

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF THE REPUBLIC OF GUINEA-BISSAU ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

THE GOVERNMENT OF THE KINGDOM OF MOROCCO,

THE GOVERNMENT OF THE REPUBLIC OF GUINEA-BISSAU, hereinafter referred to as the "Contracting Parties";

DESIRING to strengthen their economic co-operation by creating favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

CONSIDERING the beneficial influence which this Agreement may have on improving business contacts and confidence in the field of investment;

RECOGNIZING the need to encourage and protect foreign investment with a view to promoting the economic prosperity of both Contracting Parties;

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means any asset invested by investors of one Contracting Party in the territory of the other Contracting Party and includes, but is not limited to:

(A) movable and immovable property, as well as all property rights such as mortgages, pledges, pledges, or other similar rights in accordance with the Laws;

(B) shares, shares, bonds and all other forms of participation in the capital of enterprises;

C) monetary claims or any other claim having an economic value directly linked to an investment, with the exception of:

(i) monetary claims arising solely from commercial contracts for the sale of goods and services;

(ii) the extension of appropriations for a commercial transaction, such as

Trade finance;

D) intellectual property rights, as defined in the Multilateral Agreements concluded under the auspices of the World Intellectual Property Organization, in which both Contracting Parties are Parties, including copyrights, trademarks, Franchises, industrial designs, patents, technical processes, trade names and any other industrial property rights;

E) concessions under public law conferred by law or contract, including concessions to prospect, cultivate, extract or exploit natural resources in the territorial areas under the jurisdiction of the Contracting Party concerned.

No change in the legal form in which assets and capital have been invested or reinvested shall affect their character as "investments", provided that such modification is not inconsistent with the provisions of this Agreement and the Laws and Regulations In force of the Contracting Party in whose territory the investment is made.

Such investments shall be made in accordance with the laws and regulations in force of the Contracting Party in whose territory such investments are made.

2. The term "investor" means any natural or legal person of a Contracting Party who invests in the territory of the other Contracting Party:

A) The term "natural person" means a natural person having the nationality of a Contracting Party in accordance with its laws; Provided, however, that the natural person who enjoys dual nationality shall be deemed to be exclusively a citizen of the State where his nationality is dominant and effective;

(B) The term "legal person" means any entity which is established or constituted in accordance with the laws and regulations of a Contracting Party carrying on an economic activity within the scope of this Agreement and which is effectively controlled directly Or indirectly, by nationals of that Contracting Party. For greater certainty, a legal person having its head office in the territory of a Contracting Party, its activities must have a real and continuous link with the economy of the other Contracting Party.

A Contracting Party may refuse to grant the advantages of this Agreement to an investment which is held or controlled by persons having the nationality of a State which does not have diplomatic relations with that Contracting Party, Investment is made, this investment will not benefit from this Agreement.

3. The term "income" means the amounts yielded by an investment, including but not limited to profits, interest, dividends and royalties.

4. the term "territory" means:

(A) in respect of the Kingdom of Morocco: the territory of the Kingdom of Morocco including any maritime area beyond the territorial waters of the Kingdom of Morocco which has been or may hereafter be designated by the legislation of the Kingdom of Morocco in accordance with Its domestic law and international law as an area within which the rights of the Kingdom of Morocco relating to the seabed and subsoil and to natural resources may be exercised.

(B) in the case of Guinea-Bissau: the term "territory" means the land and territorial waters of the Republic of Guinea-Bissau and the exclusive economic zone and the continental shelf on which, in accordance with international law, the State Exercises its sovereignty and jurisdiction over exploitation and the preservation of natural resources.

5. "freely convertible currency" means currency which is widely used for making payments of international transactions and widely traded on the principal international exchange markets.

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

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party who make investments in its territory and shall admit such investments in accordance with its laws and regulations.

The extension, modification or transformation of an initial investment made in accordance with the laws and regulations in force in the host country shall be considered as a new investment within the meaning of this Agreement.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded by the latter Contracting Party fair and equitable treatment in accordance with international law and the provisions of this Agreement And enjoy full protection and security.

Neither Contracting Party shall prevent unjustified, arbitrary, abusive or discriminatory measures in the management, maintenance, use, enjoyment or disposal in its territory of investments made by investors of the other Contracting Party.

Investment income, in the event of reinvestment in accordance with the laws and regulations of the Contracting Party in whose territory

The investment is located, enjoy the same protection as the initial investment.

3. Nothing in this Agreement shall be interpreted so as to preclude a Contracting Party from taking such action as it deems necessary for reasons of security or for the maintenance of public order or the protection of public health Or the environment, provided that such measures are not applied in a discriminatory, abusive or unjustified manner.

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall grant in its territory investments by the other Contracting Party treatment not less favorable than that which it accords in similar circumstances to investments of its own investors or investments of investors Most-favored-nation treatment, with the most favorable treatment for the investor concerned.

Each Contracting Party shall grant to investors of the other Contracting Party, in respect of activities related to their investments, treatment no less favorable than that which it accords in similar circumstances to its own investors Or most-favored-nation investors, with the most favorable treatment for the investor concerned.

2. Notwithstanding paragraph 1 above, most-favored-nation treatment shall not apply with respect to the right of an investor to submit a dispute arising under this Agreement to any dispute settlement procedure other than Which is provided for in this Agreement.

3. The most-favored-nation treatment referred to in paragraph (1) above shall not apply to the privileges and advantages which a Contracting Party grants to investors of a third State by virtue of its Its existing or future association with a free trade area, an economic, monetary or customs union, a common market or any other form of regional economic organization or similar international agreement or under a convention to avoid double Taxation or any other tax treaty.

## **Article 4. Expropriation and Indemnification**

1. Measures of nationalization, expropriation or any other measure having the same effect (hereinafter referred to as "expropriation") as may be taken by the authorities of one Contracting Party against investments by investors The other Contracting Party shall be neither discriminatory nor motivated by reasons other than public utility. Expropriation measures must be carried out in accordance with the legal procedure.

2. The Contracting Party which has taken such measures shall pay to the person entitled, without undue delay, an indemnity the amount of which shall be the fair market value of the investment expropriated on the day before the Expropriation shall be made or made public, whichever occurs first.

3. The provisions for the determination and payment of compensation shall be taken promptly, adequately and effectively at the latest at the time of expropriation. In the event of late payment, the indemnity will bear interest at market conditions from the date of its payment until the date of payment. The indemnity shall be effectively realizable and freely transferable and in freely convertible currency.

4. The expropriated investor shall have the right, under the laws and regulations of the expropriating Contracting Party, to prompt review of his case by the courts or other competent authority of that Contracting Party, And payment of compensation, in accordance with the principles set out in this Article.

## **Article 5. Damage for Losses**

Investors of one Contracting Party whose investments would be suffered in the territory of the other Contracting Party from damage or loss due to war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or any other Shall be accorded by the latter Party non-discriminatory treatment and at least equal to that accorded to its own investors or to investors of the most favored nation in respect of refunds, compensation, compensation or other compensation, With the most favorable treatment being retained. The corresponding payments shall be transferable without undue delay in freely convertible currency.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of one Contracting Party in one of the situations referred to in that paragraph who suffer losses in the territory of the other Contracting Party as a result of:

(A) the requisition of their property by the authorities of the latter Contracting Party,

(B) the destruction of their property by the authorities of the latter Contracting Party, without the latter being caused by a combat action or required by the necessity of the situation,

Will receive fair and adequate compensation for losses incurred during the requisition or resulting from the destruction of their property. The corresponding payments shall be freely transferable without undue delay in freely convertible currency.

## **Article 6. Transfers**

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to such investors, after payment of the tax obligations, the free transfer in convertible currency and without undue delay of Payments relating to such investments, and in particular:

A) initial capital or additional amounts to maintain or increase the investment;

(B) profits, dividends, interest, royalties and other current income;

(C) amounts required to repay borrowings relating to the investment;

D) the proceeds of a sale or the total or partial liquidation of the investment;

(E) compensation payable under Articles 4 and 5;

(F) wages and other remuneration accruing to nationals of one Contracting Party who have been authorized to work in the territory of the other Contracting Party in respect of an investment;

G) payments arising from a settlement of disputes, in accordance with Article 9,

2. The transfers referred to in paragraph (1) above shall be made at the rate of exchange applicable on the date of the transfer and in accordance with the exchange regulations in force in the territory of the Contracting Party in which the investment was made.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, either Contracting Party may, on a non-discriminatory basis, adopt or maintain measures concerning the free transfer of capital:

(A) when its balance of payments faces serious financial difficulties or is likely to be so;

(B) in the case of exceptional circumstances in which capital movements cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies; or

(C) to protect the rights of creditors.

4. The measures referred to in paragraph 3 of this Article shall:

(A) not exceed those necessary to meet the circumstances set out in paragraph 3 of this Article;

(B) be applied for a limited period of time and disposed of as soon as conditions permit;

(C) be communicated immediately to the other Contracting Party.

5. The guarantees provided for in this Article shall be at least equal to those granted to investors of the most favored nation who are in similar situations.

## **Article 7. Subrogation**

1. If a Contracting Party or the body designated by it (hereinafter referred to as "the Insurer") makes a payment to its own investors under a guarantee or a contract of insurance against risks not commercial in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation of the insurer in all rights and claims arising therefrom and shall recognize that the insurer is entitled to exercise these rights and to make claims in the same scope as the original investor.

2. This subrogation will enable the insurer to be the direct beneficiary of any payment for compensation or other compensation that the investor may be entitled to.

3. Any dispute between a Contracting Party and the insurer of an investment of the other Contracting Party shall be settled in accordance with the provisions of Article 9 of this Agreement.

## **Article 8. Applicable Rules**

Where a question relating to investments is governed both by this Agreement and by the national legislation of one of the Contracting Parties or by international conventions existing or subscribed by the Parties in the future, investors of the other Party Contracting Party may avail themselves of the provisions which are most favorable to them,

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

1. Any dispute relating to investments between an investor of one Contracting Party and the other Contracting Party concerning an obligation of that Contracting Party under this Agreement shall be notified in writing to the Contracting Party in whose territory the investment is realized. The Dispute shall, as far as possible, be settled amicably by consultation and negotiation between the parties to the dispute.

2. If, within six (6) months of the date of the claim, no solution has been found, the dispute shall be submitted, at the option

of the investor,

(A) to international arbitration, under the conditions described in paragraph (3) below.

(B) to the competent court of the Contracting Party in whose territory the investment was made;

3. In the event of recourse to international arbitration, the dispute may be referred to one of the following arbitration bodies, at the choice of the investor:

(A) the International Center for the Settlement of Investment Disputes (ICSID), established by the "Convention for the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature in Washington, IR March 1965; or

(B) an ad hoc arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (C.N.U.D.C.I).

To this end each Contracting Party shall give its irrevocable consent that any dispute relating to investments shall be referred to the arbitral procedure referred to in subparagraphs (a) and (b) of that paragraph or to the tribunal referred to in subparagraph (b) Of paragraph 2 above.

If the investor chooses to submit the dispute to arbitration in accordance with subparagraphs (a) and (b) of this paragraph, the investor's choice is irrevocable.

4. Neither Contracting Party which is a party to a dispute may raise any objection at any stage of the arbitration procedure or the enforcement of an arbitral award to the fact that the investor, the adverse party to the dispute, Received an indemnity covering all or part of his losses under an insurance policy.

5. The Arbitral Tribunal shall decide on the basis of the national law of the Contracting Party, the party to the dispute, in whose territory the investment is situated, including conflict of laws rules, the provisions of this Agreement and Principles of international law.

6. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce these awards in accordance with its national 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, through diplomatic channels.

Failing this, the dispute shall be submitted to an ad hoc joint committee composed of the representatives of the Contracting Parties; The latter shall meet without delay at the request of the most diligent Contracting Party.

2. If the ad hoc Joint Committee can not settle the dispute within six (6) months from the beginning of the negotiations, it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. Such tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator, and the two arbitrators shall jointly designate a third arbitrator, who shall be a national of a third State, as President of the tribunal.

The arbitrators shall be appointed within three (3) months, the President within five (5) months from the date on which one of the Contracting Parties notified the other Contracting Party of his To submit the dispute to an arbitral tribunal.

4. If the time limits laid down in paragraph (3) above have not been complied with, either Contracting Party shall invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of one of the Contracting Parties, 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 has the nationality of one of the Contracting Parties 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 Party Contracting Parties, shall be invited to make such appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and of 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. Each Contracting Party shall apply this decision in accordance with its laws and regulations.

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

7. Each Contracting Party shall bear the expenses of its arbitrator and of its representation in the arbitration proceedings. The costs of the President and other costs shall be borne equally by the Contracting Parties.

## **Article 11. Consultations**

Each Contracting Party shall promptly agree to consultations on the interpretation or application of this Agreement at the request of the other Contracting Party.

## **Article 12. Application**

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

## **Article 13. Entry Into Force, Validity and Expiry**

1. This Agreement shall be subject to ratification and shall enter into force 30 days from the date of receipt of the last of the two notifications relating to the performance by both Contracting Parties of the constitutional procedures in their respective countries.

It shall remain in force for a period of ten (10) years. Unless one of the Contracting Parties denounces it for at least six (6) months before the expiry of its period of validity, it shall be automatically renewed for a further period of ten (10) years each Contracting Party shall, Reserving the right to denounce it by written notice at least six (06) months before the expiry date of the current validity period.

2. This Agreement may be amended by mutual consent between the two Contracting Parties. If consent is not given, the Contracting Party which has requested the amendment shall have the right to denounce the present Agreement unilaterally. In this case, the Agreement shall be considered as terminated. Amendments to this Agreement shall enter into force in accordance with the procedure required for the entry into force of this Agreement provided for in paragraph 1 of this Article.

3. Investments made prior to the date of expiry of this Agreement shall remain in force for a period of ten (10) years from the date of expiry.

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

Done at, in two originals, in the

Arabic, Portuguese and French texts being equally authentic.

In case of divergence of interpretation, the French version shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO

FOR THE GOVERNMENT OF THE REPUBLIC OF

GUINEA-BISSAU