

AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE KINGDOM OF MOROCCO FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

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

WISHING to intensify economic cooperation between the two by creating favourable conditions for the realisation of investments by investors from one of the Contracting Parties in the territory of the other Contracting Party

RECOGNIZING that the reciprocal promotion and protection of such investments, on the basis of international agreements, will help to stimulate the initiative of entrepreneurs and increase the prosperity of both countries.

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "Investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, any type of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, including in particular, but not limited to

a) movable and immovable property, as well as other rights in rem such as mortgages, sureties, pledges, usufructs and similar rights

(b) shares and other interests in companies;

(c) debt securities and entitlements to all benefits with an economic value; loans shall be included only where they are directly linked to a specific investment;

(d) intellectual property rights, in particular copyright, trademarks, patents, industrial designs, technical processes, know-how and goodwill;

(e) concessions under public law for the purpose of exploring for, extracting or exploiting natural resources.

No change in the legal form in which assets and capital are invested or reinvested shall affect their classification as "investments" under this Agreement.

These investments must be made in accordance with the laws and regulations in force in the host country.

This Agreement shall also cover, as far as its future application is concerned, investments made in foreign currencies, prior to its entry into force, by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with its laws and regulations. However, this Agreement shall not apply to disputes which may arise prior to its entry into force.

2. The term "investor" means:

(a) any natural person who passes the nationality of one of the Contracting Parties under its laws and regulations and who makes an investment in the territory of the other Contracting Party

b) any legal person formed in accordance with the legislation of a Contracting Party which has its headquarters in the territory of that Contracting Party and makes an investment in the territory of the other Contracting Party.

3. The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of a

Contracting Party in the territory of the other Contracting Party, if such persons, at the date of the investment, have been domiciled for more than two years in the latter Contracting Party, unless it is shown that the investment was admitted to its territory from outside. The provisions of this Agreement shall apply to the reinvestment of the proceeds of the investment so admitted.

4. The term "profits" means all sums produced by an investment, such as profits, dividends, interest, remuneration and licence fees, the contracts for which have been approved by the competent authorities in so far as the laws of the receiving country require, or other current income.

5. The term "territory" means:

a) for the Argentine Republic: the national territory, including those maritime areas adjacent to the outer limit of the territorial sea on which the Argentine Republic may, in accordance with international law, exercise sovereign rights or jurisdiction.

b) 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 designated by the legislation of the Kingdom of Morocco, or will be designated in the future, in accordance with international law, as an area in which the Kingdom of Morocco may exercise rights relating to the seabed and subsoil of the sea, as well as to natural resources.

Article 2. Investment Promotion

1. Each Contracting Party shall promote in its territory investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. The extension, modification or transformation of an investment made in accordance with the laws and regulations in force in the host country shall be treated as a new investment.

Article 3. Investment Protection

1. Each Contracting Party shall at all times ensure in its territory fair and equitable treatment of investments of investors of the other Contracting Party and shall not impair their management, maintenance, use, enjoyment or liquidation through unjustified or discriminatory measures.

2. The investments referred to in paragraph (1) and their proceeds shall enjoy the full protection of this Agreement. Notwithstanding the provisions of paragraph 1, the same treatment shall apply in the case of reinvestment of such earnings.

3. Subject to measures necessary for the maintenance of public order, investments admitted shall enjoy continuing security and protection, which shall not be less favourable than those enjoyed by domestic or most-favoured-nation investors.

4. However, the treatment and protection provided for in this Article shall not extend to the advantages, preferences or privileges accorded to investors of a third State under

(a) the participation or association of a Contracting Party in an existing or future free trade area, customs union, common market or similar economic organisation;

(b) an international agreement in the field of taxation;

(c) an agreement to provide concessional financing for investments made pursuant to that agreement.

Article 4. Expropriation and Compensation

1. Measures of nationalization, expropriation or any other public measure having the same effect, which may be taken by the authorities of a Contracting Party against investments belonging to investors of the other Contracting Party shall be in accordance with the legal provisions and shall not be discriminatory or based on other grounds than public utility. These measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation.

The amount of such compensation shall correspond to the market value of the investments concerned immediately before these measures were taken or made public. The compensation shall be paid without delay, shall be effectively realisable and freely transferable. In the event of late payment, the compensation shall bear interest at market rates from the date on which it becomes due.

2. Investors of one Contracting Party whose investments in the territory of the other Contracting Party have been damaged

by war or other armed conflicts, a state of national emergency, revolt, insurrection or any other similar event which has occurred in the territory of the other Contracting Party, shall receive from the latter treatment which is non-discriminatory and at least equal to that accorded to its own investors or to investors of third States as regards restitution, compensation, indemnification or other relief.

Article 5. Transfers

1. Each Contracting Party shall grant investors of the other Contracting Party the unrestricted transfer of all sums connected with investments, in particular, but not exclusively, from

(a) capital and additional sums required for the maintenance or development of the investment;

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

(c) funds necessary to repay loans as defined in Article 1, Paragraph (1) (c);

(d) royalties;

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

(f) compensation as provided for in Article 4;

(g) appropriate shares of the earnings of nationals of a Contracting Party who have been authorised to work in connection with an investment in the territory of the other Contracting Party.

2. The transfers provided for in paragraph 1 shall be made without delay, in freely convertible currency, at the normal rate of exchange applicable on the date of transfer. Such transfers shall be made in accordance with the exchange regulations in force, after the fulfilment of fiscal obligations, and in accordance with the procedures applicable by the Contracting Party in whose territory the investment was made, it being understood that such procedures shall not affect the substance of the rights provided for in this Article.

Article 6. Subrogation

1. If compensation is paid under a legal or contractual guarantee covering the non-commercial risks of investments to an investor of one of the Contracting Parties or to a body designated by it, the other Contracting Party shall recognise subrogation in favour of the first Contracting Party or the body designated by it in respect of the rights of the investor.

2. In accordance with the guarantee given to the investment concerned, the insurer may assert all the rights that the investor would have been able to exercise if the insurer had not been subrogated to him.

3. Such rights can be exercised by the insurer within the limits of the quota of risk covered by the guarantee contract, and by the investor beneficiary of the guarantee, within the limits of the quota of risk not covered by this contract.

4. With respect to the rights transferred, the other Contracting Party may assert the obligations that legally or contractually corresponded to the subrogated insurer in the rights of the compensated investors.

5. Any dispute between a Contracting Party and the insurer of an investor of the other Contracting Party shall be settled in accordance with the provisions of Article 9 of this Agreement.

Article 7. Additional Obligations

1. Where a question relating to investment is governed both by this Agreement and by the domestic laws or regulations of one of the Contracting Parties or by existing or future international obligations of the Contracting Parties, investors of the other Contracting Party may avail themselves of the provisions which are most favourable to them.

2. Investments which have been the subject of a particular commitment by one of the Contracting Parties to investors of the other Contracting Party shall, subject to the provisions of this Agreement, be governed by the terms of that commitment to the extent that it contains provisions more favourable than those set out in this Agreement.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled between the Contracting Parties through diplomatic channels. The Contracting Parties may submit such disputes, by mutual agreement,

to a Joint Committee composed of representatives of the Parties. This committee shall meet without delay at the request of the most diligent Contracting Party.

If the dispute cannot be settled in this way within six months of the beginning of the negotiations, it shall be submitted, at the request of one of the Contracting Parties, to an arbitration tribunal.

3. The tribunal shall be constituted as follows:

Each Contracting Party shall appoint an arbitrator and the two arbitrators shall jointly select a national of a third State as the third arbitrator who, with the approval of both Contracting Parties, shall be appointed Chairman of the tribunal.

The arbitrators must be appointed within three months and the chairman within five months of the date on which one of the Contracting Parties notified the other of its intention to submit the dispute to the arbitral tribunal.

4. If the time limits provided for in paragraph (3) of this Article are not observed, the President of the International Court of Justice shall be invited to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or if he is prevented from exercising this function for any other reason, the Vice-President or, if prevented, the most senior Member of the International Court of Justice who is a national of a third State, shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and principles of international law.

6. The tribunal shall determine its own rules of procedure.

7. The tribunal shall take its decisions by majority vote; such decisions shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the costs of its arbitrator and of his representation in the arbitration proceedings. The costs of the Chairman and other expenses shall be borne equally by the Contracting Parties, unless the tribunal decides otherwise.

Article 9. Settlement of Disputes between an Investor and the other Contracting Party

1. Any investment dispute arising between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably by consultation and negotiation between the parties to the dispute.

If the dispute cannot be settled amicably by direct agreement between the parties to the dispute within six months from the date of written notification, the dispute shall be submitted, at the choice of the investor:

(a) either to the national courts of the Contracting Party involved in the dispute

b) or to the arbitration of 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, opened for signature in Washington on 18 March 1965.

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

The choice of (a) or (b) is irrevocable.

No Contracting Party to a dispute may claim, at any stage of the arbitral proceedings or of the enforcement of the arbitral award, that the investor who is an adverse party to the dispute has received compensation intended to cover all or part of his losses under an insurance policy.

4. The arbitral body shall decide on the basis of the provisions of this Agreement, the law of the Contracting Party, party to the dispute, in whose territory the investment was made, including the rules of conflict of laws, the terms of any particular agreement concluded in relation to the investment, and the principles of international law in this field.

5. Arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce such judgments in accordance with its national law.

Article 10. Entry Into Force and Period of Validity

1. This Agreement shall enter into force one month after the date on which the Contracting Parties notify each other that the

constitutional procedures required in their respective countries have been completed.

2. This Agreement is concluded for an initial period of ten years. It shall remain in force after this period unless one of the Contracting Parties denounces it through diplomatic channels with one year's notice.

3. Investments made before the expiry of this Agreement shall remain subject to its provisions for a period of ten years from that expiry.

Done at RABAT, on 13 June 1996, in two originals, each in the Spanish, French and Arabic languages, the three texts being equally authentic. In case of divergence, the French text shall prevail.

For the Government of the Argentine Republic

For the Government of the Kingdom of Morocco