

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF THE REPUBLIC OF COTE D'IVOIRE ON RECIPROCAL PROMOTION 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 realisation 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 ;

RECOGNISING the need to encourage and protect foreign investment with a view to promoting the economic prosperity of both Contracting Parties;

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement :

1. The term "investment" means any asset and any direct or indirect contribution invested by investors of a Contracting Party in the territory of the other Contracting Party, and in particular, but not exclusively :

(a) a company;

(b) intellectual property rights, including copyright, 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 companies;

(d) a bond, debenture or any other type of corporate debt;

(e) a loan to a company ;

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

(g) concessions granted by law or by virtue of a contract, in particular, concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime zone of the Contracting Parties;

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

2. The term "investor" means :

(a) any individual holding Moroccan or Ivorian nationality under the legislation of the Kingdom of Morocco or the Republic of

Côte d'Ivoire, respectively and making an investment in the territory of the other Contracting Party;

(b) any legal entity having its registered office and effective economic activities on the territory of the Kingdom of Morocco or the Republic of Côte d'Ivoire and constituted, respectively, in accordance with Moroccan or Ivorian legislation.

3. The term "income" refers to amounts received from an investment, including but not limited to profits, interest, dividends and licence 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 relating to the seabed and subsoil and to 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 extending beyond the limit of the territorial sea 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 of the Contracting Parties shall encourage investments in its territory by investors from the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall receive fair and equitable treatment from the latter in accordance with international law and the provisions of this Agreement.

The income from the investment, in the event of . reinvestment 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 Investments**

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 relating to their investments, treatment no less favourable than that 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, economic or customs union, common market or any other form of regional economic organisation or similar international agreement or by virtue of a convention for the avoidance of double taxation with respect to taxes or any other convention concerning taxes.

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

1. Any 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 be neither discriminatory nor motivated by reasons other than public interest. Expropriation measures must be carried out in accordance with the legal procedure.

2. The Contracting Party which has taken such measures shall pay to the rightful owner, without undue delay, compensation equal to the fair market value of the expropriated investment on the day before the expropriation measures are taken or made public, whichever is the earlier.

3. Arrangements for the determination and payment of compensation must 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, state of national emergency, revolt, insurrection or any other similar event in the territory of the other Contracting Party shall be accorded by the latter non-discriminatory treatment at least equal to that accorded to its own investors or to investors of the most favoured nation as regards restitution, indemnification, compensation or other damages, whichever 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 discharge of tax obligations, the free transfer in convertible currency of the liquid assets relating to such investments and in particular :

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

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

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

(d) proceeds from the sale or liquidation of all or part of the investment;

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

(f) wages and other remuneration accruing to nationals of a 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) above shall be made at the rate of exchange applicable on the date of the 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 are no less favourable than those granted 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) when its balance of payments is, or is likely to be, in serious financial difficulty;

b) in exceptional circumstances where capital movements 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.

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

a) be communicated immediately to the other Contracting Party;

b) be adopted for a limited period and eliminated as soon as conditions allow;

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

## **Article 7. Subrogation**

1. If, by virtue of a legal 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 recognises 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 is entitled to assert all the rights that the investor could have exercised if the insurer had not been subrogated to him.

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 question relating to investments is governed both by this Agreement and by the national legislation of one of the

Contracting Parties or by existing international conventions or conventions entered into 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 a Contracting Party and the other Contracting Party concerning an obligation of that Contracting Party under this Agreement shall be settled as amicably as possible by consultations and negotiations between the parties to the dispute.

2. Failing settlement by direct arrangement between the parties to the dispute within a period of six months from the date of its written notification, the dispute shall be submitted, at the investor's option:

(a) or to the competent court of the Contracting Party in whose territory the investment was made;

(b) or international arbitration under the conditions described in paragraph (3) below

3. In the event of recourse to international arbitration, the dispute may be brought before one of the arbitration bodies designated below, at the investor's choice:

(a) the International Centre for Settlement of Investment Disputes (ICSID), created by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature in Washington on 18 March 1965;

(b) to an ad hoc arbitration tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

To this end, each of the Contracting Parties irrevocably consents to the submission of any investment dispute 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. None of the Contracting Parties, party to a dispute, may raise any objection, at any stage of the arbitration proceedings or the enforcement of an arbitral award, to the fact that the investor, adverse party to the dispute, has received wie 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 relating to conflicts of laws, the provisions of this Agreement and the principles of international law.

6. Arbitration 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, as far as possible, be settled by diplomatic means.

Failing this, the dispute shall be submitted to an ad hoc joint committee made up of representatives of the Contracting Parties; this committee shall meet without delay at the request of the earliest Contracting Party,

2. If the ad hoc Joint Committee is unable to settle the dispute within six (06) months of the start 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 an arbitrator, and the two arbitrators shall together appoint a third arbitrator, who shall be a national of a third State, as President of the tribunal.

The arbitrators must be appointed within three (3) months, the Chairman within five (5) months of 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 is prevented from exercising his functions, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be

invited to make the said appointments.

5. The arbitral tribunal shall rule 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 court sets its own rules of procedure.

7. Each Contracting Party shall bear the costs of its arbitrator and his representation in the arbitration proceedings. The costs of the Chairman and other costs 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 of the Contracting Parties on 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 Expiry**

1. This Agreement shall be subject to ratification and shall enter into force thirty (30) days from 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 be tacitly renewed each time 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 such expiry.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised by their respective Governments, have signed this Agreement.

Done at Abidjan, on 19 March 2013, in two originals, each in the Arabic and French languages, both texts being authentic.

For the Government of the Kingdom of Morocco

Nizar BARAKA

Minister of Economy and Finance

For the Government of Côte d'Ivoire

Nialé KABA

Minister attached to the Prime Minister, responsible for the Economy and Finance

## **Protocol**

The Government of the Kingdom of Morocco;

And

The Government of the Republic of Côte d'Ivoire;

Considering the intentions of the Kingdom of Morocco and the Republic of Côte d'Ivoire to amend the Agreement between the Government of the Kingdom of Morocco and the Government of the Republic of Côte d'Ivoire 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 the addition of a 4th paragraph, worded as follows:

"3. Neither of the Contracting Parties shall hinder by unjustified, arbitrary, abusive or discriminatory measures the 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" is 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.

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 Kingdom of Morocco

Mohamed BOUSAID

Minister of Economy and Finance

For the Government of Côte d'Ivoire

Nialé KABA

Minister attached to the Prime Minister, responsible for the Economy and Finance