. The aforementioned treatment shall not apply to benefits or privileges accorded by a Contracting Party to investors of a third state:
  - a) Based on their participation or membership in an economic union, customs union or common market, free trade area or a regional economic organization.
  - b) Based an agreement for the avoidance of double taxation or any other agreement related to taxation.

## **Article 4. Nationalization and Expropriation**

Investments made by investors of either Contracting Party shall not be nationalized, expropriated, or subject to any measure having a similar effect to nationalization or expropriation, unless the following conditions are met:

- a) These measures are taken for the benefit of the public interest and in accordance with the formulas provided by law.
- b) The measures are not discriminatory.
- c) The measures are accompanied by immediate, just, and effective compensation. The amount of compensation shall be equal to the market value of the investments at the moment immediately before the public announcement of these measures. The compensation shall be effective immediately and without delay, and its amount shall be subject to review in accordance with legal procedures.

## **Article 5. Compensation**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses resulting from war, armed conflict, revolution, national emergency or other similar situations shall be accorded treatment no less favorable than the treatment accorded by the other Contracting Party to its own investors or to investors of any third state, with regards to returns, grants, compensation, or other reparation, whichever is more favorable. The compensation due under this Article shall be paid without delay.

## **Article 6. Transfers**

1. Each Contracting Party shall permit, with regards to investments made by investors of the other Contracting Party, the free transfer of the investment and its returns.
2. These transfers include, but are not limited to:
  - a) Profits, interest and dividends other current income.
  - b) Repayments of legally concluded loans.

c) Royalties and other bonuses.

d) Proceeds from the sale or total or partial liquidation of an investment, including capital gains invested.

e) Compensation stipulated in Articles 4 and 5 above.

3. Nationals of each of the Contracting Parties, who are permitted to work in the territory of the other Contracting Party, shall be permitted to transfer a share of their wages to their home state, in accordance with the applicable legislation.

4. The transfer shall be effective without delay in a convertible currency at the official exchange rate on the date of the transfer, in accordance with the procedures stipulated by the legislation of the Party concerned.

## **Article 7. Subrogation**

1. If an insurer under a legal or contractual guarantee covering non-commercial investment risks pays indemnities to an investor of either Contracting Party, 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, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated, within the limits of covered risks.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Any dispute arising between the two Contracting Parties regarding the interpretation or application of this Agreement shall be settled, as far as possible, through diplomatic channels.

2. If the dispute cannot be settled by these means within six months from the beginning of the negotiations, it shall be submitted at the request of one of the Contracting Parties, to an arbitration tribunal.

3. The arbitral tribunal shall be constituted as follows:

Each contracting party shall appoint an arbitrator, and the two arbitrators shall choose a national of a third country to preside over the arbitration panel. The two arbitrators shall be appointed within three months, and the president within five months, from the date of receiving the notice of arbitration.

4. If the deadlines set forth in the above paragraph are not respected and in the absence of any other agreement, either of the Contracting Parties may invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is unable to perform this task for any other reason, the most senior assistant to the Secretary-General, who is not a national of either Contracting Party, may make the necessary appointments.

5. The arbitral tribunal shall reach its decisions on the basis of respect for the law and the provisions of this Agreement, as well as the principles of international law.

6. The tribunal shall determine its own procedures and shall interpret its award at the request of either Contracting Party. The tribunal shall make its decisions by majority vote and its decision shall be final and binding on both Parties.

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

## **Article 9. Settlement of Disputes Related to Investments**

1. Each of the Contracting Parties accepts the submission of every dispute of a legal character that arises between it and one of the nationals of the other Contracting Party regarding an investment established on its territory, to the International Centre for Settlement of Investment Disputes in order to settle it by conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on March 18, 1965.

2. The nationals of one of the Contracting Parties may submit to the local judicial authorities of the other Contracting Party hosting the investment any dispute of a legal nature that arises between them and the other Contracting Party regarding the investment established on the territory of the latter.

3. If one of the nationals of the two Contracting Parties chose to file a claim using one of the two mechanisms stipulated in

paragraphs 1 and 2 of this article, then he will be unable to file such a claim using the other mechanism.

### **Article 10. Agreement Implementation**

This Agreement applies to the investments made by the nationals of one of the Contracting Parties in the territory of the other Contracting Party, in accordance with its applicable laws and arrangements.

### **Article 11. Entry Into Force of the Agreement**

This Agreement shall enter into force after each Contracting Party informs the other that the constitutional procedures necessary for this purpose have been taken.

### **Article 12. Duration and Termination**

This Agreement will remain in effect for a period of ten years and will remain in effect after that until the end of the period of twelve months, starting from the date of its termination by one of the Contracting Parties through a written notification sent to the other Contracting Party. The provisions of this Agreement will remain in effect for ten years, starting from the date of its expiration, for the investments made during the validity of the agreement, taking into account the application of the rules of international law after the expiration of this period.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in Tunis on 28-01-1994 in two originals in Arabic, both texts being equally authentic.

For the Government of The Kingdom of Morocco,

For the Government of the Republic of Tunisia,