

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF THE GABONESE REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE KINGDOM OF MOROCCO, on the one hand,

And

THE GOVERNMENT OF THE GABONESE REPUBLIC, of the other part

Hereinafter referred to as the "Contracting Parties";

Desiring to create conditions conducive to increased investment and to intensify economic cooperation between the Contracting Parties on the basis of equality and mutual benefit;

Recognizing that the reciprocal promotion and protection of investments are likely to stimulate entrepreneurship and increasing prosperity of both countries;

Determined to create conditions to promote the development of investment of each Contracting Party in the territory of the other Contracting Party.

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all kinds of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations. It includes, in particular, but not exclusively :

- a) movable and immovable property as well as all other rights in rem such as mortgages, liens, usufruct, guarantees and similar rights
- b) shares, stocks, shares and bonds in companies, as well as all other forms of participation in such companies;
- c) loans and debts and all other rights to benefits having an economic value linked to an investment;
- d) intellectual and industrial property rights, in particular copyrights, patents, industrial designs, trademarks and registered names, commercial rights and customer rights;
- e) concessions granted by law or by contract, in particular concessions relating to the exploration, extraction or exploitation of natural resources.

No change in the legal form in which such assets have been invested or reinvested shall affect their character as investments" within the meaning of this Agreement.

2. The term "investor" means :

- a) any natural person having Gabonese or Moroccan nationality under the laws of the Gabonese Republic or the Kingdom of Morocco respectively and making an investment in the territory of the other Contracting Party;
- b) any legal person having its registered office in the territory of the Gabonese Republic or the Kingdom of Morocco and incorporated under the laws of Gabon or Morocco respectively and making an investment in the territory of the other Contracting Party.

3. The term "income" means the amounts earned by an investment, including, but not limited to, profits, interest, dividends and royalties.

4. The term "territory" means :

a) for the Gabonese Republic: the national territory, as well as the economic zone and the continental shelf which extend beyond the limit of the territorial waters and over which Gabon exercises, in accordance with international law, its sovereign rights and jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

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 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.

Article 2. Promotion and Protection of Investments

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

The extension, modification or conversion of an investment made in accordance with the laws and regulations of the Contracting Party in whose territory the investment is located, shall be treated as a new investment.

2. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall be accorded fair and equitable treatment as well as full protection and security by the latter.

Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal in its territory of investments of the other Contracting Party is not hindered by unjustified or discriminatory measures.

Income from the investment, if reinvested in accordance with the laws and regulations of the Contracting Party in whose territory the investment is located, shall enjoy the same protection as the initial investment.

Article 3. National Treatment and Most-favoured Nation Treatment

1. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall be accorded by the latter fair and equitable treatment no less favourable than that which it accords to investments of its own investors or to investments of investors of any third State.

2. Each Contracting Party shall accord to investors in its territory of the other Contracting Party, in respect of activities related to their investments, a treatment that is no less favourable than that it accords to its own investors to investors or of any third State.

3. Without prejudice to what is provided for in paragraph 2 above, the most-favoured-nation treatment does not extend to the privileges or advantages or preferences which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union or common market, economic or any other form of regional economic organization or similar international agreement or any agreement for the avoidance of double taxation in taxation or any other arrangement relating to taxation.

Article 4. Expropriation and Compensation

1. The measures of expropriation, nationalization or any other measures having the same nature or the same effect (hereinafter "expropriation") that could be taken by either contracting party against the investments of investors of the other Contracting Party shall not be discriminatory nor justified for reasons other than in the public interest and under due process.

2. The Contracting Party taking such measures shall contribute to the person entitled thereto without undue delay, a prompt, effective and adequate compensation, which will correspond to the market value of the investment concerned on the day before the date on which the measures are taken or are publicly available.

3. The provisions for the purpose of fixing and the payment of compensation must be taken promptly at the latest at the moment of the expropriation. in the event of late payment, the compensation shall include interest at market conditions as from the date of its receipt until the date of payment and shall be paid to the investors in convertible currency and freely transferable.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war or other armed conflicts, revolution, state of national emergency, revolt, riot or insurrection shall be accorded by the latter Contracting Party treatment no less favourable than that it accords to its own investors to investors or of any third State as regards restitution, indemnification, compensation or other settlement.

2. Without prejudice to the provisions of paragraph 1 of this article, investors of one Contracting Party who in any of the situations referred to above, losses in the territory of the other Contracting Party resulting from:

- i) Seizure, by the authorities of the other contracting party and to their property;
- ii) The destruction of their property by the authorities of the other Contracting Party, which was not required by the necessity of the situation;

Shall be entitled to compensation. payments under the above shall be carried out within the agreed time frames and shall be freely transferable.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other contracting party, after the fulfilment of tax obligations, the free transfer of payments relating to their investments. the transfers shall be made in a freely convertible currency, without undue delay and shall include in particular though not exclusively:

- a) The capital and additional amounts to maintain or increase the investment;
- b) Profits, interest, dividends, royalties and other current income;
- c) The necessary funds in repayment of loans related to investments;
- d) Proceeds from the sale or liquidation of investments;
- e) The compensation pursuant to articles 4 and 5;
- f) Wages and other remuneration accruing to nationals of one 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 shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Subrogation

1. If under a legal or contractual guarantee covering non-commercial investment risks, indemnities are paid to an investor of either Contracting Party, the other Contracting Party shall recognize the subrogation into the insurer of the rights of the investor indemnified.

2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.

3. The transfer of payments arising out of the subrogation above shall be governed by the provisions of article 6 of this Agreement.

4. Any dispute between one Contracting Party and the insurer to an investment of the other Contracting Party shall be settled in accordance with the provisions of article 8 of this Agreement.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall as far as possible, be settled amicably through consultations or negotiations between the parties to the dispute.

2. If the dispute is not régié within a period of six (6) months from the date of the written notification by either party to the dispute shall be submitted, at the request of the investor:

a) The national courts of the Contracting Party, Party to the dispute;

b) Or to international arbitration, under the conditions set out in paragraph below.

3. In the event of recourse to international arbitration, the dispute may be submitted to one of the arbitral tribunals referred to below, at the choice of the investor:

a) The International Centre for the 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 at Washington, on 18 March 1965.

b) An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

To this end, each Contracting Party gives its consent irrevocable that any investment dispute is submitted to international arbitration referred to above.

4. Neither of the Contracting Party, Party to the dispute, can raise objection, at any stage of the arbitration proceedings or of the execution of an award arbitrate, the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy.

5. The arbitration panel shall decide on the basis of the provisions of this Agreement, the national law of the Contracting Party Party to the dispute, including *règies* relating to conflicts of law, of the terms of the specific agreements which may be concluded between one Contracting Party and the investor concerning an investment as well as the Principles of International Law.

6. Arbitrates awards shall be final and binding upon the parties to the dispute. each Contracting Party shall execute them in accordance with its national law.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be *règié*, as far as possible through diplomatic channels.

2. If a dispute cannot be settled through diplomatic channels within six (6) months following the beginning of negotiations, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

3. The arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party designated an arbitrator and the two arbitrators shall select a national of a third State as Chairman of the arbitral tribunal. the arbitrators shall be appointed within three (3) months and the Chairman within five months from the date of receipt of the notice of arbitration.

4. If within the periods specified in paragraph 3 of this article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. if the President is a national of either Contracting Party or if he is unable for any reason to carry out this function, the Vice-President shall be invited to make the appointments.

If the Vice-President is a national of either Contracting Party or unable to perform this function, the member of the International Court of Justice in the order of seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and *règies* and principles of international law. it shall reach its decisions by a majority of votes. the decision shall be final and binding on the contracting parties.

6. The tribunal shall determine its own procedure.

7. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. the costs related to the Chair and any remaining costs shall be borne in equal parts by the contracting parties.

Article 10. Consultations

The Contracting Parties may, if necessary, in consultations regarding the application of this Agreement. such consultations shall be held on the proposal of one of the Contracting Parties and a place at a time agreed upon through diplomatic channels.

Article 11. Implementation

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party in 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 that may arise before its entry into force.

Article 12. Additional Obligations

1. Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or under existing international conventions or undertaken by the contracting parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.
2. Each Contracting Party shall at all times ensure respect the obligations it has assumed with regard to investments in its territory by investors of the other contracting party.
3. Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any action necessary for the protection of its own essential security interests, environment, public health and prevention of diseases animal and plant diseases. it is understood that such measures shall not be applied in a manner which would constitute arbitrary or unjustifiable, or a disguised restriction on international trade or investment.

Article 13. Final Provisions

1. This agreement repeals the Convention for the protection, the promotion and protection of the Investment signed at Libreville on 1 January 1979.

It shall enter into force thirty days after the date of receipt of the latter of the two notifications concerning the fulfilment by the two contracting parties with the procedures therefor constitutionally required in their respective countries.

2. This Agreement shall remain in force for a period of ten years and shall be extended for the same period tacitly unless one of the Contracting Parties denounces it by written notification at least six months before the date of expiry of the current period of validity.
3. Investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from the date of its termination.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement.

Done at Libreville on 21 June 2004, each in two originals in the Arabic and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO

THE MINISTER OF BUSINESS FOREIGN AND COOPERATION

MOHAMED BENAÏSSA

FOR THE GOVERNMENT OF THE GABONESE REPUBLIC

THE MINISTER OF BUSINESS FOREIGN AFFAIRS, COOPERATION AND FRANCOPHONIE

JEAN PING