

Agreement between the Government of the Kingdom of Morocco and the Government of Romania concerning the Reciprocal Encouragement and Protection of Investments

Agreement between the Government of the Kingdom of Morocco and the Government of Romania concerning the encouragement and reciprocal protection of investments

The Government of the Kingdom of Morocco and the Government of Romania referred to hereinafter as "" 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 with a view to improving the 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 owned by an investor of a Contracting Party in respect of property rights, and financial resources invested in the territory of the other contracting party, in accordance with the laws and regulations of the latter and in particular, though not exclusively: ownership rights in movable and immovable property as well as any other rights in rem servitudes, such as mortgages, liens, pledges; actions and other forms of participation in companies formed in the territory of one of the contracting parties; reinvested earnings; the obligations and rights, claims to any performance having an economic value; intellectual and industrial property rights, such as copyrights, patents, trademarks, service marks, trade names, names, goodwill and other similar rights recognized by the national laws of the Contracting Party; and the concessions under public law, including concessions to search for and extract exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law. ownership rights in movable and immovable property as well as any other rights in rem servitudes, such as mortgages, liens, pledges; actions and other forms of participation in companies formed in the territory of one of the contracting parties; reinvested earnings; the obligations and rights, claims to any performance having an economic value; intellectual and industrial property rights, such as copyrights, patents, trademarks, service marks, trade names, names, goodwill and other similar rights recognized by the national laws of the Contracting Party; and the concessions under public law, including concessions to search for and extract exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their character as "investment within the meaning of the present agreement on condition that such change is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

2. The term investor means: in the case of the Kingdom of Morocco, any natural person having Moroccan nationality under the legislation of the Kingdom of Morocco and making an investment in the territory of Romania. in respect of Romania, natural persons who have Romanian citizenship in accordance with the laws and regulations in force in Romania, and making an investment in the territory of the Kingdom of Morocco. any legal person having its head office in the territory of the Kingdom of Morocco or of Romania and incorporated under Moroccan legislation or Romanian respectively and making an investment in the territory of the other contracting party. in the case of the Kingdom of Morocco, any natural person

having Moroccan nationality under the legislation of the Kingdom of Morocco and making an investment in the territory of Romania. in respect of Romania, natural persons who have Romanian citizenship in accordance with the laws and regulations in force in Romania, and making an investment in the territory of the Kingdom of Morocco. any legal person having its head office in the territory of the Kingdom of Morocco or of Romania and incorporated under Moroccan legislation or Romanian respectively and making an investment in the territory of the other contracting party.

3. The term "proceeds" means those net amounts reported by an investment and in particular, though not exclusively, profits, dividends, interests, licence fees which have been approved by the competent authorities in so far as regulations of the host country.

4. The term "" territory means: for 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 and which has been or might be subsequently designated by the legislation of the Kingdom of Morocco, in accordance with international law as an area within which the rights of the Kingdom of Morocco concerning the marine seabed or the subsoil and natural resources may be exercised. Romania: for the territory under its sovereignty, as well as the sea, its subsoil and seabed, over which Romania exercises sovereign rights and jurisdiction. for 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 and which has been or might be subsequently designated by the legislation of the Kingdom of Morocco, in accordance with international law as an area within which the rights of the Kingdom of Morocco concerning the marine seabed or the subsoil and natural resources may be exercised. Romania: for the territory under its sovereignty, as well as the sea, its subsoil and seabed, over which Romania exercises sovereign rights and jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and admits such investments in accordance with its legislation.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy the latter part of this fair and equitable treatment and, subject to the measures strictly necessary for the maintenance of public order; protection and security. each Contracting Party undertakes to ensure that the maintenance, use, enjoyment or disposal within its territory of the investments of investors of the other contracting party are not hindered by unjustified or discriminatory measures.

3. Investment income, in case of reinvestment in accordance with the legislation of one Contracting Party, income from such reinvestment shall enjoy the same protection as the original investment.

4. Investments in respect of a particular undertaking of either Contracting Party to the investors of the other Contracting Party in accordance with paragraph 3 of Article 8 below shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment insofar as it contains provisions which are more favourable than those provided for in this Agreement.

Article 3. Treatment of Investments

1. Each Contracting Party shall in its territory, fair and equitable treatment to investments of investors of the other contracting party. this treatment shall not be less favourable than that granted by each contracting party to investments made within its territory by its own investors or by investors of any third State if the latter is more favourable treatment.

2. Each Contracting Party shall in its territory for investors of the other contracting party, in respect of activities related to their investments, a treatment no less favourable than that it accords to its own investors to investors or of any third State, whichever is more favourable treatment.

3. The provisions of this Agreement relating to most favoured nation treatment shall not be construed so as to oblige one contracting party to extend to investments of investors of the other Contracting Party the privileges arising from its present or future membership in a customs or economic union, a free trade area, Common Market or any other form of regional economic organization or similar international agreement, as well as the agreements for the avoidance of double taxation or any other arrangement relating to taxation.

Article 4. Expropriation and Compensation

1. The measures of expropriation, nationalization or any other measures having the same nature or the same effect that could be taken by the authorities of one Contracting Party against the investments made by investors of the other

Contracting Party shall not be discriminatory or other than for reasons of public interest.

2. The contracting party taking such measures shall contribute to the claimant, without undue delay, fair and equitable compensation in the amount will correspond to the market value of the investment concerned on the day before the date on which the measures taken or are publicly available.

3. The provisions for the purpose of fixing and the payment of compensation shall be made in a prompt no later than at the moment of the expropriation. in the event of late payment, the compensation shall include interest at market conditions as from the date of its receipt. the compensation shall be paid to investors of convertible and transferable according to the rules in force.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments suffer damage or loss due to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection, or any similar event in the territory of the other contracting party benefit, on the part of this latter in a non-discriminatory manner and not less than that accorded to its own investors or investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other indemnities, the most favourable treatment.

Article 6. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to investors, after the fulfilment of tax obligations, the free transfer of funds in convertible currency related to their investments and liquid inter alia:

- a. Current income derived from investments foreign exchange inflows, including the profits, interest, dividends, royalties;
- b. The amounts required for the repayment of loans;
- c. Capital and additional contributions to capital, in foreign currency necessary for the maintenance or development of the investments;
- d. Compensation paid pursuant to articles 4 and 5;
- e. The proceeds of the sale of or the partial or total liquidation of an investment made in foreign currency or from reinvested earnings.

2. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

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 investment risks, indemnities are paid to an investor of either Contracting Party, the other Contracting Party shall recognize the subrogation into the insurer of the Rights of the investor indemnified.

2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.

3. Any dispute between one Contracting Party and the insurer to 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

1. Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or under existing international conventions or undertaken by the parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.

2. Whenever, following the laws and other general legal provisions, either Contracting Party provides for more favourable

treatment to investors of the other contracting party than that provided for by the present Agreement, which will benefit from this favourable treatment.

3. Investors of one Contracting Party may conclude with the other contracting party of the specific commitments which cannot be contrary to this Agreement. Investments made under such specific commitments are governed by this Agreement.

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 amicably, as far as possible through consultations and negotiations between the parties to the dispute.

2. In the absence of an amicable settlement by direct arrangement between the parties to the dispute dé1 ai within a period of six months from the date of the written notification, the dispute shall be submitted, at the choice of the investor:

- a. Either to the competent court of the Contracting Party in whose territory the investment has been made;
- b. To arbitration or the International Centre for the Settlement of Investment Disputes (c.i.r.d.i.) 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.

To this end, each Contracting Party gives its consent irrevocable that any investment dispute may be submitted to the arbitration procedure.

3. Neither of the Contracting Party, Party to the dispute, can raise objection, at any stage of the arbitration proceedings or of the execution of an arbitral award, that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy.

4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party, Party to the dispute, in the territory of which the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific commitments to be entered into regarding the investment as well as the Principles of International Law

5. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the award according to 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, between the two Contracting Parties through diplomatic channels.

2. If the dispute is submitted to a joint commission composed of the representatives of the Parties; it shall meet without delay and at the request of either party.

3. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations, it shall be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.

4. 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 arbitration tribunal.

5. If the periods specified in paragraph (4) above have not been observed, one or the other 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 is a national of either Contracting Party or if he is unable to perform 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 ".

6. 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.

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

8. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

Article 11. Implementation

This Agreement shall also cover, as regards the implementation of future 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 and Termination

1. This Agreement shall be subject to ratification and shall enter into force thirty days after the date of receipt of the latter of the two notifications concerning the fulfilment by the two contracting parties requises constitutional procedures to that effect in their respective countries.

It shall remain in force for a period of ten years. unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years, each contracting party reserving the right to terminate the agreement by written notice of at least six months before the date of expiry of the current period of validity.

2. Investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from the date of its termination.

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

Done at Rabat on 28 January 1994 in two originals Romanian each in Arabic, English and French languages, all texts being equally authentic. in case of conflict the English text shall prevail.