

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF MOROCCO FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Morocco, (hereinafter referred to as the "Contracting Parties"),

Desiring to create favourable conditions for greater investment by nationals of one state in the territory of the other State;

Recognising that the reciprocal encouragement and protection under international agreement of investments will contribute to the stimulation of business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(a) "Investment" means every kind of investment made in accordance with legislation and regulations in force in the territory of each of the Contracting Parties, and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares, stock and debentures of companies or interests in the property of such Companies;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

(b) "returns" means the amounts yielded by such investments and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees;

(c) "nationals" means:

(i) In respect of the United Kingdom: any physical person deriving his status as a United Kingdom national from the law in force in the United Kingdom, and any corporation or partnership or other association or entity incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 12;

(ii) In respect of the Kingdom of Morocco: any physical person having Moroccan nationality under the law in force in the Kingdom of Morocco and any corporation or partnership or other association or entity deriving its status from such law;

(d) "territory" means:

(i) In respect of the United Kingdom: Great Britain and Northern Ireland, including any maritime area situated beyond the territorial waters of the United Kingdom which has been or might in the future be designated under the national law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights with regard to the sea-bed and subsoil and the natural resources; and any territory to which this Agreement is extended in

accordance with the provisions of Article 12;

(ii) In respect of 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 in the future be designated by the laws of the Kingdom of Morocco in accordance with international law as an area within which the Kingdom of Morocco may exercise rights with regard to the sea-bed and subsoil and the natural resources.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall admit and encourage, in its territory and in accordance with its laws, investments of nationals of the other Contracting Party, and shall create conditions favourable to such investment.

(2) Each Contracting Party shall in its territory ensure fair and equitable treatment and provide full protection and security for investments of nationals of the other Contracting Party. Neither Contracting Party shall impair by discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals of the other Contracting Party. Each of the Contracting Parties shall observe any obligation it may have entered into with regard to investments of nationals of the Contracting Party.

(3) Investments which are covered by a particular undertaking by one of the Contracting Parties in relation to the nationals of the other Contracting Party shall be governed by the terms of that undertaking in so far as it contains provisions more favourable than those set out in this Agreement.

Article 3. Most-favoured-nation Provisions and National Treatment

(1) Each Contracting Party shall in its territory accord to investments or returns of nationals of the other Contracting Party treatment no less favourable than that which it accords to investments or returns of its own nationals or to investments or returns of nationals of any third State.

(2) Each Contracting Party shall in its territory accord to nationals of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own nationals or to nationals of any third State.

Article 4. Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than accorded to the nationals of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party; or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or

(c) Any government aids reserved for its own nationals in the context of national development programmes and activities.

Article 5. Compensation for Losses

(1) Nationals of one of the Contracting Parties whose investments in the territory of the other Contracting Party are affected by losses as a result of civil disturbances, war or armed conflict between the latter Contracting Party and a third country shall receive treatment no less favourable than that which the latter Contracting Party accords to its own nationals or to nationals of any third State, whichever is the more favourable treatment being adopted as regards restitution, indemnification, compensation or other settlement in respect of the said losses.

(2) Without prejudice to paragraph (1) of this Article, nationals of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party as a result of requisitioning on behalf of the latter Contracting Party, shall receive restitution or adequate compensation.

(3) Resulting payments shall be transferable promptly.

Article 6. Expropriation

(1) Measures of nationalisation, expropriation or any other measures having an equivalent effect, that might be taken by one of the Contracting Parties against the investments of nationals of the other Contracting Party shall be neither discriminatory nor taken other than for a public purpose. The Contracting Party that takes such measures shall, in return, give fair and equitable compensation which shall amount to the real value of the investment immediately before the said measures were taken or before they became public. The amount of the said compensation shall be effectively realizable, transferable and shall be paid promptly and at the latest within three months of the date of implementation of the said measures. The national concerned shall have a right, under the law of the Contracting Party that has taken such measures, to prompt review of his case and of the valuation of his investments by the competent courts of the said Party, in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of one of its nationals which is a legal person referred to in Article 1(c) (i) or Article 1(c)(ii), whichever is applicable, and in which nationals of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee fair and equitable compensation in respect of their investments to such nationals of the other Contracting Party who are the owners of those shares.

Article 7. Repatriation of Investment and Returns

Each Contracting Party shall guarantee to nationals of the other Contracting Party the transfer of their investments and returns, subject to the right of each Contracting Party in exceptional financial or economic circumstances including exceptional balance of payment difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws. Such powers shall not however be used to impede the transfer of returns: as regards the proceeds of the sale or the liquidation of the investment, each Contracting Party shall guarantee the transfer of a minimum of 20 per cent a year. Transfers shall be effected promptly in convertible currency at the rate of exchange applicable on the date of transfer, pursuant to the exchange regulations in force.

Article 8. Guarantee of Investments

Each Contracting Party may continue to grant guarantees, in accordance with its laws and administrative procedures, in respect of investments made in the territory of the other Contracting Party against such risks as the former Contracting Party shall think fit.

Article 9. Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 10. Reference to International Centre for Settlement of Investment Disputes

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965(1) any legal dispute arising between one Contracting Party and a national of the other Contracting Party concerning an investment of the latter in the territory of the former. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which immediately before such a dispute arises the majority of shares are owned by nationals of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a national of the other Contracting Party. If any such dispute should arise and if the national affected consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under

the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided for in Articles 28 and 36 of the Convention. In the event of disagreement as to which is the more appropriate procedure, either conciliation or arbitration, the national affected shall be allowed to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(2) Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless:

(a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 11. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall determine its own procedure and shall reach its decision by a majority of votes. Such decision shall be final and legally binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of 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. The tribunal may, however, in its decision direct that a higher percentage of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

Article 12. Territorial Extension

On entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be extended, by an agreement between the Contracting Parties in the form of an Exchange of Notes, to the Channel Islands and the Isle of Man, for whose international relations the Government of the United Kingdom are responsible.

Article 13. Investments Made Before Entry Into Force of the Agreement

(1) The Agreement shall also apply to investments made in the territory of one Contracting Party in accordance with its legislation by nationals of the other Contracting Party before the entry into force of this Agreement.

(2) In cases of transfer as provided for in Article 7 of this Agreement, investments made before the entry into force of this Agreement which were made by a national of one Contracting Party in the territory of the other Contracting Party shall benefit from those provisions in so far as they have been made in convertible currency.

(3) In cases of transfer relating to investments made before the entry into force of this Agreement which were made other than in convertible currency, they shall benefit from the provisions of the exchange regulations relating to investments.

Article 14. Entry Into Force

This Agreement shall enter into force provisionally on the date of signature. Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the definitive entry into force of this Agreement. This Agreement shall then enter into force definitively on the date of the later of the two notifications.

Article 15. Duration and Termination

This Agreement is concluded for a duration of ten years. It shall remain in force unless its termination is notified in writing one year in advance by one of the two Contracting Parties to the other Contracting Party.

In the event of termination, the provisions of this Agreement shall remain applicable for a period of ten years to investments made at any time before its termination, without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Rabat this thirtieth day of October 1990 in the English and Arabic languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

WILLIAM WALDEGRAVE

For the Government of the Kingdom of Morocco:

MOHAMMED BERRADA

Treaty Series No. 25 (1967) Cmd. 3255.