

# Agreement between the Portuguese Republic and the Kingdom of Morocco concerning Reciprocal Promotion and Protection of Investments

The Government of the Portuguese Republic and the Government of the Kingdom of Morocco:

Desiring to enhance economic cooperation between the two countries;

Recognizing the important role of foreign private investment in the process of economic development, and the right of each Contracting Party to determine the role and to define the conditions under which foreign investment may participate in this process;

Recognizing that the only way to establish and maintain an appropriate international capital flows is an investment climate déntretenir mutually satisfactory, and, in the case of foreign investors to respect the sovereignty and the laws of the host State having jurisdiction over them to act in a manner consistent with the policies and priorities adopted by the host country, and endeavour to contribute to its development;

In order to create favourable conditions for investment capital in both States and intensify cooperation between nationals and companies, private or public law of both States, particularly in the fields of technology, industrialization and productivity;

Recognizing the need to protect investments of nationals and companies of both States and fostering the transfer of capital with a view to promoting economic prosperity of both States;

Have agreed as follows:

## Article 1. Definition

For the purposes of this Agreement:

- a) The "" nationals are natural persons who, according to the legislation of each of the Contracting Parties, which are considered to be its citizens of that State;
- b) The "" companies are: as regards the Portuguese Republic, any entity established in accordance with the legislation in force in the Portuguese Republic in which the natural persons who are nationals of the Portuguese State or the Portuguese State and its agencies have a substantial interest; in the case of the Kingdom of Morocco, any company or otherwise duly constituted, organized in accordance with the laws and regulations of the Kingdom of natural persons who are nationals of the Kingdom of Morocco and the Kingdom of Morocco and its agencies have a substantial interest; in respect of the Portuguese Republic, any entity established in accordance with the legislation in force in the Portuguese Republic in which the natural persons who are nationals of the Portuguese State or the Portuguese State and its agencies have a substantial interest; in the case of the Kingdom of Morocco, any company or otherwise duly constituted, organized in accordance with the laws and regulations of the Kingdom of natural persons who are nationals of the Kingdom of Morocco and the Kingdom of Morocco and its agencies have a substantial interest;
- c) The term "investment" includes all categories of goods, assets and partuculier but not limited to: ownership of movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits similar rights and rights; shares and other forms of equity interests in companies; Monetary claims and rights to any performance having an economic value; copyrights, industrial property rights, such as patents, trademarks, industrial designs, trade names, know-how and goodwill; concessions or other rights granted by the authorities of the Contracting Parties, including research concession extract or exploit natural resources; the property of movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits similar rights and rights; shares and other forms of equity interests in companies; Monetary claims and rights to any performance having an economic value; copyrights, industrial property rights,

such as patents, trademarks, industrial designs, trade names, know-how and goodwill; concessions or other rights granted by the authorities of the Contracting Parties, including research concession extract or exploit natural resources;

d) The term means returns the amounts of the net profit or interests in connection with an investment for a specified period.

## **Article 2. Encouragement , Admission**

Each Contracting Party shall promote as far as possible investments made in its territory by nationals or companies of the other Contracting Party and admit such investments in accordance with its laws and regulations.

## **Article 3. Protection**

Each Contracting Party shall protect investments made within its territory by nationals or companies of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, extension and sale and, where appropriate, the liquidation of such investments. each Contracting Party shall endeavour to issue the necessary authorizations in relations with such investments.

## **Article 4. Treatment**

1: each Contracting Party shall in its territory fair and equitable treatment to investments of nationals or companies of the other contracting party.

2. this treatment shall be not less than that granted by each contracting party to investments made within its territory by nationals or companies of the most favoured nation.

3 - however, this treatment shall not apply to privileges which either Contracting Party accords to nationals and companies of any third State by virtue of its participation in a customs union or association, a common market or a free trade area or any other form of regional economic organization.

## **Article 5. Transfer**

Each of the Contracting Parties, and in which nationals or companies of the other Contracting Party, shall be made investments in accordance with its laws and regulations in force, at such nationals or companies, the transfer of payments related to these investments, including:

a) Profits, dividends, interests and other current income;

b) Royalties and other payments contracts and licensing rights deriving from the commercial, administrative and technical assistance;

c) Other payments arising from contracts, including payments depreciation or financial or commercial loan repayments;

d) The proceeds of sale or of the partial or total liquidation of an investment;

e) Compensation for reasons of expropriation, nationalization or other measures having the same nature or the same effect.

## **Article 6. Nationalisation or Expropriation**

The measures of expropriation, nationalization or any other measures having the same nature or the same effect that could be taken by the authorities of one Contracting Party against the investments made by nationals or companies of the other Contracting Party will be in accordance with the legal requirements, and shall not be discriminatoires nor justified for reasons other than the public interest. the contracting party taking such measures shall contribute to the claimant, fair and equitable compensation.

## **Article 7. More Favourable Terms**

The more favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with nationals or companies of the other Contracting Party shall not be affected by this Agreement.

## **Article 8. Principle of Subrogation**

If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment made in the territory of the other party makes payment to one of its nationals, whether natural or legal persons, it is thereby entered into the rights and claims of such nationals.

## **Article 9. Arbitration**

1: disputes concerning the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. if both contracting parties do not reach a settlement within 12 months, the dispute shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State.

3 - if one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other contracting party to make within three months of the appointment of the arbitrator shall be appointed upon request by the latter Contracting Party by the President of the International Court of Justice.

4 - if the two arbitrators cannot reach an agreement about the choice of the Chairman within three months following their appointment, the latter will be appointed at the request of either Contracting Party by the President of the International Court of Justice.

5. if in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from exercising his mandate or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they shall be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

6 - unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

7 - the decisions of the Tribunal are final and binding on the contracting parties.

## **Article 10. Entry Into Force , Termination**

1: this Agreement shall enter into force on the day on which the two Governments that have notified the constitutional formalities required for the entry into force of international agreements have been completed, it shall remain valid for an initial period of ten years and may be renewed tacitly renewed. each Contracting Party may denounce this Agreement by a written notice of six months.

2. in the event of termination, the provisions of articles 1 to 9 above shall apply for a period of ten years for investments made prior to the termination of the Agreement.

Done at Rabat on 18 October 1988 in two originals in the Arabic, French and Portuguese languages. the three texts being equally authentic.