

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

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

- Desiring to develop and deepen economic and industrial cooperation;

- Desiring to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

- Recognizing that the protection of these investments on the basis of an Agreement will stimulate the flow of investments and business initiatives with a view to the economic prosperity of the two Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "Investment" means every kind of asset or contribution, direct or indirect, acquired or established by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Party, in particular, though not exclusively:

(a) movable and immovable property, as well as all other property rights such as mortgages and liens, securities, usufruct, leasing and similar rights,

(b) shares, stocks and any other forms of participation in enterprises;

(c) claims to money and title to any other performance having an economic value;

(d) intellectual and industrial property rights, including copyrights, patents, trademarks, trade names, franchises, industrial designs, technical processes, know-how and clientele;

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

2. Any change in the legal form in which the assets and capital are invested or reinvested shall not affect their character as investments in the sense of the present Agreement.

3. These investments must be carried out according to the laws and regulations in force in the Contracting Party in whose territory the investment is made.

4. The term "Investor" means

(a) any natural person who is a Moroccan or a Finnish national by virtue of the legislation of the Kingdom of Morocco or the Republic of Finland respectively and who makes an investment in the territory of the other Contracting Party,

(b) any legal person, such as a company, corporation, firm, business organization or commercial association, which has its main office in the territory of the Kingdom of Morocco or the Republic of Finland and which is constituted in accordance with the Moroccan or Finnish laws respectively and which makes an investment in the territory of the other Contracting Party.

5. The term "Returns" means the total amounts yielded by investments such as profits, dividends, interests, fees or other

legal returns.

6. The term "Territory" means:

(a) with respect to the Kingdom of Morocco: the territory of the Kingdom of Morocco, including all maritime areas situated beyond the territorial waters of the Kingdom of Morocco which have been or could have been therefore referred to in the legislation of the Kingdom of Morocco, in accordance with international law, as being an area within which the Kingdom of Morocco can exercise its rights in relation to the seabed and to the maritime subsoil as well as to natural resources.

(b) with respect to the Republic of Finland: all land and sea areas, including the maritime zones over which the Republic of Finland exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

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

2. Any extension, modification or transformation of an investment, performed according to the laws and regulations in force of the Contracting Party in the territory of which the investment is made, is considered as a new investment. However, the conditions for the admission of this new investment shall not be less favourable than those applied to the initial investment.

3. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment by the latter Party as well as, with reservations relating to measures strictly necessary for the maintenance of public order, full and complete protection and security. Each Contracting Party shall undertake to assure that the management, maintenance, use, enjoyment or liquidation of the investments of the other Contracting Party in its territory are not impeded by unreasonable or discriminatory measures.

4. The returns of the investment and, in case of their reinvestment in accordance to the legislation of the Contracting Party in whose territory the investment is made, enjoy the same protection as accorded to the initial investment.

Article 3. Treatment of Investments

1. Each Contracting Party shall in its territory ensure to investments by investors of the other Contracting Party fair and equitable treatment, which is not less favourable than that which it accords to investments of its own investors or to investments of the most favoured nation, whichever is the more favourable to the investor.

2. Each Contracting Party shall in its territory ensure to investors of the other Contracting Party, concerning activities relating to their investments, treatment which is not less favourable than that which it accords to its own investors or to investors of the most favoured nation, whichever is the more favourable to the investor.

3. The treatment of the most favoured nation does not apply to privileges which a Contracting Party accords to investors of a third State by virtue of its participation in or of its association with a free trade zone, an economic or a customs union, a common market or any other form of regional economic organization or a similar international agreement or a convention aiming to avoid the double taxation or any other convention relating to taxation.

Article 4. Expropriation and Compensation

1. Any measure of nationalisation, expropriation or any other measure having an equivalent effect which could be taken by the authorities of one Contracting Party against investments made by investors of the other Contracting Party must be neither discriminatory nor motivated by reasons other than public utility. The measures shall be taken under due legal process.

2. The Contracting Party, which has taken such measures, shall pay to the beneficiary, without delay, a fair and reasonable compensation, the total of which corresponds to the market value of the investment in question on the eve of the day when the measures are taken or made public.

3. The arrangements for the determining and payment of the compensation must be taken promptly, at the latest at the time of the expropriation. In case of a delay of payment the compensation shall carry interest at international market rate from the date when the payment was eligible. The compensation shall be payable to the investors in convertible and freely transferable currency.

Article 5. Compensation for Losses

1. Investors of a Contracting Party whose investments suffer damages or losses owing to war or other armed conflict, revolution, a state of national emergency, riot, insurrection or other similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, which is non-discriminatory and at least equal to the treatment accorded to its own investors or to investors of the most favoured nation, whichever is the more favourable to the investor.

2. Without prejudice to paragraph 1 of this Article, investors of a Contracting Party whose investments, in any of the situations referred to in this paragraph, suffer in the territory of the other Contracting Party losses resulting from the requisition or destruction of their possessions by the armed forces or by the authorities, which was not caused by combat action or was not required by the necessity-of the situation, shall be accorded by the other Contracting Party prompt, adequate and effective restitution or compensation.

Article 6. Transfers

1. Each Contracting Party, in whose territory investments have been effected by investors of the other Contracting Party, shall ensure these investors, after the settlement of tax obligations, the free transfer in a convertible currency of the liquid assets relating to these investments and in particular, though not exclusively:

(a) of capital or an additional amount for the purpose of maintaining or increasing the investment;

(b) of profits, dividends, interest, fees and other current returns;

(c) of the sums necessary for the reimbursement of loans and interest relating to the investment;

(d) of the proceeds from the total or partial liquidation of an investment;

(e) of compensations paid pursuant to Articles 4 and 5;

(f) of an appropriate quota of the salaries and other remunerations belonging to the citizens of a Contracting Party who are allowed to work in the territory of the other Contracting Party in connection with an investment; and

(g) of payments resulting from the settlement of disputes.

2. The transfers referred to in paragraph 1 shall be effected at the rate of exchange applicable on the date of transfer and shall be made without any restriction or delay, in a freely convertible currency.

3. The guarantees foreseen by this article are at least equal to those accorded to the investors of the most favoured nation.

Article 7. Subrogation

1. If a Contracting Party or its designated agency (insurer) makes a payment to its own investor by virtue of a guarantee against non-commercial risks accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation to the insurer of all the rights and claims ensuing from such an investment, and shall recognize that the insurer is entitled to exercise these rights and to enforce the claims to the same extent as the original investor.

2. All disputes between a Contracting Party and the insurer concerning subrogation shall be settled according to the provisions of Article 10 of this Agreement.

Article 8. Applicable Rules

When a question relating to the investments is regulated at the same time by the present Agreement and by the national legislation of a Contracting Party or by existing international conventions or by international conventions to be signed by the Parties in the future, the investors of the other Contracting Party can make the provisions which are most favourable for them to prevail.

Article 9. Other Obligations

1. The investors of one Contracting Party can conclude with the other Contracting Party Specific engagements whose provisions, however, may not be contrary to the present Agreement. Investments effected by virtue of such specific

engagements are also regulated by the present Agreement.

2. Each Contracting Party shall ensure they will at every moment meet their engagements in respect of the investors of the other Contracting Party.

Article 10. Settlement of Disputes Relating to Investments

1. All disputes relating to investments between a Contracting Party and an investor of the other Contracting Party shall be settled, if possible, amicably through consultations and negotiations between the parties to the dispute.

2. If an amicable settlement through a direct agreement between the parties to the dispute is not reached within six months from the date of a written notification, the dispute shall, at the choice of the investor, be submitted:

(a) to a competent tribunal of the Contracting Party in whose territory the investment has been made;

(b) or to arbitration by the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), 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;

(c) or to an ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

For this purpose both parties to the dispute give their irrevocable consent in respect of the fact that all disputes relating to investments are submitted to the above-mentioned tribunal or alternative arbitration procedures.

3. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitration sentence, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering the whole or a part of its losses by virtue of an insurance.

4. The Arbitration Tribunal shall give its ruling on the basis of the national law of the Contracting Party, which is a party to the dispute, in the territory of which the investment is situated, including the rules of conflict of laws, the provisions of the present Agreement, the terms of particular agreements which may be concluded in respect of the investment as well as the principles of international law.

5. The arbitration awards are final and binding to the parties to the dispute. Each Contracting Party undertakes to execute these awards according to its national legislation.

Article 11. Settlement of Disputes between the Contracting Parties

1. All disputes between the Contracting Parties concerning the interpretation or the application of this Agreement shall be settled, if possible, between the two Contracting Parties through diplomatic channels.

2. If the dispute cannot thus be settled, it shall be submitted to a joint commission, composed of representatives of the Contracting Parties; it convenes without delay, at the request of the most diligent Party.

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

4. The arbitration tribunal shall be constituted in the following way: each Contracting Party shall appoint one arbitrator, and these two arbitrators shall then together choose a third arbitrator, who is a national of a third state, to be appointed Chairman of the tribunal by the Contracting Parties. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which one of the Contracting Parties has advised the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.

5. If the time limits referred to in paragraph (4) of this Article have not been complied with 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 the President is prevented from discharging this task, 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 discharging this task, the most senior member of the Court who is not a national of either Contracting Party, shall be invited to make the said appointments.

6. The arbitration tribunal gives its ruling on the basis of the provisions of the present Agreement and the 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 upon the Contracting Parties.

7. The tribunal determines its own rules of procedure.

8. Each Contracting Party shall bear the costs of its arbitrator and of its representation to the arbitral proceedings. The costs of the Chairman and the other costs shall be borne in equal parts by the Contracting Parties.

Article 12. Application

The present Agreement also covers the investments made before its entry into force by the investors of one Contracting Party in the territory of the other Contracting Party, in accordance with its laws and regulations. However, the present Agreement does not apply to disputes arisen prior to its entry into force.

Article 13. Entry Into Force, Validity and Expiration

1. This Agreement shall be subject to ratification and enter into force thirty days after the receipt of the last of the two notifications concerning the fulfilment of the respective constitutional procedures of the two Contracting Parties.

It shall remain in force for a period of ten years, unless one of the Contracting Parties denounce it at least six months before the expiration of its period of validity. It is every time tacitly renewed for a new period of ten years, both Contracting Parties reserving themselves the right to denounce it by a written notification at least six months prior to the date of expiration of the current period of validity.

2. Investments made prior to the date of expiration of the present Agreement remain subject to it for a period of ten years from the date of the said expiration.

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

Done at in two originals, each in the Arabian, Finnish, French and English languages; the four text are equally authentic. In case of difference of interpretation the French and English texts shall prevail.

For the Government of the Kingdom of Morocco

For the Government of the Republic of Finland