

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF THE REPUBLIC OF EQUATORIAL GUINEA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Morocco and the Government of the Republic of Equatorial Guinea hereinafter referred to as the "Contracting Parties";

Desiring to intensify economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party;

Recognizing the positive impact that may exercise such an agreement to intensify business contacts and to enhance confidence in the field of investment;

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both countries;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every asset or direct or indirect contribution 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, including but not limited to:

- a) movable and immovable property as well as any other rights in rem such as mortgages, pledge, security interests, usufruct, and similar rights;
- b) the shares, securities and any other forms of participation in companies;
- c) monetary claims and rights to any 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 goodwill;
- e) all rights granted by law or under contract, including concessions to search for or exploit extract natural resources.

No change in the legal form in which the assets and capital have been invested or reinvested shall affect their character as "investments" within the meaning of this Agreement.

2. The term "investor" means:

- a) any natural person having Moroccan or Equatorial Guinea nationality according to the legislation of the Kingdom of Morocco or of the Republic of Equatorial Guinea respectively, and making an investment in the territory of the other Contracting Party;
- b) any legal person having its head office in the territory of the Kingdom of Morocco or of the Republic of Equatorial Guinea and incorporated under Moroccan legislation or of Equatorial Guinea respectively, and making an investment in the territory of the other Contracting Party.

3. The term "income" means the amounts yielded by an investment, such as interests, profits, capital gains, dividends, royalties or licence fees.

4. The term "territory" means:

a) for the Kingdom of Morocco: the territory of the Kingdom of Morocco including any maritime zone situated beyond the territorial waters of the Kingdom of Morocco and which has been or may hereafter be designated by the legislation of the Kingdom of Morocco, in accordance with international law as an area within which the Kingdom of Morocco exercise rights with respect to the seabed and subsoil or marine natural resources.

b) for the Republic of Equatorial Guinea: the territory of the Republic of Equatorial Guinea, including the any maritime zone situated beyond the territorial waters of the Republic of Equatorial Guinea and which has been or may hereafter be designated by the legislation of the Republic of Equatorial Guinea, in accordance with international law as an area within which the Republic of Equatorial Guinea exercise rights with respect to the seabed and subsoil or marine natural resources.

Article 2. Promotion and Protection of Investments

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

The extension, modification or transformation of an investment made in accordance with the laws and regulations in force of the Contracting Party, shall be considered as a new investment.

2. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall be accorded by the latter Party fair and equitable treatment and, subject to the measures strictly necessary for the maintenance of public order, full protection and security.

Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal in its territory of the Investments of the other Contracting Party are not hindered by unjustified or discriminatory measures. The income from the investment, in case of its reinvestment in accordance with the legislation of a Contracting Party, shall enjoy the same protection as the original investment.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord in its territory to investments of investors of the other Contracting Party treatment no less favourable than that accorded to investments of its own investors or to investments of the most favoured nation, whichever treatment is more favourable to the investment.

2. Each Contracting Party shall grant in its territory to investors of the other Contracting Party, in respect of activities relating to their investments, treatment no less favourable than that it accords to its own investors or to investors of the most favoured nation, whichever is more favourable to the investor.

3. Most-favored-nation treatment shall not apply to privileges which a Contracting Party accords to investors of a third State by virtue of its participation in or association with a free trade area, economic or customs union, common market or other form of regional economic organization, or a similar international agreement or convention for the avoidance of double taxation in respect of taxes or any other agreement relating to taxes.

4. Each Contracting Party shall, in accordance with its laws relating to the entry, residence and work of foreigners, permit investors of the other Contracting Party to employ, in connection with the activities of their investments, managerial personnel of their choice.

Article 4. Expropriation and Compensation

1. Measures of nationalization, expropriation or any other measure having equivalent effect, which may be taken by the authorities of one of the Contracting Parties against investments made by investors of the other Contracting Party shall not be discriminatory or motivated by reasons other than those of public utility.

2. The Contracting Party which has taken such measures shall pay to the entitled party, without delay, fair and equitable compensation equal to the market value of the investment on the day before the measures are taken or made public.

3. Arrangements for the determination and payment of the compensation shall be made promptly at the latest at the time of expropriation. In case of delay in payment, the compensation shall bear interest at market rates from the date of its due date. The compensation shall be paid to the investors in convertible and freely transferable currency.

Article 5. Compensation for Losses

Investors of one of the Contracting Parties whose investments suffer damage or loss as a result of war or any other armed conflict, revolution, national emergency, revolt, insurrection, or any other similar event in the territory of the other Contracting Party, shall be accorded by the latter Party non-discriminatory treatment at least equal to that accorded to its own investors or to investors of the most favoured nation with respect to restitution, compensation, indemnification or other relief, whichever is more favourable to the investor.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after the payment of taxes, the free transfer of payments relating to their investments. Such transfers shall be effected without undue delay in a freely convertible currency and include in particular, though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Interests, profits, dividends, royalties and other current income;
- c) The necessary funds in repayment of loans related to investments;
- d) The proceeds from a total or partial liquidation of the investment;
- e) The compensation pursuant to articles 4 and 5.
- f) Wages and other remuneration accruing to nationals of one Contracting Party who have been authorised to work in the territory of the other Contracting Party in connection with an investment.
- g) Payments arising out of the settlement of disputes.

2. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of transfer and under the laws of the Contracting Party in whose territory the investment is made.

3. The guarantees provided for by this Article shall be at least equal to those accorded to investors of the most favoured nation in similar situations.

Article 7. Subrogation

1. If under a legal or contractual guarantee covering non-commercial risks of investments, compensation is paid to an investor of one of the Contracting Parties, the other Contracting Party shall recognize the subrogation of the insurer in the rights of the compensated investor.

2. In accordance with the guarantee given for the investment concerned, the insurer shall be entitled to assert all the rights which the investor could have exercised if the insurer had not been subrogated to him.

3. Any dispute between a Contracting Party and the insurer of an investment of the other Contracting Party shall be governed by the provisions of Article 9 of this Agreement.

Article 8. Applicable Rules

Where a matter relating to investments is governed both by this Agreement and by the national legislation of one of the Contracting Parties or by existing international agreements or agreements entered into by the Contracting Parties in the future, the investors of the other Contracting Party may avail themselves of the provisions which are more favorable to them.

Article 9. Settlement of Investment Disputes

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled as amicably as possible by consultations and negotiations between the parties to the dispute.

2. If the dispute is not settled amicably by direct agreement between the parties to the dispute within six months from the date of written notification, the dispute shall be submitted, at the option of the investor, either

- (a) either to the competent court of the Contracting Party in whose territory the investment was made

b) or for arbitration to the International Centre for Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature in Washington, D.C. on March 18, 1965.

To this end, each of the Contracting Parties irrevocably consents to the submission of any investment dispute to this arbitration procedure;

(c) to an ad hoc arbitral tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Neither of the Contracting Parties to a dispute may object, at any stage of the arbitration proceedings or of the enforcement of an arbitral award, to the fact that the investor, as an adverse party to the dispute, has made an indemnity covering all or part of its losses under an insurance policy.

4. The arbitral tribunal shall decide the dispute on the basis of the national law of the Contracting Party, party to the dispute, in whose territory the investment is located, including the rules of conflict of laws, the provisions of this Agreement, the terms of any special agreements entered into with respect to the investment and the principles of international law.

5. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce such awards in accordance with its domestic law.

Article 10. Settlement of Disputes between the Contracting Parties

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

2. In the absence of a settlement within six months after the beginning of negotiations, the dispute shall be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.

3. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph (3) above 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 he is prevented from exercising this function, 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 exercising his mandate, the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this 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 on the Contracting Parties.

6. The tribunal shall determine its own rules of procedure.

7. Each Contracting Party shall bear the cost 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 the Contracting Parties.

Article 11. Application

This Agreement shall also cover investments made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with its laws and regulations. However, this Agreement shall not apply to disputes that may arise before its entry into force.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force 30 days from the date of receipt of the last of the two written notifications relating to the completion by the two Contracting Parties of the constitutional procedures required in their respective countries.

It shall remain in force for a period of ten years unless one of the Contracting Parties denounces it in writing at least six months before the expiration of its period of validity. It shall be tacitly renewed each time for a further period of ten years, each Contracting Party reserving the right to denounce it by written notification at least six months before the expiry of the current period of validity.

2. Investments made prior to the date of termination of this Agreement shall remain subject to it for a period of ten years from the date of such termination.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement.

Done at Rabat on 5 July 2005 in two originals each in the Arabic, French and Spanish 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

Fathallah OUALALOU

Minister of Finance and Privatization

FOR THE GOVERNMENT OF THE REPUBLIC OF EQUATORIAL GUINEA

Marceline OWONO EDU

Minister of Finance and Budget