

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA AND THE GOVERNMENT OF THE KINGDOM OF MOROCCO ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Macedonia and the Government of the Kingdom of Morocco, hereinafter referred to as "Contracting Parties",

Desiring to intensify their economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments under this Agreement shall be conducive to the stimulation of business in both States,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of the present Agreement:

1. "Investments" shall mean every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made and shall include in particular, though not exclusively:

a) movable and immovable property and any related property rights, such as mortgages, liens, pledges and other similar rights under the law;

b) shares, stocks, debentures and any other form of participation in companies;

c) claims to money and claims under a contract having a financial value and loans directly related to a specific investment, except:

(i) claims to money that arise solely from commercial contracts for the sale of goods and services; and

(ii) the extension of credit in connection with a commercial transaction, such as trade financing;

d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are Parties to them, including copyrights, patents, trademarks, trade names, franchises, industrial designs, technical processes and other similar rights;

e) any right to conduct economic activities conferred by law or under contract, including concessions granted in accordance with applicable regulations, that regulate the performance of activities including to search for, cultivate, extract or exploit natural resources including those situated in maritime areas falling under the jurisdiction of either party.

Any alteration of the legal form in which assets are invested or reinvested shall not affect their qualification as investments provided that such alteration is not in conflict with the provisions of this Agreement and the legislation of the Contracting Party in whose territory the investment is made.

2. "Investor" shall mean any natural or legal person of one Contracting Party that invests in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party:

a) the term "Natural person" shall mean a physical person having the nationality of that Contracting Party in accordance

with its law; and

b) the term "Legal person" shall mean any entity constituted or organised on the territory of one Contracting Party in accordance with the laws and regulations in force in that Contracting Party and having its headquarters together with its main economic activities in the territory of that Contracting Party.

3. "Returns" shall mean the amounts yielded by investments and includes in particular, though not exclusively, profits, interests, capital gains, dividends and royalties.

4. "Territory" means:

- With respect to the Republic of Macedonia: the territory of Republic of Macedonia, including land, water and airspace, over which the State concerned exercises, in accordance with international Law, sovereign rights and jurisdiction of such areas;

- With respect to the Kingdom of Morocco: the territory of the Kingdom of Morocco, including any maritime area situated beyond the territorial waters of the Kingdom of Morocco which has been or might be in the future designated by the laws of the Kingdom of Morocco, in accordance with international law, as being an area into which the rights of the Kingdom of Morocco relative to the sea-bed and to the maritime subsoil as well as to natural resources can be exercised.

5. "Freely Convertible Currency" shall mean a currency that is widely used to make payments for International transactions and widely exchanged in principal international exchange markets.

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

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

2. Any extension or transformation of an initial investment must be made in accordance with the laws and regulations in force in the Contracting Party in whose territory the investment is made. Such an extension or transformation shall be considered as a new investment, in the meaning of this Agreement.

3. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment, by the latter Contracting Party, in accordance with the principles of International Law, and shall enjoy full protection and security.

4. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in the territory of its State of investors of the other Contracting Party.

5. Investment returns, in case of their reinvestment in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, enjoy the same protection as that accorded to the initial investment.

6. Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any action that is considered as necessary for the protection of public security, order or public health or protection of environment, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustified discrimination.

## **Article 3. National and Most Favoured Nation Treatment**

1. Each Contracting Party shall accord in the territory of its State to investments of investors of the other Contracting Party treatment which is not less favourable than that it accords, in like circumstances, to investments of investors of its own State or to investments of investors of any third State, whichever is more favourable to the investor concerned.

2. Each Contracting Party shall accord in the territory of its State to investors of the other Contracting Party, as regards to the activities in connection with their investments, a treatment not less favourable than that it accords, in like circumstances, to investors of its own State or to investors of any third State.

3. The provisions in this Article relating to treatment not less favourable than that accorded to investments of investors and to investors of any third State shall not be construed so as to oblige one Contracting Party to extend to investments of investors and to investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

a) Any existing or future economic, monetary or customs union, free trade area, or similar international agreements, including other forms of regional economic cooperation, to which either of the Contracting Parties is or may become a party;

b) Any international agreement or arrangement relating to taxation.

## **Article 4. Compensation for Tosses**

Investors of one of the Contracting Parties whose investments suffer damages or losses owing to war, armed conflict, revolution, a state of national emergency, revolt, insurrection, riot 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 shall not be less favourable than that it accords to investors of its own State or to investors of any third State. Resulting payments shall be transferable without undue delay, in a convertible and freely transferable currency.

## **Article 5. Expropriation and Compensation**

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be subjected to any expropriation or nationalisation measures or any other measures having the effect of dispossession (hereinafter referred to as "expropriation"), unless the following conditions are complied with:

- a) the measures are taken in the public interest and under due process of law;
- b) they are taken on a non-discriminatory basis;
- c) they are accompanied by payment of adequate and effective compensation.

2. The amount of such compensation shall represent the real market value of the expropriated investment immediately before the measure was taken or before the impending measure became publicly knowledge.

3. Such compensation shall be paid without undue delay. In case of a delay in payment, the compensation shall carry interest calculated from the due date until the date of payment, in accordance with national legislation of the Contracting Party in whose territory the investment has been expropriated. Resulting payments shall be effectively realizable and freely transferable without undue delay, in a convertible and freely transferable currency.

## **Article 6. Transfers**

1. In respect of investments made in its territory by investors of the other Contracting Party, either Contracting Party shall permit to investors of the other Contracting Party, after fulfilment of their fiscal obligations, the transfer of payments related to their investments. Such transfers shall include, in particular, though not exclusively:

- a) capital and additional amount aiming to maintain or to increase an investment;
- b) investment returns, as defined in Article 1;
- c) amounts necessary to reimburse loans related to investments;
- d) proceeds from the total or partial sale or liquidation of an investment;
- e) compensations under Articles 4 and 5 of this Agreement;
- f) salaries and other remuneration of nationals of each Contracting Party who have been allowed to work in the territory of the other Contracting Party in connection with an investment;
- g) payments arising out of the settlement of a dispute pursuant to Article 8 of this Agreement.

2. The transfers of payments referred to in the paragraph 1 of this Article shall be made, without undue delay, in a freely convertible currency, at the official rate of exchange applicable on the date of transfer, pursuant to the exchange regulations and procedures in force in the territory of the Contracting Party in whose territory investments have been made.

3. Notwithstanding paragraphs 1 and 2 of this Article, either Contracting Party may, on non-discriminatory basis, adopt or maintain measures relating to cross-border capital and payment transactions:

- a) in the event of serious balance of payments and external financial difficulties or threat thereof; or
- b) in cases where, in exceptional circumstances, movements of

Capital 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. Measures referred to in paragraph 3 of this Article shall:

a) not exceed those necessary to deal with the circumstances set out in paragraph 3 of this Article;

b) be temporary and shall be eliminated as soon as conditions permit it; and

c) be promptly notified to the other Contracting Party.

5. The Contracting Parties shall accord to transfers of payments referred to in this Article a treatment not less favourable than that accorded to transfers of payments originating from investments made by investors of a third State.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency (hereinafter referred to as "Insurer") makes a payment to its own investors under a guarantee or insurance against non-commercial risks in respect of investments made 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. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

3. In the case of subrogation as defined in the paragraph 1 of this Article, the investor shall not pursue a claim unless he is authorised to do so by the Contracting Party or its designated Agency.

4. Any dispute between one Contracting Party and the Insurer shall be settled in accordance with the provisions of Article 8 of this Agreement.

## **Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an alleged violation of one or more provisions of this Agreement in respect of an investment shall be notified in writing, including detailed information, by the investor to the Contracting Party on whose territory the investment is made. As far as possible, the parties involved in the dispute shall endeavour to settle the dispute amicably or by consultation and negotiation. They may, upon the initiative of either of them and as a part of their consultation and negotiation, agree to rely upon non-binding, third-party procedures such as mediation.

If the dispute can not be settled within six months from the date of request for settlement, the dispute may be submitted on the investor's choice to:

a) the competent court of the Contracting Party in whose territory the investment has been made, or

b) the International Centre for Settlement of Investment Disputes (ICSID) established by the "Convention for Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington on March 18th 1965, or

c) an arbitration ad-hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

2. For this purpose, each Contracting Party shall give its irrevocable consent to the submission of disputes to international arbitration set out in subparagraphs (b) and (c) of this Article.

3. Once the investor has chosen to submit the dispute to the competent

been made or arbitration as provided under the subparagraphs (b) and (c) of this Article, such choice shall be irrevocable for the investor.

4. The arbitral tribunal shall rule on the basis of the national law of the Contracting Party involved in the dispute in whose territory the investment is situated, including the rules relating to conflicts of law, the provisions of this Agreement, as well as universally accepted principles of the international law.

5. Arbitral decisions shall be final and binding on either party to the dispute. Each Contracting Party commits to enforce these decisions in accordance with laws and regulations of its State.

## **Article 9. Settlement of Disputes between the Contracting Parties**

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

2. If the dispute cannot be settled within six months, it shall upon the request of either Contracting Party be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State to be appointed 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 within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, 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 otherwise prevented from discharging the said 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 also prevented from discharging the said function, the member of the International Court of Justice next in seniority in office who is not a national of either Contracting Party shall be invited to make the appointments.

5. The arbitral tribunal rules on the basis of the provisions of the present Agreement and rules and principles of international law. The tribunal shall reach its decisions by a majority of votes. The decision shall be final and binding for both Contracting Parties. Each Contracting Party commits to enforce these decisions in accordance with the laws and regulations of its State.

6. The tribunal decides on its own procedure.

7. Each Contracting Party shall bear the expenses of its arbitrator and its representation in the arbitration proceedings. The expenses of the Chairman and any other expenses shall be borne in equal parts by the Contracting Parties.

## **Article 10. More Favourable Provisions**

If the domestic law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments made by investors of the State of the other Contracting Party to a treatment more favourable than that provided by this present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

## **Article 11. Consultations**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to hold consultations on the interpretation or application of this Agreement.

## **Article 12. Application**

This Agreement shall apply to investments made in the territory of one Contracting Party in accordance with its laws and regulations by investors of the other Contracting Party, prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute raised or any claim concerning Investments made before the entry into force of this Agreement.

## **Article 13. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty days after the date of the latter notification of the Contracting Parties that their respective internal constitutional requirements, necessary for entry into force of this Agreement, have been fulfilled.

2. This Agreement shall remain into force for an initial period of ten years. It shall be automatically renewed for consecutive periods of ten years, unless, at least one year before the expiration of any subsequent period, one of the Contracting Parties

notifies, by written notice through diplomatic channels, the other Contracting Party of its intention to terminate the Agreement.

3. This Agreement may be amended by mutual consent between the Contracting Parties. The Amendments of the Agreement shall enter into force in accordance with the procedure required for entering into force of the present Agreement set up in paragraph 1 of this Article.

4. In respect of investments made prior to the date of termination of this Agreement, the provisions of Article 1 to Article 12 relating to such investments shall remain in force for a period of ten years from the date of the termination of this Agreement

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

Done at Rabat on 11th May 2010 in two originals, each in Macedonian, Arabic and English language, the three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Macedonia

For the Government of the Kingdom of Morocco