

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF THE REPUBLIC OF BENIN CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Morocco and the Government of the Republic of Benin hereinafter referred to as the "Contracting Parties";

Desirous of promoting relations of economic cooperation and friendship between the two countries;

Whereas the reciprocal promotion and protection of investments are likely to stimulate private economic initiative and increase the prosperity of both countries;

Determined to create the conditions to encourage the development of investments by each Contracting Party in the territory of the other Contracting Party.

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means 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 latter. It shall include in particular, though not exclusively:

- a. Movable and immovable property as well as any other rights in rem, privileges, such as mortgages usufruits, bonds and other similar rights;
- b. Shares, securities, stocks, bonds and debentures of companies, as well as all other forms of participation in the said companies;
- c. Loans and receivables and any other rights to performance having an economic value associated with an investment;
- d. Intellectual and industrial property rights, such as copyrights, patents, industrial designs, trademarks, trade names, and goodwill;
- e. The concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

Any change in the form in which assets and capital invested or reinvested shall not affect their character as an investment, provided that such change is made in accordance with the laws and regulations of the Contracting Party in whose territory the investment is situated. the extension, modification or conversion of an investment made in accordance with the laws and regulations of the country against which the investment is located, shall be treated as a new investment.

2. The term "investor" means:

- a. Any natural person having the nationality of Morocco or Benin under the laws of the Kingdom of Morocco or the Republic of Benin respectively and making an investment in the territory of the other Contracting Party.
- b. Any legal person having its head office in the territory of the Kingdom of Morocco or the Republic of Benin and incorporated under Moroccan legislation or Beninese respectively and making an investment in the territory of the other Contracting Party.

3. The term "income" means the income after taxes yielded by an investment and in particular, though not exclusively, profits, interest, dividends, royalties.

4. The term "territory" means:

a) 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.

b) For the Republic of Benin: the territory of the Republic of Benin, including the territorial sea and the airspace above its territory and territorial sea over which the Republic of Benin exercises sovereignty as well as the contiguous zone and continental shelf and the exclusive economic zone over which the Republic of Benin has jurisdiction, including its sovereign rights, in accordance with its national law and international law.

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 laws and regulations.

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 protection and security.

Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal within its territory of the Investments of the other Contracting Party shall not be affected by unjustified or discriminatory measures. investment income, in case of reinvestment in accordance with the laws and regulations of the Contracting Party in whose territory the investment is located, shall enjoy the same protection as the original investment.

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

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, shall be accorded by the latter of which is fair and equitable treatment no less favourable than that which it accords to its own investments of investors or to investments of investors of any third State.

2. Each Contracting Party shall accord to investors in its territory 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.

Article 4. Exceptions

The most-favoured-nation treatment does not extend to the privileges or advantages or preferences which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union or common market, economic or any other form of regional economic organization or similar international agreement or any agreement for the avoidance of double taxation in taxation or any other arrangement relating to taxation.

Article 5. Expropriation and Compensation

1. The measures of expropriation, nationalization or any other measures having the same nature or the same effect (hereinafter "expropriation") that could be taken by either Contracting Party against the investments of investors of the other Contracting Party shall not be discriminatory nor justified for reasons other than in the public interest and under due process.

2. The contracting party taking such measures shall contribute to the person entitled thereto without undue delay, a prompt, effective and adequate compensation, which 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 must be taken promptly at the latest 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 until the date of payment and shall be paid to the investors in convertible currency and freely transferable.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, riot or insurrection shall be accorded by the latter Contracting Party treatment no less favourable than that it accords to its own investors or of any third State as regards restitution, indemnification, compensation or other settlement.

Article 7. Transfers

1. Each Contracting Party shall guarantee to investors of the other contracting party, after the fulfilment of tax obligations, the free transfer of payments relating to their investments. the transfers shall be made in a freely convertible currency, without undue delay and shall include in particular though not exclusively:

- a. Capital and / or any amounts intended to maintain or increase the investment;
- b. Profits, interest, dividends, royalties and other current income;
- c. The necessary funds in repayment of loans related to investments;
- d. Proceeds from the sale or liquidation of investments;
- e. The compensation payable pursuant to Articles 5 and 6;
- f. Wages and other remuneration accruing to nationals of one Contracting Party who have been authorised to work in the territory of the other contracting party in connection with an investment.

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.

Article 8. 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 9. Settlement of Disputes Relating to Investments

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall as far as possible, be settled amicably through consultations or negotiations between the parties to the dispute.

2. If the dispute is not settled within a period of six (6) months from the date of the written notification by either party to the dispute shall be submitted, at the request of the investor:

- a. Either to national jurisdiction of the Contracting Party involved in the dispute; or
- b. To international arbitration under the conditions described in the paragraph below.

3. In the event of recourse to international arbitration, the dispute may be submitted to one of the arbitral tribunals referred to below, at the choice of the investor:

- a. The International Centre for the Settlement of Investment Disputes (ICSID), 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.
- b. An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

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

4. 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, on account of the fact 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.

5. The arbitration panel shall decide on the basis of the provisions of this Agreement, the national law of the Contracting Party to the dispute party including its rules on the Conflict of Laws, the terms of the specific agreements which may be concluded between one Contracting Party and the investor concerning an investment as well as the principles of international law.

6. The arbitral awards shall be final and binding upon the parties to the dispute. each Contracting Party shall execute them 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.

2. If a dispute cannot be settled through diplomatic channels within six (6) months after the beginning of negotiations, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

3. The arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall select a national of a third State as Chairman of the arbitral tribunal. the arbitrators shall be appointed within three (3) months and the Chairman within five months from the date of receipt of the notice of arbitration.

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 the necessary appointments. if the President is a national of either Contracting Party or if he is unable for any reason to carry out this function, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President is a national of either Contracting Party or unable to perform this function, the member of the International Court of Justice in the order of seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and *règles* and principles of international law. it shall reach its decisions by a majority of votes. the decision shall be final and binding upon the contracting party.

6. The tribunal shall determine its own procedure.

7. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. the costs related to the Chair and any remaining costs shall be borne in equal parts by the contracting parties.

Article 11. Consultations

The Contracting Parties may, if necessary, in consultations regarding the application of this Agreement. such consultations shall be held on the proposal of one of the Contracting Parties and a place at a time agreed upon through diplomatic channels.

Article 12. Implementation

This Agreement shall apply to all investments made before or 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 that may arise before its entry into force.

Article 13. Additional Obligations

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.

Article 14. Entry Into Force and Expiry of Validity ,

1. This Agreement 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 constitutional procedures required therefor in their respective countries.

It shall remain in force for a period of ten years and shall be automatically renewed each time for the same period unless one of the Contracting Parties denounces 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 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 Cotonou, on 15 June 2004, each in two originals in the Arabic and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO

FOR AND THE GOVERNMENT OF THE REPUBLIC OF BENIN