

# **Agreement between the Government of the French Republic and the Government of the Kingdom of Morocco on the reciprocal encouragement and protection of investments**

The Government of the French Republic and the Government of the Kingdom of Morocco hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in Morocco and Moroccan investments in France

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries, in the interest of their economic development

Have agreed on the following provisions:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means assets such as property, rights and interests of every kind and, more particularly but not exclusively:

(a) movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, pledges, bonds and similar rights ;

(b) shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the Contracting Parties

(c) Bonds, debts and rights to any benefits of economic value;

(d) copyrights, industrial property rights (such as patents, licenses, trademarks, industrial designs and models), technical processes, registered names and goodwill

(e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those in the maritime zone of the contracting parties.

This Agreement shall apply to investments made in accordance with the legislation of the Contracting Party in whose territory or maritime zone the investment is made before or after the entry into force of this Agreement.

Any change in the form of investment of assets shall not affect their qualification as investments, provided that such change is not contrary to the legislation of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "investor" means any national or company of a Contracting Party which makes investments in the territory or maritime area of the other Contracting Party:

(a) "National" means natural persons possessing the nationality of one of the Contracting Parties;

(b) "Company" means any legal person incorporated in the territory or maritime area of one of the Contracting Parties in accordance with the laws of that Party and having its registered office therein, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory or maritime area of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

3. "Income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

The income from the investment and, in the case of reinvestment, the income from its reinvestment shall enjoy the same

protection as the investment.

4. This Agreement shall apply to the territory of each of the Contracting Parties and to the maritime area of each of the Contracting Parties, hereinafter defined as the economic zone and the continental shelf which extend beyond the limits of the territorial waters of each of the Contracting Parties and over which they have, in accordance with international law, sovereign rights.

## **Article 2.**

Each of the Contracting Parties shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by investors of the other Party in its territory and in its maritime zone.

## **Article 3.**

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, fair and equitable treatment in accordance with the principles of international law, to the investments of the investors of the other Party and to ensure that no arbitrary or discriminatory measures limit the application of this principle.

## **Article 4.**

Each Contracting Party shall apply, in its territory and maritime zone, to investors of the other Party, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its investors, or the treatment accorded to investors of the most favoured Nation, if the latter is more advantageous. In this regard, nationals authorized to work in the territory and maritime zone of one of the contracting parties shall be entitled to appropriate material facilities, within the framework of the regulations in force, for the exercise of their professional activities.

This treatment shall not, however, extend to the privileges which a Contracting Party grants to investors from a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization, or by virtue of a double taxation agreement or any other agreement in the field of taxation.

## **Article 5.**

1. Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory and maritime zone of the other Contracting Party.

2. The Contracting Parties shall not take measures of expropriation or nationalization or any other measures the effect of which is to dispossess, directly or indirectly, the investors of the other Party of investments belonging to them in their territory and maritime zone, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

Any measures of dispossession which may be taken must give rise to the payment of prompt and adequate compensation, the amount of which, calculated on the real value of the investments concerned, must be assessed in relation to a normal economic situation on the eve of the day on which such measures are taken or made known to the public.

This compensation, its amount and the terms of its payment shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable and paid without delay. It shall bear interest until the date of payment at the appropriate market rate of interest.

3. Investors of one of the contracting parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime area of the other contracting party shall be accorded by the latter treatment no less favourable than that accorded to its own investors or to those of the most favoured nation.

## **Article 6.**

Each Contracting Party, in the territory or maritime area of which investments have been made by investors of the other Contracting Party, shall accord to such investors the free transfer of

(a) interest, dividends, profits and other current income ;

- (b) royalties from intangible rights designated in paragraph 1(d) and (e) of Article 1;
- c) payments made for the repayment of loans regularly contracted;
- d) Proceeds from the sale or liquidation of the investment, in whole or in part, including capital gains on the investment;
- (e) the compensation for loss or dispossession provided for in Article 5, paragraphs 2 and 3 above.

Nationals of each of the Contracting Parties who have been authorized to work in the territory or maritime area of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer.

## **Article 7.**

Insofar as the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, within the framework of such regulations, to investments made by investors of that Party in the territory or maritime zone of the other Party.

## **Article 8.**

Any investment dispute between one of the Contracting Parties and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall, at the request of the investor, be submitted either to the competent court of the Contracting Party involved in the dispute or to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

Once an investor has submitted the dispute to the competent court of the Contracting Party involved in the dispute or to ICSID, the choice of either of these procedures shall be final.

## **Article 9.**

If one of the Contracting Parties, by virtue of a guarantee given for an investment made on the territory or in the maritime zone of the other Party, makes payments to one of its investors, it is thereby subrogated to the rights and actions of the latter.

The said payments shall not affect the rights of the beneficiary of the guarantee to have recourse either to ICSID or to the competent jurisdiction of the Contracting Party involved in the dispute, or to pursue the actions initiated either before ICSID or before the competent jurisdiction of the Contracting Party involved in the dispute, until the proceedings have been completed.

## **Article 10.**

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of investors of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking insofar as it contains provisions more favourable than those provided for in this Agreement.

## **Article 11.**

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner:

Each Contracting Party shall appoint one member, and both members shall appoint, by mutual agreement, a national of a

third State who shall be appointed by both Contracting Parties as chairman. All members shall be appointed within two months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party, or if for any other reason he or she is prevented from exercising this function, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The Arbitration Tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Parties.

## **Article 12.**

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial period of fifteen years. It shall remain in force after that term unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for a further period of fifteen years.

## **Article 13.**

This Agreement cancels and replaces, as of its entry into force, the agreement concluded between the Government of the French Republic and the Government of the Kingdom of Morocco on the reciprocal protection, encouragement and guarantee of investments, together with two exchanges of letters, signed in Rabat on July 15, 1975.

Done at Marrakech, on January 13, 1996, in two originals, each in the French and Arabic languages, both texts being equally authentic.

For the Government of the French Republic:

Jean Arthuis

Minister of Economy and Finance

For the Government of the Kingdom of Morocco:

Mohamed Kabbag

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