

# **Agreement between the Government of the Kingdom of Morocco and the Government of the Republic of Côte d'Ivoire on the Reciprocal Encouragement and Protection of Investments**

The Government of the Kingdom of Morocco, of the one part, and the Government of the Republic of Côte d'Ivoire, of the other part, hereinafter referred to as the "Contracting Parties";

Desiring to strengthen their economic cooperation by creating favourable conditions for the realization of investments by investors of one of the Contracting Parties in the territory of the other Contracting Party;

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

Recognizing the need to encourage and protect foreign investment in order to promote the economic welfare of the Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement :

1. The term "investment" means any assets and any direct or indirect contribution invested by investors of one Contracting Party in the territory of the other Contracting Party, including, but not limited to :

(a) an enterprise;

(b) intellectual property rights, including copyrights, trademarks, patents, technical processes, trade names and any other industrial property rights, as well as goodwill;

(c) shares and all other forms of participation in enterprises;

(d) an obligation, an unsecured obligation or any other type of claim of a company;

(e) a loan to an undertaking ;

(f) tangible or intangible property, movable or immovable property and all other rights in rem, such as mortgages, liens, usufruct, guarantees and similar rights, in short, all related rights acquired or used for the purpose of making an economic profit or for other commercial purposes ;

(g) concessions granted by law or by contract, including such concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those in the maritime zones of the Contracting Parties;

(4) notwithstanding subparagraphs (d) and (e) of this definition, a loan or debt security granted by a financial institution is an investment only if it is considered to be regulatory capital by the Party in whose territory the financial institution is located.

2. The term "investor" means :

(a) any natural person having Moroccan or Ivorian nationality under the laws of the Kingdom of Morocco or the Republic of Cote d'Ivoire, respectively, and making an investment in the territory of the other Contracting Party ;

(b) any legal person having its registered office and effective economic activities in the territory of the Kingdom of Morocco or the Republic of Côte d'Ivoire and constituted, respectively, in accordance with the legislation of the Kingdom of Morocco or the Republic of Côte d'Ivoire and investing in the territory of the other Contracting Party.

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

4. The term "territory" means :

(a) for 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 international law, as an area within which the rights of the Kingdom of Morocco with respect to the seabed and subsoil and natural resources may be exercised;

(b) for the Republic of Côte d'Ivoire, the territory, internal waters, territorial sea, airspace, exclusive economic zone and continental shelf which extends beyond the limit of the territorial sea and over which the Republic of Côte d'Ivoire has or may have, in accordance with international law, jurisdiction or sovereign rights.

## **Article 2. Investment Promotion and Protection**

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

2. 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 in accordance with international law and the provisions of this Agreement,

The income from the investment, if reinvested in accordance with the laws and regulations of the Contracting Party in whose territory the investment is situated, shall enjoy the same protection as the original investment.

## **Article 3. Treatment of Investissements**

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

Each Contracting Party shall accord in its territory to investors of the other Contracting Party, in respect of activities related to their investments, treatment no less favourable than that which it accords in like circumstances to its own investors or to investors of the most-favoured-nation, whichever is the more favourable.

2. The most-favoured-nation treatment referred to in paragraph (1) above shall not apply to privileges and advantages which a Contracting Party grants to investors of a third State by virtue of its participation in or association with a free trade area, an economic or customs union, a common market or any other form of regional economic organization or a similar international agreement or under a convention for the avoidance of double taxation for tax purposes or any other tax convention.

## **Article 4. Expropriation and Compensation**

1. Measures of nationalisation, expropriation or any other measure having the same effect (hereinafter referred to as expropriation) 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. Expropriation measures shall be carried out in accordance with the legal procedure.

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

3. Arrangements for the determination and payment of compensation shall be made promptly, at the latest at the time of expropriation.

## **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 in respect of restitution, compensation, indemnification or other

relief, whichever treatment is the more favourable.

## **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 the fulfilment of tax obligations, the free transfer in convertible currency of liquid assets relating to such investments and in particular :

(a) the initial capital or additional amounts. intended to maintain or increase the investment ;

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

(c) sums required for the repayment of loans relating to the investment;

(d) proceeds from the sale or winding-up of the investment in whole or in part;

(e) compensation due pursuant to Articles 4 and 5;

(f) salaries and other remuneration due to nationals of a Contracting Party who have been authorised to work in the territory of the other Contracting Party in respect of an investment.

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

3. The guarantees provided for in this Article shall be no less favourable than those accorded to investors in similar situations.

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

(a) where its balance of payments is, or is threatened with, serious financial difficulties ;

(b) in exceptional circumstances where the movement of capital causes or threatens to cause serious difficulties for macro-economic management, in particular monetary and exchange rate policies; or

(c) to protect the rights of creditors.

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

(a) be communicated immediately to the other Contracting Party;

(b) be adopted for a limited period of time and removed as soon as conditions permit;

(c) not exceed those necessary to meet the circumstances set out in paragraph 4 of this Article.

## **Article 7. Subrogation**

1. If under a statutory or contractual guarantee covering the 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 it.

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 matter relating to investment is governed both by this Agreement and by the national legislation of one of the Contracting Parties or by international conventions existing or acceded to by the Parties in the future, investors of the other Contracting Party may avail themselves of the provisions which are most favourable to them,

## **Article 9. Settlement of Investment Disputes**

1. Any investment dispute between an investor of one Contracting Party and the other Contracting Party concerning an obligation of that Contracting Party under this Agreement shall be settled to the extent possible by consultation and negotiation between the parties to the dispute.
  2. Failing an amicable settlement by direct agreement between the parties to the dispute within six months from the date of its 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 was made ;
    - (4) or to international arbitration, under the conditions described in paragraph (3) below.
  3. In the event of recourse to international arbitration, the dispute may be submitted to one of the arbitration bodies designated below, at the choice of the investor :
    - (a) the International Centre for Settlement of Investment Disputes (I.C.S.I.D.), 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;
    - b) an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.).
- To this end, each Contracting Party gives its irrevocable consent that any dispute relating to investments shall be submitted to the tribunal referred to in sub-paragraph (a) of paragraph 2 above or to the arbitration procedure referred to in sub-paragraphs (a) and (b) of that paragraph.
4. No Contracting Party which is party to a dispute may raise an objection. At no stage in the arbitration proceedings or in the enforcement of an arbitral award may an objection be raised on the ground that the investor, the adverse party to the dispute, has received compensation covering all or part of its losses under an insurance policy.
  5. The arbitral tribunal shall decide 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 on conflict of laws, the provisions of this Agreement, and the principles of international law.
  6. 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 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 representatives of the Contracting Parties; this Committee shall meet without delay at the request of the Contracting Party concerned,
2. If the ad hoc Joint Committee cannot settle the dispute within six months from the date of commencement of negotiations, it shall be submitted to an arbitration tribunal at the request of one of the Contracting Parties,
3. The said tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator, and the two arbitrators shall together appoint a third arbitrator, who shall be a national of a third State, as chairman of the tribunal.

The arbitrators shall be appointed within three months, the chairman within five months from the date on which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.
4. If the time-limits laid down in paragraph (3) above have not been observed, 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 possesses 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 possesses the nationality of one of the Contracting Parties, or if he is prevented from holding office, the senior member of the International Court of Justice who is not a national of any of the Contracting Parties 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 lay down its own rules of procedure.

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

## **Article 11. 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 before its entry into force.

## **Article 12. Entry Into Force, Validity and Termination**

1. This Agreement shall be subject to ratification and shall enter into force thirty days after the date of receipt of the last of the two notifications relating to the completion by the Contracting Parties of the constitutional procedures 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 expiry of its period of validity, it shall each time be tacitly renewed 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 date of expiry of the current period of validity.

2. Investments made prior to the date of expiry of this Agreement shall remain subject to it for a period of ten 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 Abidjan, on 19 March 2013, in two originals, each in the French and Arabic languages, both texts being equally authentic.

For the Government of the Republic of Côte d'Ivoire,

Nialé KABA,

Minister of the Economy and Finance.

For the Government of the Kingdom of Morocco,

Nizar Baraka,

Minister to the Prime Minister, responsible for Economic and Financial Affairs.

## **Additional protocol to the agreement between the government of the republic of cote d'ivoire and the government of the kingdom of morocco on the reciprocal promotion and protection of investments signed in abidjan on 19 march 2013**

The Government of the Republic of Cote d'Ivoire on the one hand; and the Government of the Kingdom of Morocco on the other hand ;

Considering the intentions of the Republic of Cote d'Ivoire and the Kingdom of Morocco to amend the Agreement between the Government of the Republic of Cote d'Ivoire and the Government of the Kingdom of Morocco on the reciprocal promotion and protection of investments signed in Abidjan on 19 March 2013 (hereinafter referred to as the Agreement),

Have agreed as follows:

**1.**

Article 2 "Investment Promotion and Protection" is amended by adding a fourth paragraph, which reads as follows:

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

**2.**

Paragraph 5 of Article 6 "Transfers", which states that "The measures referred to in paragraph 3 of this Article" shall be amended as follows: "The measures referred to in paragraph 4 of this Article".

**3.**

This Additional Protocol shall form an integral part of the Agreement and shall be subject to the legal procedures required by the respective legislation of the Contracting Parties for its entry into force.

**4.**

This Additional Protocol shall take effect on the date of receipt of the last of the two written notifications relating to the completion by the Contracting Parties of the constitutional procedures required for its entry into force and shall remain in force for as long as the Agreement remains in force.

Done at Abidjan on 25 February 2014, in two originals each in the Arabic and French languages, both texts being equally authentic.

For the Government of the Republic of Côte d'Ivoire,

Nialé KABA,

Minister attached to the Prime Minister, with responsibility for the Economy and Finance.

For the Government of the Kingdom of Morocco,

Mohamed BOUSAID,

Minister of the Economy and Finance