

AGREEMENT BETWEEN THE Government of the Kingdom of Morocco and the Government of the Republic of El Salvador on the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Morocco and the Government of the Republic of El Salvador (hereinafter referred to as the "Parties").

Desiring to intensify economic cooperation to the mutual benefit of both Parties,

Intending to create and maintain favorable conditions for capital investments of investors of one Party in the territory of the other Party, and

Conscious that the promotion and reciprocal protection of such investments stimulates business initiatives and increase the welfare of both Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "capital-investment" (hereinafter referred to as the "investment") shall comprise every kind of asset acquired or established by investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Party and shall include, in particular though not exclusively: (a) Movable and immovable property as well as any other property rights, such as mortgages, liens or pledges;

(b) Debentures of companies or any other of participation in a company constituted and organized in accordance with the legislation of the other Party;

(c) Claims to money destined to create an economic value or to any performance having an economic value;

(d) Intellectual property rights, including copyrights, patents, industrial and Commercial, technical processes. trade marks. commercial, marks, trade names, know-how and goodwill;

(e) Any right conferred by law or under public contract, including concessions to search for, explore cultivate extract or exploit natural resources.

Any alteration of the form in which assets are invested shall not, affect. their character as investment.

2. The term "returns" means the after tax amounts yielded by an investment in a determinate period, such as profits, interest related to loans, capital gains, shares, dividends, royalties or fees.

3. The term "investor" shall mean for each Party, any natural or legal person who invests in the territory of the other Party.

(i) The term "natural person" shall men for each Party any natural person having the nationality of either Party in accordance with its legislation.

(ii) The term "legal person" includes societies, corporations, commercial associations or any entity incorporated or constituted in accordance with the legislation of one Party and which has its main office in the territory of this Party.

4. 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 El Salvador "the terrestrial, maritime and aerial space under the sovereignty and the jurisdiction of the Republic of El Salvador. in accordance with its legislation and international law.

Article 2. Promotion and Protection of Investments

1. Each Party shall, in accordance with its respective laws, encourage and create favorable conditions for investors of the other Party to make investments in its territory.
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 favorable than those applied to the initial investment.
3. Each Party shall in its territory protect the investments of investors of the other Party in accordance with its laws and regulations and shall not hinder the administration, use, usufruct, extension, sale and liquidation of such investments by means of unjustified or discriminatory measures. The returns obtained of one investment as well as the returns obtained of the reinvestments, shall be equally protected.
4. Investments of investors of either Party shall at all be accorded fair and equitable treatment.

Article 3. Treatment of the Investments

1. Each Party shall in its territory accord to investments of investors of the other Party treatment which is not less favorable than that which it accords to investments of its own investors or to investments of investors of any third state.
2. Each Party shall in its territory accord to investors of the other Party, as regards to their activities related to their investments treatment which is not less favorable than that which it accords to its own investors or to investors of any third State.
3. This article shall not be construed so as to oblige one Party to extend to investors of the other Party the privileges which may be extended by the former Party by virtue of any customs or economic union, common market, free trade area or because of its association with this kind of unions.
4. This Article also shall not be construed so as to oblige one Party to extend to investors of the other Party treatment which is consequence of any Agreement relating wholly or mainly to double taxation.
5. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Parties are members, or by a general principles of international law, nothing in this agreement shall prevent either Party or any of its investors from taking advantage of whichever rules are the more favorable to his case.

This Article shall not hinder the Parties to adopt, maintain or achieve any measure considered appropriate to secure that investments in its territory comply with its legislation related to the environment.

Article 4. Migratory Situation of Investors

Each Party shall permit the entry and stay in its territory to investors of the other Party and to the persons hired by them, with the purpose of establishing, development, management or assessment of the function of investment, in which such investors have undertaken or are ready to undertake capital or other resources, subject to the legislation of each Party, relating to the entry and stay of foreigners in its respective territories.

Article 5. Property Protection

1. Investments of investors of either Party shall enjoy full protection and security in the territory of the other Party.
2. Investments of investors of either Party shall not be nationalized expropriated or subjected, direct or indirectly, to measures having effect equivalent to nationalization or expropriation in the territory of the other Party except for public purpose or social interest and in that case, it shall be compensated.
3. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge. The expropriation shall be effective without delay and shall include interest, at the banking rate from the date of expropriation until the date of payment and shall be effectively realizable and be freely transferable. Measures to settle and satisfy the compensation shall be taken at the latest in the moment of expropriation or nationalization.

4. Where investment of investors of either Party suffer losses owing to war, armed conflict, a state of national emergency, revolt or other similar events the territory of the other Party, such investors shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Party accords to its own investors or to investors of any third State.

Article 6. Transfers

1. The Party in which territory .the investment has been made shall guarantee to the investors of the other Party after the settlement of fiscal obligations. the freely transfer of payments related. to investments. Such transfers shall include in particular, though not exclusively :

(a) Capital and addition mounts to maintain or increase the investment;

(b) Returns,

(c) Proceeds of sale or liquidation, total or partial, of the investment;

(d) Funds in repayment of loans;

(e) Compensations pursuant to Article 5;

(f) Salaries and other remuneration of the citizens of a Contracting Party who are allowed to work in the territory of the other Contracting Party in connection with an investment.

2. The transfers mentioned in Article 5, paragraphs 3 and 4, and Articles 6 and 7, shall be made without delay in a freely convertible currency at the market exchange rate prevailing on the date of transfer. Transfers shall be considered to have been made "without any undue delay" when they have been made within the period normally necessary for the completion of the formalities of transfer. This period shall in no case exceed two months and shall begin at the moment of delivery of the request.

3. Notwithstanding, each Party shall hinder the transfers by means equitable and non discriminatory application of its legislation in the following cases:

a) Bankruptcy, insolvency or creditor rights protection;

b) Penal or administrative infractions;

c) Guarantee for the completion of awards in a contentious proceeding;

d) Nonfulfilment of tributary obligations; or

e) Nonfulfilment of labor obligations.

Article 7. Subrogation

1. If a Party makes a payment to its own investors under a guarantee against non commercial risks it has accorded in respect of an investment in the territory of the other Party, the latter Party shall recognize the assignment, of any right of claim by the investor to the former Party which, besides, is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor, without prejudice of the rights of the former Party, in accordance with the provisions of Article 9 of this Agreement.

2. The transfers of this payments shall be governed mutatis mutandis by Article 5, paragraphe 3 and 4, and Article 6.

Article 8. Application of the Agreement

This Agreement shall also apply to investments of one Party in the territory of the other Party before its entry into force, but shall not apply to any dispute arose before its entry into force.

Article 9. Settlement of Disputes between the Government of a Party and an Investor of the other Party

1. Any dispute which may arise between the Government of a Party and an investor of the other Party in connection with an investment shall be, as far as possible, settled by means of amicable consultations between the parties to the dispute.

2. If any dispute between an investor of one Party and the Government of the other Party cannot be thus settled within six months from the start of the consultations, the investor shall be entitled to submit the case, at his choice, for settlement to:

a) The competent tribunal or administrative tribunal of the Party which is the party to the dispute.

b) The International Center for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, in case both Parties are members of this Convention; or

c) An arbitrator or international ad-hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules.

3. Once the investor has submitted the dispute to the competent tribunals of the Party where the investment has been made or to an international tribunal, this submission shall be definitive.

4. The Arbitration Tribunal shall give its ruling on the basis of the provisions of the present Agreement, the rules and principles of international law as well as 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 terms of particular agreement concluded in respect to investments.

5. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.

Article 10. Settlement of Disputes between the Parties

1. Disputes between the Governments of the Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through consultations or friendly negotiations.

2. If the dispute cannot be thus settled within six months from the date the dispute has been notified, it shall upon the request of either Government of the Parties be submitted to an Arbitral ad-hoc Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted by three members in the following way: within two months from the receipt of the request for arbitration, each Party shall appoint one member of the Tribunal. These two members shall within thirty days, from the appointment of the last one, select a national of a third State, who shall be appointed Chairman of the Tribunal.

4. If within the period specified in paragraph three of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointment. If it happens to be a national of either Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the appointments.

5. The Chairman of the Arbitral Tribunal shall be a national of a State with which both Parties maintain diplomatic relations.

6. The arbitration tribunal gives its ruling on the basis of the provisions of the present Agreement and the rules and principles of international laws.

7. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be definitive and binding for both Parties.

8. Each Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Parties. The Arbitral Tribunal can determine its own procedure in relation with its costs.

Article 11. Entry Into Force, Duration and Termination

1. Each Party shall notify the other the fulfillment of the domestic procedures required by their laws for the entry into force of the Agreement. This Agreement shall enter into force thirty (30) days after the date of the second notification.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force indefinitely unless either Party notifies the other Party in writing twelve months in advance of its intention to terminate this Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of (his Agreement shall remain

in force for a further period of ten years from the date of termination.

4. This Agreement shall govern even if both Parties do not maintain diplomatic relations.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Agreement.

Done in duplicate at this day of 199, in Arabic, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of MOROCCO

For the Government of the Republic of EL SALVADOR