

An agreement
Between
The Kingdom of Morocco and the State of Kuwait
For Mutual Encouragement and Protection of Investments

The Government of the Kingdom of Morocco and the State of Kuwait (hereinafter referred to as "Contracting States")

Desiring to create conditions for the development of economic cooperation between them and in particular for investments made by investors of one of the Contracting States in the territory of the other Contracting State;

Recognizing that the reciprocal encouragement and protection of such investments will be a catalyst for the revitalization of business initiative and to increase prosperity in both States

They have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement, unless the context requires otherwise;

1 The term "investment" means: All types of assets owned or controlled by an investor of a Contracting State, directly or indirectly; invested in the territory of the other Contracting State in accordance with the laws and regulations in force in this state, the term includes, in particular, but not limited to :

a Movable and immovable property and any related rights, such as the rent, mortgage, privileges of debt, mortgage possessory, use rights and other similar rights;

b A company or a business or a joint venture or shares, stocks, and other forms of contribution in the property, bonds, debentures, and other forms of debt rights in a company or business venture or joint venture and other debts, loans and securities issued by any investor of a Contracting State;

c Claims to money and claims to any other assets or performance according to a contract with an economic value;

d Intellectual and industrial property rights, including, without limitation, copyright, trademarks, patents, designs, industrial models, technical processes, expertise, trade secrets, trade names, goodwill and any other similar rights;

e Any right decided by law or contract or under any licenses or permits granted in accordance with the law, including prospecting, exploration, extraction or exploitation of natural resources and the rights of the manufacture, use and sale of products, and the rights to exercise economic and other commercial activities or provide services.

Any change in the form in which the assets are invested or reinvested will not affect the nature as an investment.

The term "investment" is also applies on the proceeds reinvested.

2 The term "investor" for a Contracting State:

3.(a) a natural person holding the nationality of the Contracting States in accordance with the laws in force;

b The Government of that State and its institutions;

c Any legal person or any other entity established legally under the laws and regulations of that State; and any entity

established outside the contracting authority of the state as a body corporate and owned or controlled by that contracting state or by any of its citizens or by any entity established within the State authority.

3 The term "earnings" means: net amounts realized by the investment regardless of the form of payment , it includes, in particular, but not limited to dividends, interest, capital gains, royalties, management fees, technical assistance, payments or other fees and payments in kind of any kind.

4 The term "territory":

For the Kingdom of Morocco: the soil of the Kingdom of Morocco and the territorial sea, the area along the sea, the depths of the underground water adjacent to the shores of Morocco located beyond the territorial waters, the exclusive economic zone, which Morocco in accordance with the domestic law and international law, practice its sovereignty rights to explore and exploit its natural resources (Continental Shelf).

For the State of Kuwait: the territory of the State of Kuwait that includes any area outside the territorial sea of the State of Kuwait, which according to international law identified or subsequently identified according to the law of the State of Kuwait as a permissible area for the State of Kuwait to exercise the sovereignty or jurisdiction rights in;

5 The term "freely convertible currency" means any currency determined by the International Monetary Fund from time to time as a freely used currency, in accordance with the provisions of the International Monetary Fund and any amendments thereto.

Article 2. Accepting and Encouraging the Investment

1 Each of the Contracting States in accordance with the laws and regulations in force shall accept and encourage investment in its territory, for the affiliated investors of the other Contracting State.

2 Each of the Contracting States shall grant for investments acceptable in its territory the necessary licenses and permits to the extent permitted in accordance with the principles and conditions set out in its laws and regulations.

3 Each of the Contracting States shall act in accordance with their laws and regulations to provide the necessary facilities and permits for entry, exit, residence and work for the investor and for those who are temporarily or permanently related the investment such as experts, administrators, technicians and workers.

Article 3. Protection of Investments

1 The investments of Investors of either Contracting State shall enjoy the full protection and security in the territory of the other Contracting State in a manner consistent with the recognized principles of international law and the provisions of this Agreement. With the exception of the measures necessary to maintain public health, public safety or the environment;

Any of the two contracting states in any way shall not take any arbitrary or discriminatory measures that lead to damage such investments, including the use and enjoyment of the management, development, maintenance and expansion of investments.

2 Each Contracting State shall endeavour to the maximum extent possible to avoid the achievement requirements as a condition for the establishment, expansion, maintenance, use and enjoyment of the investments; that they are requirements to the implementation of the commitment to export goods produced or those imposed specifically on the purchase of goods or services locally, or those that impose any similar requirements. It also works on not taking any procedure that has a discriminatory effect against investors of investment of the other contracting state.

3 Each of the Contracting States shall take into account any obligation or commitment may be a party in, with regard to investments of investors of the other Contracting State in its territory.

Article 4. Treatment of Investments

1 Each Contracting States shall guarantee at all times for the investments of investors of the other Contracting State made in its territory a fair and equitable treatment that is not less favourable than that granted in similar conditions for the investments of its investors or to the investors of any third country, whichever was the most favourable.

2 Each Contracting State shall grant the investors of the other Contracting State in respect of their investments, including the use, enjoyment, management, development, maintenance, expansion and disposition of these investments a treatment that is not less favourable than that accorded to its investors or investors of any third state whichever is more favourable.

3 Nevertheless, the provisions of this Article shall not be interpreted as a Contracting State requirement to submit to the investors of the other Contracting State a privilege or a treatment or a preference resulting from:

a Any custom union or economic union or a free trade area or fiscal union or any other form of economic union to arrange a regional or any other similar international agreement either Contracting State is or may become a party in;

b Any international or regional agreement or bilateral agreement or any other similar arrangement, or any domestic legislation related mainly to taxation respect;

c Any aid from the government allocated to investors in the context of national development programs or activities.

Article 5. Compensation for Damages or Losses

Investors of a Contracting State whose investments in the territory of the other Contracting State are exposed to damaged or losses due to war or other armed conflict or a state of emergency or revolt or disturbances or riots or other similar events are granted a treatment from the latter Contracting State in respect of returning the situation to what was been to refund the losses or compensation or any other settlement that is not less favourable than those granted by the latter Contracting State to its investors or investors of a third country, whichever more favourable.

Article 6. Expropriation

1 The investments made by investors affiliated to any Contracting State in the territory of the other Contracting State when nationalized or expropriated or dispossession or subjected directly or indirectly to actions with effect equivalent to nationalization or expropriation or dispossession of tenure (referred to collectively later "expropriation") by the other Contracting State must only be for the purpose of public interests of the Contracting State and on the basis of non-discrimination in accordance with legal procedures applicable in general.

2 The term "expropriation" includes taking any other procedures such as freezing or restricting investment or the compulsory sale of all or part of the investment or the confiscation of property that result in denying in reality the investor's ownership or dominance over substantial interests in investment, which may result in a loss or a damage to the economic value of the investment.

3 The Contracting State which executed the expropriation shall grant to the rights holders, a fair, equitable and immediate compensation, with a value that equals the actual value of the investment expropriated from ownership, and determined based on the fair market value of the investment expropriated in the time immediately preceding an expropriation or where the disarmament of an impending property became occurrence and known publicly whichever occurs first. The amount of the mentioned compensation shall be determined, made able to perform and paid without delay. In the case of undue delay in performance, a compensation interest at the market price is calculated starting from the due date until the date of the performance, the compensation to investors is paid in a freely convertible currency and been freely transferred.

4 If the fair market value mentioned above cannot be ascertained easily, the compensation is determined based on equitable principles by taking into account all the factors and circumstances related to it, such as the invested capital, the nature and duration of the investment, the replacement value, the increase in investment, current revenues, the value of the calculated cash flows, the book value and goodwill.

Article 7. Transfer of Payments Related to Investments

1 Each of the Contracting States shall guarantee to the investors of the other Contracting State the free transfer of payments related to investment, including:

a The original capital and any additional capital for the maintenance, management and development of investments.

b The proceeds.

c Payments under a contract, including the repayment of principal and interest payments owed performed under a loan agreement.

d Royalties and fees for the rights referred to Article (1), paragraph (d).

e The proceeds accrued from the sale or liquidation of all or part of the investment.

f Other money earned, bonuses for workers hired from abroad who are linked to investment, in accordance with the laws and regulations in force in the territory of the host country.

g Compensation payments in accordance with articles (5) and (6).

h Payments referred to in Article (8)

i Payments arising from the settlement of disputes.

2 The transfer of payments mentioned in paragraph (1) is performed without delay or restrictions and in a freely convertible currency, except in the case of payments in kind.

3 Transfers are made without any discrimination at a fixed exchange price from the central bank in the state in which the conversion is done, in the case of the application of more than one exchange rate in the country, the best price for the investor is applied.

Article 8. Subrogation of the Investor

1 If the Contracting State or agency concerned, or any other specific body appointed by it ("guarantor Party") that was established or have been created in that Contracting State paid a payment under a compensation or guarantee against non-commercial risks undertaken by it and related to an investment in the territory of the other Contracting State ("the host State"), the host state recognizes:

a The right of the guarantor party under the law or legal agreement to subrogate the investor in all rights and claims resulting from such an investment.

B The right of the guarantor party to exercise these rights and implement those claims and obligations related to the investment.

2 Any dispute between one of the Contracting States and the guarantor party of the investment of investor from the other Contracting State is settled in accordance with the provisions of Article 9 of this Agreement.

Article 9. Settlement of Disputes between a Contracting State and an Investor

1 Disputes between the Contracting State and an investor of the other state with respect to investment returns to the latter in the territory of the first-mentioned State are settled amicably as possible.

2 If such disputes cannot be settled within six months from the date of the request of any party of the dispute settlement amicably by the delivery of a written notification to the other party, the dispute shall be submitted to resolve upon the choice of the investor party to the dispute by one of the following means:

a According to any appropriate procedures for the settlement of the dispute pre-agreed.

b A competent court of the Contracting States in which territory the investment is established.

c In accordance with the provisions of the chapter on the settlement of disputes of the Unified Agreement for the Investment of Arab Capitals in the Arab countries for the year 1980

d International arbitration in accordance with the following paragraphs of this article.

3 In the case of the investor choice to display the dispute to settlement through an international arbitration, the investor shall also provide a written consent to submit the dispute to be settled by one of the following two sides:

a International Centre for Settlement of Investment Disputes ("centre"), which was created based on the Agreement of Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18-March -1965 (Washington Agreement), in the event that the Contracting States are parties to Washington Agreement, and the applicability of Washington Agreement on the dispute.

b An arbitration court set on the arbitration rules related to any arbitration tribunal agreed upon between the parties to the dispute.

4 The arbitration tribunal shall take its decisions on the basis of the national law of the Contracting Party that is a party to the dispute in which territory the investment is done, as well as the principles of the international law, the rules relating to conflict of laws, the provisions of this Agreement and special agreements that have been concluded on investment, as well as the principles of international law.

5 The arbitration decisions are considered final and binding for the parties to the dispute and each Contracting State shall

execute any judgment like this immediately, and shall take the necessary measures for the effective implementation of those provisions in its territory.

6 Contracting State should not defence by Immunity in any judicial proceedings or arbitration proceedings or otherwise, or in the implementation of any decision or provision concerning an investment dispute between a Contracting State and an investor of the other Contracting State. And one of the Contracting State, party to the conflict, can raise an objection at any stage of the arbitration proceedings or execution of an arbitration award on the grounds that the investor the other party in the dispute has received or will receive compensation partially or completely covers losses or damages under an insurance.

Article 10. Settlement of Disputes between the Contracting States

1 The Contracting States shall as far as possible settle any dispute concerning the interpretation or application of the Agreement through consultations or diplomatic channels.

2 If the dispute cannot be settled within six months from the date of request for such consultations or settlement through diplomatic channels, by any of the Contracting States, or unless the Contracting States agreed by writing to the contrary, any of the Contracting States by written notification to the other Contracting State may display the dispute to an arbitration tribunal held for this purpose in accordance with the following provisions of this Article.

3 An arbitration tribunal is constituted as follows: each Contracting State shall appoint one member, and the two members agree on a citizen of a third country to be the President for them. The appoint of the members is within three months and the president within five months from the date of notification of either Contracting State the other Contracting State of its intention to submit the dispute to an arbitration court.

4 If the period specified in paragraph (3) was not taken into account, any of the Contracting States in the absence of any other arrangement may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice, is national of a Contracting State or any obstacle to performance of the task mentioned, the Vice-President International Court of Justice shall make the necessary appointments, and if the Vice President of the International Court of Justice is a national of a Contracting State or any obstacle to performance of the task mentioned, the member of the International Court of Justice next in seniority and who is not a citizen of a Contracting State is asked to make the necessary appointments.

5 The arbitration tribunal shall take its decision by a majority of votes. The decision is made in accordance with the provisions of this Agreement and recognized norms of international law, and shall be final and binding on both Contracting States and each Contracting State shall bear the fees the member of court of arbitration designated by this Contracting State as well as the fees of its representative in the arbitration proceedings. The President fees as well as any other costs borne by both Contracting State and divided equally between them.

6 The arbitration court shall determine its own procedures in respect of all the other matters.

Article 11. Relations between the Contracting States

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

Article 12. The Application of other Provisions

The investments, which are subject to requirements of a special agreement between a Contracting State and investors of the other Contracting State are subject to the provisions of that Agreement, as long as they offer conditions more favourable than the provisions of this Agreement.

Article 13. Scope of the Agreement

This Agreement shall apply to all investments, whether those existing in the date of entry into force of this Agreement or made after that date by the investors of either Contracting State in the territory of the other Contracting State. The provisions of this Agreement shall not apply to disputes that have arisen before the force; unless the two parties to dispute agreed otherwise.

Article 14. Entry Into Force, Duration and Termination

1 Each Contracting State shall notify the other Contracting State of the fulfilment of the constitutional requirements necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

2 This Agreement shall remain in force for a period of twenty years and is automatically renewable for similar periods, and any of the Contracting States may terminate the Agreement at the end of the first term or at the end of any period of extension, by notifying the other contracting party in writing of its intention to terminate the provisions of this Agreement six months before the expiry of the first term or any subsequent periods.

3 With respect to investments held before the date of termination of this Agreement, the provisions shall remain in force for a period of 10 years from the date of termination of working out.

4 This agreement immediately after the entry into force, shall replace the agreements signed between the Kingdom of Morocco and the State of Kuwait in the field of investment and development in Rabat dated April 3, 1980, and also replace the agreement of economic, commercial and technical cooperation signed between the Government of the State of Kuwait and the Government of the Kingdom of Morocco in Kuwait on 26 May 1989 in the range of topics addressed by these Agreements.

In witness whereof that, the commissioners concerned of both Contracting States have signed this Agreement.

Done at Kuwait on this day of 30 October 1419 AH, February 16, 1999, in two originals in Arabic language, and both versions equally authentic.

For the Kingdom of Morocco

Fathallah Walaálo

Minister of Economy and Finance

For the State of Kuwait

Ali Salem al-Ali

Minister of Finance and Minister of Communications