

AGREEMENT BETWEEN THE KINGDOM OF MOROCCO AND FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Kingdom of Morocco and

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hereinafter referred to as the "Parties" or individually as a "Party", Desiring to strengthen and improve the ties of friendship and develop economic cooperation between the Parties;

Recognizing the differences in the level of development and size of their economies;

Desiring to strengthen their economic and investment relations, in accordance with the objective of sustainable development in its economic, social and environmental dimensions and without compromising the right of the Parties to adopt general measures relating, inter alia, to the protection of public health, the environment, safety and workers' rights, in accordance with the standards provided for in the international agreements to which both Parties have acceded;

Recognizing the essential role of investment in promoting sustainable development, economic growth, technology transfer, poverty reduction, job creation, and human development;

Desiring to encourage investments that are made with the objective of establishing a lasting economic relationship between the investor and the Host Party and that will afford the investor the opportunity to exercise significant influence in the management of the investment;

Recognizing that the encouragement of sustainable and inclusive investment is essential for the development of the Parties' economies and that the encouragement of such investment requires cooperative efforts on the part of investors and governments of both Parties;

Understanding that the reciprocal promotion and protection of investments in accordance with the provisions of this Agreement will stimulate private initiatives and strengthen contacts between the private sector of both Parties;

Emphasizing the importance of responsible business conduct, the promotion of transparency principles and the fight against corruption;

Seeking to create a mechanism for dialogue and government initiatives that can contribute to a significant increase in mutual investment;

Convinced that investments by investors of one Party in the territory of the other Party shall be made in accordance with the laws and regulations of that other Party.

Reaffirming their respective commitments under the Agreement Establishing the World Trade Organization ;

Accepting, in good faith, that the Agreement for the Reciprocal Promotion and Protection of Investments, hereinafter referred to as "Agreement", is as follows

Section I. OBJECTIVES, SCOPE OF THE AGREEMENT AND DEFINITIONS

Article 1. OBJECTIVES

1.1 The objectives of this Agreement are to promote investment that contributes to sustainable development in the Host Party, to foster technology transfer and job creation, and to strengthen contacts between the private sector of both Parties.

1.2 The objectives of this Agreement shall be achieved without prejudice to the rights of the Parties to regulate in the public interest.

Article 2. SCOPE OF APPLICATION

2.1 This Agreement shall apply to investments made in foreign currency by investors of one Party in the territory of the other Party before or after its entry into force, in accordance with the laws and regulations in force in the latter Party.

2.2 This Agreement covers measures adopted by a Party after its entry into force that affect investors of the other Party or investments of investors of that other Party.

2.3 This Agreement shall not apply to disputes that may arise prior to its entry into force.

2.4 Subject to the other provisions of this Agreement, this Agreement does not apply to any law, decision or action taken in relation to taxation, including actions taken to enforce tax obligations.

2.5 The provisions of this Agreement shall not prevent a Party from adopting or implementing new restrictive measures with respect to investors and their investments, provided that such measures are consistent with this Agreement.

2.6 Investments made with funds or assets related to activities of illicit origin are not covered by this Agreement.

2.7 Investors of a Party may enter into special commitments with the other Party. Investments made pursuant to such special commitments shall not be governed by this Agreement.

Article 3. DEFINITIONS

For the purposes of this Agreement :

3.1 Host Party means the Party in whose territory the investment is located.

3.2 Home Party means the home state in whose territory the investor has its principal place of business and from which it exercises effective control over the investment in the territory of the Host Party. For purposes of this Agreement, the investor shall inform the Host Party of its home state.

3.3 Investment means assets invested in good faith by an investor of a Party in the territory of the other Party, which contribute to the sustainable development of the latter Party and which involve a certain period of time, a commitment of capital or other similar resources, an expectation of profit, and an assumption of risk.

Note: Both Parties confirm their understanding that the contribution of investment to sustainable development can be measured through, inter alia, increased productive capacity, economic growth, quality of jobs created, duration of investment, technology transfer and poverty reduction.

The investment includes:

- a) shares, securities and all other forms of participation in the capital of a company;
- b) movable or immovable property and other property rights related to the investment such as mortgages, liens, pledges, encumbrances or similar rights and obligations
- c) concessions, licenses, authorizations, permits and similar rights granted by law or by contract, including concessions for the search, exploration, extraction or exploitation of natural resources;
- d) debt securities of, or loans to, an enterprise that are directly related to the investment, where the enterprise is an affiliate of the investor; and
- e) intellectual property rights provided that they are recognized by the laws of the Host Party and are an integral part of an investment. Such intellectual property rights shall be consistent with those provided for in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and the laws of the Host Party. For greater certainty, provisions relating to intellectual property rights are not covered by Section VI on dispute settlement between an investor and the host Party.

Note: Mere ownership of an intellectual property right by an investor of a Party does not trigger the rights and obligations under this Agreement.

Investments must:

- be made in good faith and in accordance with the host Party's applicable laws and regulations and its investment policies. For greater certainty, this Agreement does not cover investments made by investors of a Party in the territory of the other Party in violation of the laws and regulations in force in the latter Party;

- have a significant physical presence in the Host Party; - constitute all or part of a business or commercial operation; - be made by an investor as defined in this Agreement.

For the purposes of this Agreement and for greater certainty, investment does not include:

i) debt obligations issued by or loans to a Party or a government business enterprise;

ii) portfolio investments, including portfolio companies ;

Note: Portfolio investments are investments that represent less than 10% of a company's shares or that do not allow the investor holding them to exercise effective management or influence over the management of the company.

iii) receivables arising solely from commercial contracts for the sale of goods and services;

iv) receivables or loans with a maturity of less than three years; v) loans granted under a commercial contract such as trade financing;

vi) an order or judgment obtained in an administrative or judicial proceeding;

vii) pre-investment expenses incurred by the investor prior to the actual implementation of its investment in the territory of the Host Party;

viii) the value of a brand, market share or similar intangible rights; ix) bank letters of credit; and

x) any other claims other than those set forth in the definition of investment in this Agreement.

No change in the legal form in which the assets have been invested or reinvested shall affect their character as an investment within the meaning of this Agreement, provided that such change is made in accordance with the laws and regulations in force in the Host Party.

3.4 Investor means a natural or juridical person of a Party, other than a branch or representative office, that makes a bona fide investment in the territory of the other Party:

A/: The term "natural person" means a national who is a national of a Party in accordance with its laws and regulations.

This Agreement does not cover investments of natural persons who are nationals of both Parties, unless such persons, at the time of making the investment in the Host Party, have their principal residence and center of interest in the other Party.

B/: the term "legal person" means:

(a) a juridical person that is incorporated or organized in accordance with the laws and regulations of a Party and that has its registered office, central administration or principal place of business in the territory of that Party and conducts in the territory of that Party substantial economic activities within the scope of this Agreement; or

(b) a legal person that is incorporated or organized under the laws and regulations of a Party and that is owned or controlled directly or indirectly by a natural person of that Party or by a legal person as described in paragraph (a) above.

The concept of "substantial economic activity" requires a case-by-case examination of all circumstances, including, but not limited to

i) the amount of investment brought into the country; ii) the number of jobs created ;

iii) its effect on the local community; and

iv) the length of time the company has been operational.

For greater certainty, a legal person that has its registered office in the territory of one of the Parties, its activity must have a real and continuous link with the economy of that Party.

Note: "owned" by an investor means that the investor holds more than fifty (50) percent of the capital of the corporation and "controlled" by an investor means that the investor has the power to appoint a majority of the directors of the corporation or to legally supervise its activities.

For greater certainty, legal persons that are incorporated or organized in accordance with the laws of a Party and that conduct business in the territory of that Party shall not be considered an investor for purposes of this Agreement if such legal persons are owned or controlled by natural or legal persons that are nationals of a third state or the Host Party.

3.5 Public company means any company whose capital is held directly or indirectly, exclusively or jointly by public bodies in a proportion of more than 50%.

3.6 Measures include any legislation, regulation or administrative decision made by a Party directly related to an investment in the territory of that Party and affecting that investment.

3.7 Confidential Information means any confidential business information or information that is privileged or protected from disclosure under the law of a Party.

3.8 Party to the dispute means the investor filing a complaint under Section VI or the responding Party.

3.9 Respondent means the Party against whom a Complaint is filed under Section VI.

3.10 Claimant means an investor of a Party that files a claim against the other Party under Section VI.

3.11 Washington Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington on 18 March 1965.

3.12 ICSID means the International Centre for Settlement of Investment Disputes established under the Washington Convention.

3.13 ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes.

3.14 New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958.

3.15 UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

3.16 "Without delay" means the period of time normally required for the completion of the necessary formalities for the payment of benefits or for the transfer of payments. In no case shall the period exceed three months.

3.17 Income means amounts net of taxes earned by an investment such as profits, interest, dividends, royalties or other legal income.

3.18 Territory means :

a) 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, in accordance with international law and its national legislation, as an area within which the rights of the Kingdom of Morocco with respect to the seabed and subsoil and to natural resources may be exercised.

3.19 Freely convertible currency means the currency widely used to make payments for international transactions and commonly traded in major international foreign exchange markets.

Section II. OBLIGATIONS OF THE PARTIES

Article 4. Admission of Investments

4.1 Each Party shall admit investments of investors of the other Party in accordance with its applicable laws and regulations, its economic development policies and its foreign investment regime.

4.2 Any extension, modification or substantial transformation of an initial investment, made in accordance with the laws and regulations in force in the Host Party, shall be considered a new investment.

Article 5. Investment Promotion

5.1 Each Party shall, to the extent practicable and in accordance with its applicable laws and regulations and its investment promotion policies, encourage and create favorable conditions for investors of the other Party to make investments in its territory.

5.2 Subject to its applicable laws and regulations and policies relating to the entry of foreign nationals, each Party shall grant the necessary facilities and permissions for the entry, stay and work of the investor of the other Party and any person having a permanent or temporary relationship with the investment such as directors, experts and technicians.

5.3 Each Party shall encourage its nationals to invest in the territory of the other Party and shall create favorable conditions for doing so.

5.4 The Parties shall consult periodically within the framework of the Joint Committee provided for in Article 26 of this Agreement on investment opportunities in their territories in various sectors of the economy in order to determine which reciprocal investments could be most beneficial to both Parties and to grant appropriate facilities, incentives and other inducements to the extent and under the conditions that the Parties shall periodically determine by mutual agreement.

Article 6. General Treatment and Protection of Investments

6.1 Investments made by investors of one Party in the territory of the other Party in accordance with its laws and regulations shall, in accordance with the provisions of this Article, be accorded fair and equitable treatment by the latter Party and full protection and security that should not be less than that accorded to its own investors and their investments or to investors of a third State and their investments. It is understood that :

a) A party violates the obligation to provide fair and equitable treatment under paragraph 1 when a measure or series of measures, constituting :

(i) a denial of justice in criminal, civil or administrative proceedings; or

ii) a fundamental violation of the rights of the defence; or

iii) targeted discrimination on patently unjustified grounds, such as gender, race or religious belief; or

iv) grossly abusive treatment, such as harassment, coercion and pressure.

Note: For greater certainty, the fact that an investor or investment does not achieve its desired results does not constitute a denial of justice.

(b) the full protection and security set out in paragraph 1 refers only to the Party's obligations with respect to the physical security of investors and their investments in its territory and not to any other obligations.

6.2 For greater certainty, a change in the law of a Party does not in itself constitute a violation of section 6.1.

6.3 Nothing in this Article shall be construed to prevent a Party from taking any measure considered necessary to protect public order, public health or the environment, provided that such measures are not applied in a discriminatory, abusive or unjustified manner.

6.4 It shall not be a violation of this Article for a Party to take or fail to take any action that adversely affects the expectations of an investor.

6.5 It shall not be a violation of this Article that an investment incentive has not been granted, renewed or continued, or has been modified by a Party.

6.6 The income from the investment, if reinvested in accordance with the applicable laws and regulations of the Host Party, shall enjoy the same protection as the original investment.

6.7 A finding that a breach of any other provision of this Agreement or any other international agreement entered into by a Party does not constitute a breach of this Article.

6.8 The treatment provided in this Article shall apply to the management, maintenance, use, enjoyment, sale or liquidation in the territory of a Party of investments made by investors of the other Party

Article 7. National Treatment

7.1 Without prejudice to its laws and regulations, each Party shall grant, within its territory :

a) investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the management, maintenance, use, enjoyment, sale or liquidation of their investments.

b) to investments of investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the management, maintenance, use, enjoyment, sale or liquidation of investments.

Note: For greater clarity, the national treatment provided for in paragraph 7.1 above, which shall be accorded in accordance with the applicable laws and regulations of the Host Party, shall preserve the right of the Host Party to apply treatment to investors of the other Party and their investments that is different from that applied to its own investors and their investments in certain economic sectors or activities that are reserved for its own investors under its national development program.

7.2 It remains understood that the "in similar circumstances" language referred to in paragraph 7.1 above requires, on a case-by-case basis, a review that addresses the following:

- the objective and nature of the measure concerned by the investment;
- the actual and potential impact of the investment on the population and the environment and on local, regional or national development;
- the location of the investment and the sector in which the investment is made and the goods or services consumed or produced by the investment;
- the public or private origin of the investment.

For greater clarity, the "under similar circumstances" review will not be limited to any one of the items listed in Section 7.2.

Article 8. Most Favored Nation Treatment

8.1 Without prejudice to its laws and regulations, each Party shall grant in its territory :

- a) investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of a third State with respect to the management, maintenance, use, enjoyment, sale or liquidation of their investments.
- b) to investments of investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of a third State, with respect to the management, maintenance, use, enjoyment, sale, or liquidation of investments.

8.2 The provisions of Article 7.2 of this Agreement apply with respect to the definition of "in like circumstances" in this Article.

8.3 For greater certainty, treatment under this Article does not include treatment accorded to investors of a non-Party and their investments under investment dispute settlement provisions in other international agreements, including agreements containing an investment chapter, between a Party and a non-Party.

8.4 Substantive obligations contained in other international investment treaties and other trade agreements do not in themselves constitute "treatment", and thus cannot give rise to a violation of this Article, absent measures adopted or maintained by a Party under those obligations.

Article 9. Exceptions to National and Most-Favored-Nation Treatment

9.1 The provisions of Articles 7 and 8 of this Agreement shall not be construed to require a Party to extend to investors of the other Party the benefits of any treatment, preference or privilege arising from :

- a) an existing or future free trade agreement, customs union, common market, monetary union or similar international agreement to which a Party is or may become a party or any other form of regional cooperation to which a Party is or may become a party;
- b) Bilateral or multilateral international investment agreements to which a Party is a party and which were signed or are in force prior to the entry into force of this Agreement ;
- c) any national legislation relating wholly or partly to taxation;

d) subsidies (grants, loans, insurance and guarantees) provided by a Party exclusively to its own investors in connection with national development activities and programs;

e) contracts entered into by a Party or a government enterprise.

9.2 For purposes of clarification, the "treatment" referred to in Article 7 of this Agreement does not preclude different treatment of investors of a Party based on objective regulatory distinctions justified by legitimate development policies.

Article 10. Expropriation

10.1. No Party may nationalize or expropriate an investment of an investor of the other Party either directly or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter expropriation), except :

(i) for public utility reasons; (ii) on a non-discriminatory basis; (iii) in accordance with due process of law; and

(iv) upon payment of compensation in accordance with subsections 10.2 to 10.4.

For greater certainty, this subsection shall be construed in accordance with subsection 10.8 of this section.

10.2. The compensation referred to in Section 10.1 shall be equivalent to the fair market value of the expropriated investment immediately prior to the date of its expropriation or the announcement of the expropriation (date of expropriation) and shall not take into account any change in value resulting from the fact that the proposed expropriation was already known. The criteria for assessing the fair market value of the investment include going concern value, asset value, including the declared tax value of tangible property, and where applicable any other relevant criteria for determining fair market value.

10.3 The assessment of fair and equitable compensation must be based on a fair balance between the public interest and the interest of the investor affected by the expropriation measure while taking into consideration all the circumstances of the expropriation, namely: the present and past use of the investment, the conditions of acquisition, the purpose of the expropriation, the profits generated by the investment and the duration of this investment.

10.4 The compensation shall be paid without undue delay in accordance with the regulations in force in the host Party. Compensation shall be paid in freely convertible currency at the market rate of exchange prevailing on the date of payment. It shall be freely transferable in accordance with the Article on Transfers.

Note: The Parties confirm their understanding that there may be an administrative or legal process that must be followed prior to payment of compensation.

10.5 In the event of delay in payment of the indemnity, it shall accrue simple interest until the date of payment, calculated at a reasonable commercial rate for that currency.

10.6 The investor affected by the expropriation may request, under the laws and regulations of the host Party that took the expropriation measure, a review by a judicial authority of the host Party of the legality of the administrative procedure of the expropriation and the valuation of the amount of compensation in accordance with the provisions of this Article.

10.7 This Article shall not apply to the issuance of compulsory licenses for intellectual property rights, or to the cancellation, limitation or creation of intellectual property rights, provided that the issuance, cancellation, limitation or creation is in accordance with international agreements on intellectual property.

10.8 The parties confirm their common understanding that: a) Expropriation can be direct or indirect:

(i) Direct expropriation occurs when an investment is nationalized or expropriated directly, through a formal transfer of ownership or outright seizure;

(ii) indirect expropriation results from a measure or series of measures taken by a Party that have an effect equivalent to a direct expropriation by substantially or permanently depriving the investor of basic property rights associated with its investment, including the right to use, enjoy and dispose of its investment without a formal transfer of ownership or final seizure, to such an extent as to deprive the investor of benefits that may be legitimately expected or to deprive its investment of any utility.

b) whether a Party's action or series of actions constitutes an indirect expropriation shall be investigated on a case-by-case basis, including the following factors

i) the economic effects of the measure or set of measures in question, it being understood that the fact that the measure or set of measures taken by a Party has an adverse effect on the economic value of an investment is not sufficient in itself to justify the measure or set of measures (s) only to establish that there has been an indirect expropriation ;

ii) the duration of the measurement or series of measurements;

iii) the extent to which the measure or series of measures in question undermines the legitimate expectations of the investor;

iv) the character of the measure or set of measures, including its purpose and whether the measure is disproportionate to the public interest goal

c) Consistent with the right of States to regulate and the principles of customary international law relating to State police powers, bona fide and non-discriminatory legislative and regulatory measures taken by a Party to protect or enhance legitimate public welfare objectives such as public health, safety environment and labor, or which result in legitimate general taxation or alteration of the value of the national currency or any type of action commonly accepted as falling within the police power of the States, do not constitute an indirect expropriation under this Article and therefore would not be subject to any requirement of compensation.

d) In considering a claim of breach of this Article by an investor, the arbitral tribunal established under Section VI shall take into account whether that investor has pursued a remedy in the domestic courts of the Host Party prior to bringing a claim under this Agreement.

Article 11. Compensation for Losses

11.1 Investors of one Party whose investments have suffered damage in the territory of the other Party as a result of armed conflict, revolution, national emergency, revolt, insurrection, riot, natural disasters or other similar events, shall be accorded by the latter Party non-discriminatory treatment at least equal to that accorded in similar circumstances to its own investors or to investors of a third State with respect to restitution, compensation, indemnification or other relief, whichever is more favorable.

11.2 Without prejudice to the provisions of paragraph 1 of this Article, investors of a Party that, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from :

the requisition of their property by the authorities of the latter Party, or

the destruction of their property by the authorities of the latter Party, without such requisition or destruction being caused by combat action or required by the necessity of the situation,

shall be fairly and equitably compensated for losses incurred during the requisition or resulting from the destruction of their property.

Article 12. Officers and Boards of Directors

12.1 Without prejudice to any special provisions regarding the admission of foreign investors and investments in strategic sectors, no Party may require an investor to appoint as managers of its investment persons of a particular nationality.

12.2 For investments in strategic sectors, a Party may require that a majority of the members of the board of directors, or a committee of the board of directors, of an investment be of a particular nationality, or resident in its territory, provided that such a requirement does not materially impair the investor's ability to control its investment.

12.3 Notwithstanding paragraph 12.1, a Party may require an investor of the other Party, taking into account the size and nature of its investment, to have incremental increases in the number of managerial, executive or specialized positions held by nationals of the Host Party and to institute training programs and establish monitoring programs to that effect.

Article 13. Subrogation

13.1 If a Party or its designated agency (hereinafter referred to as the "insurer") makes a payment to its own investors under a guarantee or insurance against non-commercial risks in respect of investments made in the territory of the other Party, the latter Party shall recognize the subrogation of the insurer in all rights and claims arising out of such investment, and shall recognize that the insurer shall be entitled to exercise such rights and to enforce such claims in the same manner as the original investor.

13.2 This subrogation will allow the insurer to be the direct beneficiary of an indemnity payment or other compensation to which the investor may have been entitled.

13.3 The subrogation rights or claims shall not exceed the original rights or claims of the investor.

Article 14. Transfers

14.1 Each Party shall permit transfers relating to an investment to be made freely. Such transfers shall include:

- (i) the initial capital contribution or any increase in capital related to the maintenance or expansion of such investments;
- (ii) income directly related to the investment;
- (iii) proceeds from the sale or liquidation of the investment or part thereof;
- (iv) loan repayments, including interest thereon, directly related to the investment;
- (v) the allowances provided for in Articles 10 and 11 of this Agreement; vi) wages and other remuneration accruing to nationals of a Party authorized to work in the territory of the other Party in connection with an investment; and
- vii) payments arising from the settlement of investor/state disputes.

14.2 Transfers referred to in paragraph 14.1 of this Article shall be made, without undue delay, in a freely convertible currency at the market rate of exchange prevailing in the Host Party on the date of transfer.

14.3 The transfer must be carried out in compliance with the formalities provided for by the legal and regulatory provisions applicable in each Party with respect to exchange control, in force on the date of the transfer.

14.4 For greater certainty, nothing in this Agreement shall be construed to prevent a Party from requiring, prior to transfers relating to an investment, investors to meet their tax obligations with respect to that investment.

14.5 Notwithstanding the provisions of paragraphs 14.1 and 14.2 of this Article, a Party may delay or prevent a transfer through the fair, non-discriminatory and good faith application of its laws or international obligations regarding:

- a) bankruptcy, insolvency or protection of creditors's rights ;
- b) issuing, trading or dealing in securities;
- c) criminal or penal offences;
- d) compliance with tax and labor laws;
- e) the fight against money laundering and terrorist financing ;
- f) financial reports or records of currency transfers when necessary to assist in the enforcement of law or financial regulation;
- g) the enforcement of orders or judgments in judicial or administrative proceedings; and
- h) the respect of the social security and pension systems of the workers.

Article 15. Measures to Safeguard the Balance of Payments and Maintain the Stability of the Financial System

15.1 Each Party may, on a non-discriminatory basis and in accordance with the rights and obligations of the Members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, adopt or maintain measures to restrict the free transfer of foreign capital and the payment of transactions in the following cases

- a) when its balance of payments is in serious financial difficulty or in danger of being so; and
- b) in exceptional circumstances where capital movements cause or threaten to cause serious difficulties for macroeconomic management, in particular in terms of monetary or exchange rate policy.

15.2 The measures cited in paragraph 15.1 of this section shall:

- a) not exceed those necessary to meet the circumstances referred to in paragraph 15.1 of this section;

b) be applied for a limited time and removed as soon as conditions permit; and

c) be notified immediately to the other Party.

Article 16. Transparency

16.1 Each Party shall ensure, to the extent practicable, that its laws, regulations and administrative rulings of general application respecting matters covered by this Agreement are published as soon as practicable and are accessible, where practicable, by electronic means, so as to enable interested persons and the other Party to become acquainted with them.

16.2 Each Party shall provide to the other Party, upon request, information on any measure that may materially affect the investments of investors of the latter Party.

16.3 The Host Party shall have the right to request information from an investor or its home state regarding its corporate governance record and practices as an investor, including in its home state. The Host Party shall protect confidential business information received in this regard.

16.4 No investor may have recourse to the dispute settlement mechanism provided for in Section VI for any matter arising under this Article.

Article 17. Maintaining Public Health, Labor, Environmental and Safety Standards

17.1 The Parties recognize that it is not appropriate to relax domestic public health, labor, environmental or safety measures to encourage investment. Accordingly, no Party should waive or otherwise derogate from, or offer flexibilities to waive or otherwise derogate from, such measures to encourage the establishment, acquisition, expansion or retention in its territory of an investment by an investor.

17.2 The Parties shall cooperate on matters relating to the protection of public health and the environment and shall hold expert consultations on these matters.

Section III. OBLIGATIONS AND RESPONSIBILITIES OF INVESTORS AND INVESTMENTS

Article 18. Compliance with Domestic Laws and International Obligations

18.1 Investments shall be governed by the laws and regulations of the Host Party and investors and their investments shall comply with such laws and regulations throughout their existence in the Host Party.

18.2 Investors and investments after admission shall comply with the measures of the Host Party that prescribe the formalities for the establishment of an investment and accept the jurisdiction of that Party with respect to the investment.

18.3 An investor shall provide the Host Party with any information it requires concerning its investment for the purpose of making decisions related to such investment or for statistical purposes only. The Host Party shall protect any confidential business information from disclosure that would prejudice the competitive position of the investor or the investment.

18.4 Any processing of investors' personal data for the purpose of making investment-related decisions, compiling statistics, or resolving disputes shall be carried out in accordance with the national legislation of the Host Party and/or the relevant international conventions of which both Parties are members.

18.5 An investor shall not commit fraud or provide false information regarding its investment. A material breach of this paragraph by an investor shall constitute a violation of the domestic law of the Host Party relating to the establishment of its investment.

18.6 Investors and their investments must comply with the Host Party's tax laws, including the timely fulfillment of their tax and social security obligations.

18.7 Investors shall manage and operate their investments in a manner consistent with international environmental, labor and human_ rights obligations to which both Parties are party.

Article 19. Fight Against Corruption, Money Laundering and Terrorist Financing

19.1 Prior to or after the establishment of an investment in the territory of the Host Party, investors and their investments

shall not offer, promise or give any undue pecuniary or other advantage, directly or through intermediaries, to a public official of the Host Party or to a member of his family, any of its associates or any other person closely related to it, for its benefit or for the benefit of a third party, to act or refrain from acting in the performance of its official duties, with a view to obtaining any preference with respect to a proposed investment or to licenses, permits, contracts or any other rights related to an investment.

19.2 Within the framework of their activities, investors and their investments admitted to the territory of the Host Party shall apply the principles recognized by the international community with regard to the fight against money laundering and the financing of terrorism.

19.3 A violation of paragraphs 19.1 and 19.2 of this Article by an investor or investment shall constitute a violation of the domestic law of the Host Party relating to the establishment and operation of an investment.

19.4 Where an investor or its investment has violated this Article, neither the investor nor the investment shall have the right to initiate a dispute settlement process under any provision of this Agreement. The Host Party may raise this issue as an objection to jurisdiction in any dispute arising under this Agreement or in any proceeding under Section VI relating to dispute settlement between an investor and the Host Party.

Article 20. Social and Environmental Responsibility

20.1 Investors and their investments will strive to contribute to the sustainable development of the Host Party and the local community through responsible practices.

20.2 Investors of a Party in the territory of the other Party shall endeavor to contribute to human capital formation, job creation and technology transfer.

20.3 Investors of a Party in the territory of the other Party shall endeavor to apply the International Labor Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises, as well as specific or sectoral standards of responsible conduct promoted by the Parties.

20.4 Investors will be expected to manage or operate their investments in compliance with international obligations regarding human and labor rights, responsible business conduct, health and environmental protection, and consistent with climate change mitigation and adaptation objectives.

20.5 A tribunal established under Section VI of this Agreement shall, in determining the amount of compensation, take into account the failure of the Investor to comply with its commitments referred to in paragraph 20.4 of this section.

Section IV. EXCEPTIONS

Article 21. General Exceptions

Nothing in this Agreement shall be construed to require a Party to pay compensation as a result of taking action in good faith, on a non-discriminatory basis and of general application to:

- a) face a situation whose effects result from a force majeure or an unforeseen external event;
- b) protect public morals or public order;
- c) to protect human or animal life and to preserve plants;
- d) ensure the provision of essential social services, such as health, education or water supply;
- e) protect and conserve the environment, including exhaustible natural resources, both biological and non-biological;
- e) protect monuments of national artistic, cultural, historical or archaeological value ; and
- f) ensure compliance with laws and regulations that are not inconsistent 22.1 with the provisions of this Agreement.

Article 22. Security Exceptions

22.1 Nothing in this Agreement shall be construed to limit a Party from adopting or maintaining measures that it considers necessary to :

- (a) protect its essential security interests in defense and national security investments;
- (b) protect its interests in time of war or other emergency in international relations; or
- (c) comply with its obligations regarding the maintenance of international peace and security or the application of economic sanctions, in accordance with the provisions of the United Nations Charter.

22.2 Nothing in this Agreement shall require a Party to provide or permit access to any information that it considers contrary to its national security interests.

22.3 Measures taken by a Party under paragraphs 23.1 and 23.2 of this Article or a decision based on national security or public policy laws that may at any time prohibit or restrict an investment in its territory by an investor of the other Party shall not be subject to the dispute settlement mechanism between an investor and the Host Party provided for in Section VI of this Agreement.

Article 23. Prudential Measures

23.1 Nothing in this Agreement shall be construed to require a Party to pay compensation if it adopts or maintains reasonable measures for prudential reasons to ensure

- a) the protection of investors, depositors, financial market participants, insurance policyholders, claimants or persons to whom a financial institution owes a fiduciary duty;
- b) maintaining the safety, soundness, solvency, integrity or financial responsibility of financial institutions; and
- c) the preservation of the integrity and stability of a Party's financial system.

23.2 This Agreement does not apply to non-discriminatory measures of general application taken by governmental bodies for reasons relating to monetary, credit or exchange rate policies. Nothing in this paragraph shall be construed to affect the obligations of a Party under Article 14 (Transfers).

Article 24. Tax Measures

24.1 Nothing in this Agreement shall be construed to require a Party to extend to an investor of the other Party, with respect to its investments, any treatment, preference or privilege under any existing or future double taxation convention to which either Party is a member or may hereafter accede.

24.2 This Agreement does not alter the rights and obligations of the Parties under any tax treaty. In the event of any inconsistency between this Agreement and a tax treaty between the Parties, such treaty shall prevail to the extent of the inconsistency. For greater certainty, only the competent tax authorities of both Parties shall have the authority to determine whether there is an inconsistency between this Agreement and such convention.

24.3 Nothing in this Agreement shall be construed to prevent the adoption or enforcement of any measure designed to secure the equitable or effective imposition or collection of taxes in accordance with the respective laws and regulations of the Parties, provided, however, that such measure shall not be applied in a discriminatory, arbitrary or unjustifiable manner or constitute a disguised restriction.

24.4 Any dispute concerning the application of the provisions of this Article may be brought only before the competent tax authorities of both Parties or before the domestic courts of the Host Party and shall not be covered by the provisions of Section VI relating to the settlement of disputes between an investor and the Host Party.

Article 25. Denial of Agreement Benefits

25.1 The benefits of this Agreement shall be denied at any time, including after the initiation of an arbitration proceeding under Section VI, to any investor of the other Party that is a juridical person of that other Party and to the investments of such investor if:

- a) investors of a third Party, or of the rejecting Party, own or control that legal entity;
- b) the investment or investor was created or restructured for the primary purpose of accessing the dispute resolution mechanisms of this Agreement.

25.2 The benefits of this Agreement shall be denied at any time, including after the commencement of an arbitration

proceeding under Section VI, to any investor from a third Party with which the Host Party does not maintain diplomatic relations or against which it maintains economic sanctions.

Section V. INSTITUTIONAL GOVERNANCE

Article 26. Joint Committee

26.1 To facilitate the implementation of this Agreement, the Parties agree to establish a Joint Committee composed of representatives of both Parties.

26.2 The Joint Committee shall allow the Parties to consult on matters related to this Agreement that are referred to it by a Party.

26.3 The Joint Committee shall meet alternately in Rabat and in at the request of either Party on the basis of an agenda drawn up by the Party requesting the Joint Committee meeting.

26.4 The Joint Committee meeting shall be held within 60 days of receipt of the request, unless the Parties agree otherwise.

26.5 The Joint Committee is responsible for:

- a) monitor the implementation and execution of this Agreement and review any issues that may affect the proper functioning of this Agreement;
- b) to exchange information on the legal framework and investment opportunities in the territory of both Parties and to formulate proposals for the promotion of investment;
- c) consult, as appropriate, with any entity concerned by a specific issue(s) being considered by the Joint Committee;
- d) amicably resolve problems and disputes between the Parties concerning the interpretation or application of this Agreement or problems and disputes between an investor and the Host Party concerning an alleged breach of one or more obligations of this Agreement;
- e) provide advice and interpretations on the provisions of the Agreement;
- f) propose, as appropriate, procedures to supplement the applicable arbitration procedures set forth in Section VI of this Agreement and adopt, as appropriate, a code of conduct for arbitrators or amend it as necessary; and
- g) consider the need or desirability of recommending amendments to this Agreement to the Parties based on experience and trends in international investment agreements.

26.6 The Parties may establish ad hoc working groups, which shall meet with the Joint Committee or separately.

26.7 The private sector may be invited to participate in the ad hoc working groups upon invitation by the Joint Committee.

26.8 Decisions and recommendations of the Joint Committee shall be made by consensus.

26.9 The Joint Committee shall establish its own rules and procedures.

Article 27. National Focal Point

27.1 Each Party shall designate a National Focal Point as a point of contact to support the other Party's investor in its territory.

27.2 The functions of the National Focal Point are :

- (a) to welcome and accompany the investors during the implementation of their investments in the Host Party;
- (b) Provide timely and useful information on regulatory issues on investment in general or on specific projects;
- (c) interact with the National Focal Point of the other Party in accordance with this Agreement;
- (d) assess and recommend, where appropriate, solutions to problems and complaints raised by the Government and investors of the other Party;
- (e) facilitate dispute resolution in coordination with appropriate government authorities and in partnership with relevant

private organizations; and

(f) Implement the recommendations of the Joint Committee and report its activities and actions as appropriate.

27.3 The National Focal Point shall respond in a timely manner to notifications and requests made by the Government and investors of the other Party.

27.4 The National Focal Point must have the means and resources to fulfill its functions.

Section VI. DISPUTE RESOLUTION BETWEEN AN INVESTOR AND THE HOST PARTY

Article 28. Purpose and Scope of Application

28.1 Without prejudice to the rights and obligations of the Parties under Section VII (Settlement of Disputes between the Parties), this Section establishes a mechanism for the settlement of investment disputes.

28.2 This Section shall apply to disputes raised by an investor in connection with its investment if and only if:

- the Respondent has failed to comply with an obligation under Section IT of this Agreement; and
- the investor in question has suffered loss or damage by reason of or as a result of such failure.

28.3 If an investor or its investment has breached any of its obligations under this Agreement, neither the investor nor the investment shall have the right to initiate any dispute resolution process established under this Agreement. The Host Party may raise this issue as an objection to jurisdiction in any dispute arising under this Section.

28.4 Where an investor or its investment has failed to comply with its obligations under Article 18 (Compliance with Domestic Laws and International Obligations) or has violated Article 19 (Anti-Corruption, Anti-Money Laundering and Anti-Terrorist Financing), the Host Party may file a counterclaim in any court established pursuant to this Section.

28.3 If an investor or its investment has breached any of its obligations under this Agreement, neither the investor nor the investment shall have the right to initiate any dispute resolution process established under this Agreement. The Host Party may raise this issue as an objection to jurisdiction in any dispute arising under this Section.

28.4 Where an investor or its investment has failed to comply with its obligations under Article 18 (Compliance with Domestic Laws and International Obligations) or has violated Article 19 (Anti-Corruption, Anti-Money Laundering and Anti-Terrorist Financing), the Host Party may file a counterclaim in any court established pursuant to this Section.

28.5 In the case of an investment authorization or investment contract between a Party and the investor of the other Party, the provisions of such authorization or contract shall prevail and no arbitration mechanism provided for in this Section may be initiated by such investor to resolve a dispute relating to such investment.

28.6 This section shall not apply to a dispute submitted by an investor if more than three years have elapsed since the date on which such investor knew or should have known of the alleged breach and the loss or damage suffered.

28.7 An investor may use the dispute resolution mechanism under this section at his or her option, either on his or her own behalf or on behalf of the investment, which is a legal entity, if he or she directly or indirectly owns or controls that investment, and his or her choice is irrevocable. For greater certainty, the investor may not submit one complaint in his or her own name and another complaint on behalf of the investment.

28.8 If the investor involved in the dispute is a natural person with dual nationality of the Parties or has the nationality of one Party and permanent resident status of the other, only the courts of the Respondent Party shall have jurisdiction to resolve the dispute.

28.9 A dispute resolution proceeding may not be commenced if it duplicates another dispute resolution proceeding already commenced or if it relates to the same facts constituting a breach covered by paragraph 28.2 that are being addressed in another dispute resolution proceeding, either local or international. An investor of the home Party may not initiate a proceeding to enforce its rights under paragraph 28.2 if its local affiliate is engaged in the same proceeding under that paragraph.

28.10 A Party shall not grant diplomatic protection in respect of a dispute that one of its investors and the other Party has agreed to submit or has submitted to arbitration under this Section. However, such diplomatic protection may be granted in the event that a Party has not complied with the award in that dispute. Diplomatic protection, for purposes of this

paragraph, does not include informal diplomatic exchanges for the sole purpose of facilitating the resolution of the dispute.

Article 29. Consultations and Negotiations

29.1 Any dispute between an investor of a Party and the Host Party concerning a breach referred to in Article 28.2 shall be subject to written notification of the dispute, hereinafter referred to as the "Dispute Notification", by such investor to the Host Party together with a detailed *aide-mÃ©moire*.

29.2 The National Focal Points will coordinate with each other and with the Joint Committee to prevent, manage and amicably resolve investment disputes by exhausting the host Party's domestic administrative remedies.

29.3 The dispute should be settled amicably through consultations and negotiations that are conducted in good faith by the parties to the dispute in the Joint Committee. Such an amicable settlement may be accepted at any time, including after the commencement of the arbitration.

29.4 The Joint Committee shall meet, upon convocation by the Host Party, no later than 30 days after the date of receipt of the notification of the dispute referred to in paragraph 29.1. The consultations and negotiations shall be held in the capital city of the Host Party unless the Parties agree otherwise.

29.5 The Joint Committee shall have a period of 90 days from the date of receipt of the notification of the dispute, which may be extended upon justification, to submit a report, which shall include, *inter alia*:

- i) a description of the measure in dispute and the Joint Committee's proposed solution to the dispute; and
- ii) the position of the Parties and the investor regarding the measure and the proposed solution.

29.6 In order to facilitate the search for a solution acceptable to the parties to the dispute, whenever possible, the following representatives shall be invited to participate in the meetings of the Joint Committee

- i) the investor's representatives; and ii) representatives of governmental or non-governmental entities involved in the disputed action.

29.7 If the solution referred to in paragraph 29.5 is not agreed to by the parties to the dispute or any of them, the dispute, taking into account the time limit referred to in paragraph 29.5, may be submitted by the parties to the dispute to other non-binding procedures, such as mediation.

Article 30. Mediation

30.1 Mediation may be entrusted to a natural or legal person and the mediator is appointed jointly by the parties to the dispute.

30.2 The mediator can hear the parties to the dispute and compare their points of view to enable them to find a solution to the conflict between them.

30.3 The mediator may, with the agreement of the parties to the dispute, carry out or have carried out any expert appraisal of a nature to clarify the dispute.

30.4 At the end of his mission, the mediator proposes to the parties to the dispute a draft compromise containing the facts of the dispute and the terms of its settlement.

30.5 If the draft agreement is accepted by the parties to the dispute, it will be signed by the mediator and the parties to the dispute and will have the force of *res judicata* and may be accompanied by the mention of *exequatur*.

30.6 Unless the parties to the dispute agree on another time limit, if by the end of a period of six (6) months from the date of receipt of the notification of dispute referred to in Article 29.1, no solution has been found under Article 29 and/or Article 30, the dispute shall be submitted to the competent courts of the Host Party.

Article 31. Submission of the Dispute to the Competent Courts of the Host Party

31.1 The dispute may be submitted to the competent courts of the Host Party only after exhaustion of the remedies provided for in Article 29 of this Agreement.

31.2 If, within 30 months from the notification of the commencement of proceedings before the competent courts, the latter have not rendered a final judgment, the dispute may be submitted, at the request of the investor, to arbitration.

31.3 A dispute may not be submitted to arbitration if the competent courts have rendered a final judgment.

Article 32. Prerequisites for Submitting a Dispute to Arbitration

32.1 An investor may not submit a dispute to arbitration under this Section if it is found that his or her investment was made through bribery, money laundering or misrepresentation.

32.2 No dispute may be submitted to arbitration by an investor unless the investor has established that it has exhausted local remedies under Articles 29 and 31 of this Section.

32.3 An arbitral tribunal may not be constituted under this Section if a final judgment has been entered by the competent courts of the Host Party or if the disputing investor pursues the proceedings in any competent court of that Party.

32.4 An investor must serve written notice of its intention to submit a dispute to arbitration on the Host Party at least 90 days prior to the filing of its claim (Notice of Arbitration). This notice should contain the following information:

- a) the name and address of the investor and the investor's legal representatives, and where a complaint is submitted on behalf of an investment, the name, address and place of incorporation of the investment;
- b) for each complaint, the provision(s) of this Agreement alleged to have been violated and any other relevant provision ;
- c) the legal and factual basis for the complaint;
- d) the relief sought and the approximate amount of damages claimed ;
- e) the written consent of the Investor to arbitration in accordance with the procedures set out in this Agreement; and
- f) the name of the arbitration body referred to in section 33 selected for the resolution of the dispute.

32.5 The investor does not mention in its "Notice of Arbitration" any measures that were not specified in its "Notice of Dispute".

32.6 The Notice of Arbitration referred to in paragraph 32.4 shall be accompanied by evidence that it is an investor of the other Party.

Article 33. Referring a Dispute to Arbitration

33.1 An investor, who meets the prerequisites of Article 32, may submit a dispute for arbitration to one of the following dispute resolution forums:

- a) ICSID, if both Parties are parties to the Washington Convention;
- b) the ICSID Additional Facility Rules; c) an "ad hoc" tribunal constituted under the UNCITRAL Arbitration Rules;
- d) an Arbitration Centre as may be agreed upon by both parties to the dispute.

33.2 In the event the investor elects to submit the dispute to arbitration in one of the arbitration forums listed in Section 33.1, the choice of such forum shall be irrevocable by the investor.

33.3 The arbitration shall be governed by the applicable arbitration rules, by one of the forums selected pursuant to Section 33.1, in effect at the time the dispute is submitted under this Section, subject to the modifications provided for in this Agreement.

33.4 The Parties in the Joint Committee may adopt additional rules of procedure to supplement the arbitration rules referred to in Section 33.3 and such Parties may amend the rules they themselves have made. The arbitral tribunal established under this Section shall be bound by such rules.

33.5 A dispute shall be deemed to have been submitted to arbitration when the investor's request for arbitration (notice of arbitration) is submitted to, or registered, as the case may be, by the Secretariat of one of the instruments chosen by such investor that are provided for in paragraph 33.1 and to the Responding Party.

33.6 The filing of the Notice of Dispute, the Notice of Arbitration (Notice of Arbitration) and any other document shall also be made with the secretariats of the Parties' focal points.

33.7 If, after submitting a dispute to arbitration under this section, the investor takes no procedural steps for an

uninterrupted period of six months, such investor shall be deemed to have withdrawn its claim and to have abandoned the dispute. The authority of the tribunal constituted to adjudicate such dispute shall be deemed to have expired after charging the costs of the arbitration to the withdrawing investor.

Article 34. Consent to Arbitration

34.1 Subject to Article 25 of this Agreement (Denial of Benefits), each Party consents to the submission of each dispute to arbitration under the terms of this Agreement. Failure to comply with a condition precedent set out in Article 32 shall negate such consent.

34.2 The consent referred to in section 34.1 and the submission of a complaint to arbitration by an investor meet the requirements:

a) Chapter II of the Washington Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for the written consent of the parties to the dispute; and

b) Article II of the New York Convention with respect to "written agreement".

Article 35. Constitution of the Arbitral Tribunal

35.1 An Arbitral Tribunal constituted under this Article may not decide disputes that do not fall within the scope of Section VI.

35.2 The Tribunal shall consist of three arbitrators. Each party to the dispute shall appoint, within 30 days after the date of filing or registration, as the case may be, of a notice of arbitration, one arbitrator and the third, who shall be the chairperson of the Tribunal, shall be appointed jointly by the parties to the dispute.

35.3 No member of the arbitral tribunal shall be a national of the Host Party or the Home Party and/or have permanent resident status in either of them.

35.4 Arbitrators shall have, inter alia, a thorough knowledge of the subject matter of the dispute, experience in public international law, international trade or investment rules, or the settlement of disputes arising under international trade or investment agreements. They shall be independent of, and shall not be instructed by or connected with, the Parties and the investor in the dispute.

For greater certainty, no member of the Arbitral Tribunal may serve simultaneously as an arbitrator in a dispute arising under this Agreement and as counsel in another pending or potential arbitration involving a foreign investor and a State.

35.5 A party to the dispute may request the disqualification of an arbitrator for good cause, including a real or apparent conflict of interest. The party requesting the challenge of an arbitrator shall give notice of its request within 15 days after the date on which it was notified of the appointment (or acceptance of appointment, as the case may be) or within 15 days after the date on which it became aware of the information giving rise to the challenge. The request for a challenge shall be communicated to the other party to the dispute, the arbitrator concerned and the other arbitrators. It shall state the reasons for the challenge. Any challenge shall be decided by the other two appointed members. If the two arbitrators disagree or if more than one arbitrator is challenged, the Secretary General of ICSID or the Chairman of the Administrative Council of ICSID, as the case may be, shall decide on the challenge. For all other cases and matters not provided for in this Section, the arbitration rules governing the proceeding shall apply.

35.6 The parties to the dispute may establish rules relating to the expenses incurred by the arbitral tribunal, including the remuneration of the arbitrators.

35.7 If the parties to the dispute do not reach agreement on the remuneration of the arbitrators before the constitution of the arbitral tribunal, the arbitrators shall be remunerated at the current ICSID rate.

35.8 If no Tribunal is constituted within 90 days after the date of filing or registration, as the case may be, of the Notice of Arbitration, a party to the dispute may request the Secretary-General of ICSID to appoint the arbitrator or arbitrators not yet appointed. The Secretary-General of ICSID shall make such appointment at his or her discretion and, to the extent possible, in consultation with the parties to the dispute.

35.9 If the Secretary-General of ICSID is a national of one of the Parties, the appointments referred to in paragraph 35.8 shall be made by the Chairman of the Administrative Council of ICSID or by the person who replaces him or her in case of impediment who is not a national of one of the Parties.

35.10 If an arbitrator appointed pursuant to this section resigns or is unable to serve, a new arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator.

Article 36. Language of Proceedings

36.1 Unless the parties to the dispute agree otherwise, the language of the arbitration proceedings, including hearings, decisions and awards, shall be :

- a) where Morocco is the Respondent, Arabic and one of the following two languages: French or English;
- b) when..... is the Respondent, on..... and one of the following two languages: French or English.

36.2 Communications, submissions, witness statements and documentary evidence may be submitted in either language of the arbitration.

Article 37. Conduct of the Arbitration

37.1 Unless the parties to the dispute agree otherwise, a court shall hold the arbitration in the territory of a country which is a party to the New York Convention, chosen in accordance with :

- a) the ICSID Additional Facility Rules if the arbitration is governed by those Rules;
- b) the UNCITRAL Arbitration Rules if the arbitration is governed by those Rules.

37.2 At the request of one of the parties to the dispute, the tribunal may determine a convenient place for meetings and hearings other than the seat of arbitration, taking into account, inter alia, the constraints of the parties to the dispute and the arbitrators, the proximity of the evidence, and paying particular attention to the capital of the responding Party.

37.3 The Party of origin shall have the right to attend hearings held under this Section and may, upon written notice to the parties to the dispute, make oral and written submissions to the Tribunal on a question of interpretation of this Agreement or on other matters relevant to the dispute. Such submissions should not constitute diplomatic protection by the home Party for the benefit of the investor.

37.4 The tribunal shall ensure that the parties to the dispute are given an opportunity to comment on any submission made by the Originating Party.

37.5 At any stage of the proceedings, the court may propose to the parties to the dispute that the dispute be settled amicably.

37.6 The Tribunal shall have the authority to accept and consider written submissions from a party (person or entity) that is not a party to the dispute and that has a significant interest in the arbitration. The tribunal shall ensure that any submissions made by such party do not unduly disrupt or burden the proceedings or cause undue prejudice to any party to the dispute.

37.7 The Tribunal shall provide an opportunity for the disputing parties and the Originating Party to comment on the submissions made by the non- disputing party referred to in paragraph 37.6.

37.8 The court may order an interim measure of protection to preserve the rights of a party to the dispute, including an order to preserve evidence in the possession or control of a party to the dispute. However, the court may not order a seizure or prohibit the enforcement of the measure that is alleged to constitute a breach under Article 28 (Purpose and Scope).

37.9 A request by a party to the dispute to a judicial authority of the Host Party for an interim measure shall not be deemed to be inconsistent with the arbitration agreement or to be a waiver of the right to rely on the arbitration agreement.

37.10 Without prejudice to the appointment of other experts where permitted by the applicable arbitration rules, the Tribunal may, at the request of the parties to the dispute, appoint one or more experts to submit a written report to the Tribunal on any factual matter relating to environmental, health, safety or other issues raised by any party to the dispute in the course of a proceeding, in such manner as may be agreed by such parties.

Article 38. Transparency of the Arbitration Process

38.1 Hearings under this section shall be open to the public. The court may hold part of the hearings in private, to the extent

necessary to ensure the protection of confidential information.

38.2 Unless the parties to the dispute agree otherwise, all documents submitted to or emanating from the tribunal shall be made available to the public in a redacted version.

38.3 Where a party to a dispute asserts that information provided to the Tribunal is confidential information, including business information, or is protected from disclosure under the law of a Party, the party shall, at the time of providing the information to the Tribunal, state that the information is confidential.

38.4 The Tribunal may, on its own initiative or at the request of a party to the dispute, take appropriate measures to restrict or delay the release of information where such release would compromise the integrity of the arbitral process by interfering with the collection or production of evidence or by intimidating witnesses, counsel acting for the parties to the dispute or members of the Arbitral Tribunal, or in comparable exceptional circumstances.

38.5 The Parties may, in a dispute resolution proceeding under this Section, make available to officials of their respective national governments any relevant documents in their unredacted form, provided that such officials shall protect the confidential information contained in such documents.

38.6 Any award made by a court under this section shall be made available to the public in a redacted version.

Article 39. Dismissal of Frivolous Complaints

39.1 The Tribunal shall address as a preliminary matter any objection by the Respondent that the dispute submitted to the Tribunal is not subject to an award that could be made in favor of the Investor under Article 42 of this Agreement (Award of the Arbitral Tribunal).

39.2 The objection referred to in paragraph 39.1 shall be submitted to the Tribunal as soon as it is filed and in no event shall it be submitted after the date set by the Tribunal for the filing of the Respondent's first reply brief.

39.3 Following receipt of an objection under this section, the court shall suspend all proceedings on the merits and set a date for consideration of such objection in accordance with any timetable established for consideration of any other preliminary matter.

39.4 The parties to the dispute shall submit their views and observations to the tribunal within a reasonable time. If the tribunal decides that the complaint is manifestly without merit, or that it is not within the tribunal's jurisdiction, the tribunal shall make an award to that effect.

39.5 Before making a final determination on an objection raised under this section, the court shall give the parties to the dispute an opportunity to comment.

39.6 The Tribunal shall make an award under this section no later than 150 days after the date of receipt of the request under Article 39.1. However, if the responding Party requests a hearing, the Tribunal may take an additional 30 days to make the decision or award.

39.7 Where the tribunal rules on such objection and grants the Respondent Party's case, the tribunal shall charge the investor with the costs of the arbitration and the attorneys' fees incurred by the Respondent Party in connection with such objection.

Article 40. Consolidation of Complaints

40.1 In the event that two or more claims separately submitted to arbitration under this Section share a common issue of law or fact and arise out of the same events or circumstances, any party to the dispute may request an order of consolidation.

40.2 The party to the dispute seeking a joinder order under this Article shall deliver a written request to the Secretary-General of ICSID and to all parties that would be affected by the joinder order, containing the following information

- a) the names and contact information of all parties to the order sought;
- b) the nature of the order sought; and
- c) the grounds on which the order is sought.

40.3 If the Secretary-General of ICSID determines that the claim has merit, a Tribunal shall be established under this Article

no later than 60 days after the Secretary-General receives the request for the joinder order.

40.4 Unless all parties to the dispute who would be affected by the order agree otherwise, the tribunal established under this section shall consist of three arbitrators:

- a) an arbitrator jointly appointed by the investors;
- b) an arbitrator appointed by the Respondent;
- c) the president of the tribunal appointed by the Secretary General of ICSID, provided that the president is not a national of any of the parties to the dispute.

40.5 If, within 60 days of the date of receipt by the Secretary-General of a request under paragraph 40.2, the Respondent or the Investors fail to appoint an arbitrator in accordance with paragraph 40.4, the Secretary-General shall, at the request of any party to the dispute to whom the order relates, appoint the arbitrator or arbitrators not yet appointed. Such appointment shall be made at the discretion of the Secretary General and, to the extent possible, in consultation with the parties to the dispute.

If the Secretary-General of ICSID is a national of one of the Parties, the appointments referred to in paragraphs 40.4 and 40.5 shall be made by the Chairman of the Administrative Council of ICSID or by the person who replaces him or her in the event of his or her inability to act who is not a national of one of the Parties.

40.6 Unless the parties to the dispute otherwise agree, the Tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, subject to the modifications provided for in this Article.

40.7 On application by a party to the dispute, the Tribunal constituted under this section may order a stay of proceedings before a Tribunal constituted under section 35 (Constitution of Arbitral Tribunal) until it makes the decision on consolidation.

40.8 If the tribunal constituted under this section finds that two or more claims submitted to arbitration under this Section involve the same question of law or fact and arise out of the same events or circumstances, it may, in the interest of fair and efficient resolution of the claims and after hearing the parties to the dispute, by order:

- a) to take up some or all of these complaints and to investigate and adjudicate them together;
- b) take up, investigate and decide upon one or more complaints the resolution of which it believes would facilitate the resolution of the others.

40.9 If a Tribunal has been established under this section, an investor who has submitted a claim to arbitration under this Section and who has not been named in an application under section 40.2 may request in writing that the Tribunal be included in any order made under section 40.8. Such request shall contain the following:

- a) the name and address of the investor; b) the nature of the order sought; c) the grounds on which the order is sought.

The applicant shall forward a copy of its request to the Secretary General and all parties to the dispute covered by the joinder order.

40.10 A Tribunal constituted under section 35 (Establishment of Arbitral Tribunal) does not have jurisdiction to determine, in whole or in part, a claim that is before the Tribunal constituted under this section.

Article 41. Applicable Law In Disputes

41.1 A dispute filed with an arbitral tribunal shall be decided in accordance with the provisions of this Agreement, the national law of the Host Party and the applicable rules of international law.

41.2 An interpretation by the Parties in the Joint Committee of any of the provisions of this Agreement shall be binding on any court established under this Agreement and any award shall be consistent with such interpretation.

41.3 The tribunal may request, on the initiative of a party to the dispute or on its own initiative, that the Parties make an interpretation of the provision of this Agreement that is in dispute between the parties to the dispute. The Parties, meeting in the Joint Committee, shall submit their decision declaring their interpretation to the tribunal in writing within 90 days of receiving the request. If the Parties fail to issue such a decision within 90 days, the court will decide the matter itself.

41.4 Where the defending Party asserts in its defense that the measure alleged to be in breach relates to provisions of Section IV of this Agreement (Exceptions), the court shall, upon request of such Party, seek the interpretation of the Joint

Committee on this point. The Joint Committee shall, within 90 days of receipt of the request, submit its interpretation to the court in writing.

41.5 In accordance with Section 41.2 of this Article, an interpretation of the Joint Committee submitted under Section 41.4 of this Article shall be binding on the court. If the Joint Committee has not provided an interpretation within 90 days, the court shall decide the matter itself.

41.6 The Explanatory Notes of the Parties set out in this Agreement shall be binding on any Tribunal established under this Section and any award shall be in accordance with such Notes.

Article 42. Award of the Arbitral Tribunal

42.1 The parties to the dispute may agree on an amicable solution to the dispute at any time before the arbitral tribunal renders its award deciding the dispute.

42.2 At the request of any party to the dispute, the arbitral tribunal may, before making its award, communicate its draft award to the parties to the dispute. Within thirty (30) days from the date of communication of the draft award, the parties to the dispute shall have the opportunity to submit written comments to the tribunal on any aspect of the draft award. The tribunal shall consider such comments and render its award within sixty (60) days of the communication of the draft award to the parties to the dispute.

42.3 The arbitral tribunal shall make its award by majority vote.

42.4 In making a final award against one of the parties to the dispute, a court may grant only, separately or in combination:

- a) monetary damages, and any applicable interest;
- b) restitution of property, in which case the award shall provide that either party to the dispute, as the case may be, may pay monetary damages, and any applicable interest, in lieu of restitution.

The Tribunal may also impose costs in accordance with the applicable arbitration rules.

42.5 Subject to section 42.4, where a claim is submitted to arbitration on behalf of an investment :

- a) the award ordering the return of property shall provide that the return is to be made to the investment; and
- b) the award for monetary damages and any applicable interest shall provide that the amount due is to be paid to the investment.

42.6 The Court may not order the Respondent to pay punitive damages.

42.7 Each party to the dispute shall bear the costs of the arbitration proceedings and the costs of its arbitrator. The costs of the chairman of the arbitral tribunal and other costs related to the conduct of the arbitration shall be borne equally by the parties to the dispute, unless the arbitral tribunal decides that all or a high proportion of the costs shall be borne by the losing party in the dispute. Such decision of the tribunal shall be final and binding on both parties to the dispute.

Article 43. Finality and Enforceability of the Award Made by the Arbitral Tribunal

43.1 The award rendered by the arbitral tribunal is only binding between the parties to the dispute and in the case that has been decided.

43.2 Subject to subsection 43.3 and the review procedure applicable to interim awards, a party to the dispute shall comply with the award without delay.

43.3 A party to the dispute may seek enforcement of a final award only when the following conditions are met:

- (ii) or the revision or cancellation procedure has been completed;
- b) in the case of a final award made under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
 - (i) 90 days have elapsed from the date the award was made and neither party to the dispute has initiated proceedings to review or set aside the award;
 - (ii) a court has rejected or granted an application for review or annulment of the award, and its decision is no longer subject to appeal.

43.4 Each Party shall enforce an arbitral award in its territory in accordance with its domestic law.

43.5. If a party to the dispute refuses to enforce an arbitration award, the matter shall, at the request of the other party to the dispute, be referred to the dispute resolution procedure between the Parties in accordance with Section VII of this Agreement. Such other party to the dispute may seek, in such proceedings:

- a) a determination that the refusal to enforce the award is inconsistent with the obligations of this Agreement; and
- b) a recommendation that the party to the dispute who refuses to enforce the award respect and comply with the award.

43.6 No enforcement action prior to or subsequent to a final award, such as seizure, attachment or garnishment, may be taken against property of the Respondent including, but not limited to:

- a) property, including bank accounts, used or intended to be used in the performance of the functions of the diplomatic mission of the Respondent or its consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences;
- b) property of a military character or property used or intended to be used in the performance of military functions;
- c) property of the Respondent's central bank or other monetary authority;
- d) property forming part of the cultural heritage of the Respondent Party or its archives that is not offered or intended to be offered for sale;
- e) property that is part of an exhibition of objects of scientific, cultural or historical interest that are not offered or intended for sale.

Section VII. DISPUTE RESOLUTION BETWEEN THE PARTIES

Article 44. DISPUTE RESOLUTION BETWEEN THE PARTIES

44.1 Either Party may request consultations regarding the interpretation or application of this Agreement and the enforcement of an arbitration award in accordance with Article 43 of this Agreement (paragraph 43.5). The other Party shall give sympathetic consideration to such a request.

44.2 Any dispute between the Parties relating to the matters referred to in Paragraph 44.1 shall, to the extent possible, be resolved amicably through consultations within the Joint Committee referred to in Article 26 of this Agreement. This Committee shall meet without delay at the request of the most diligent Party.

44.3 If the dispute cannot be settled within six months of the commencement of consultations, it may be submitted to an arbitration tribunal at the request of either Party.

44.4 An arbitral tribunal is constituted for each dispute and is composed of three arbitrators.

44.5 Within two months after receipt through diplomatic channels of the request for arbitration, each Party shall appoint an arbitrator to the arbitral tribunal. The two arbitrators so appointed shall then select an arbitrator who is a national of a third State who, subject to the approval of both Parties, shall be appointed chairman of the arbitral tribunal. The chairman shall be appointed within two months from the date of appointment of the other two arbitrators of the arbitral tribunal.

44.6 If the time limits set forth in paragraph 44.5 of this Article have not been observed, each Party may, in the absence of any other agreement between the Parties on the extension of such time limits, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice possesses the nationality or permanent resident status of one of the Parties or is otherwise prevented from exercising this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice President has the nationality or permanent resident status of one of the Parties or is otherwise prevented from serving, the most senior member of the International Court of Justice, who is a national of a third State, shall be invited to make such appointments.

44.7 The President of the arbitral tribunal and the two other arbitrators must be nationals of a third State having diplomatic relations with both Parties.

44.8 The arbitrators shall have extensive knowledge of or experience in public international law, international trade or investment rules, or the settlement of disputes arising under international trade or investment agreements. They shall be independent of the Parties and shall not receive instructions from or be connected with them.

44.9 Arbitrators shall, where applicable, in addition to meeting the criteria set out in section 44.8, have extensive knowledge or experience in financial services law or practice, which may include the regulation of financial institutions.

44.10 The arbitral tribunal shall determine its own rules of procedure.

44.11 The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and principles of international law and shall take its decisions by majority vote. Unless the Parties agree otherwise, the arbitral tribunal shall render its decisions within six (6) months of the appointment of the Chairman. Such decisions shall be final and binding on both Parties.

44.12 Each Party shall bear the costs of its arbitrator and his or her representation in the arbitration proceedings. The costs of the chairman and all other costs shall be borne equally by the Parties. The arbitral tribunal may, however, for objective reasons, order that a higher percentage of the costs be borne by one of the two Parties, and this decision shall be binding on both Parties.

Section VII. FINAL PROVISIONS

Article 45. Relationship with other Agreements

45.1. Upon execution and ratification of this Agreement by the Parties, the prior investment agreement or agreements between such Parties shall be deemed to be terminated and all rights and obligations under such prior agreement or agreements shall be governed by this Agreement. Such termination shall be immediate, notwithstanding any expiration period provided with respect to the rights of investors or investments under such prior agreement(s).

45.2. Notwithstanding paragraph 45.1 of this Article, any dispute that has been formally initiated under a prior investment agreement or agreements shall be resolved in accordance with the rights and obligations under such prior agreement or agreements.

45.3 This Agreement shall be without prejudice to the rights and obligations of the Parties under other international agreements to which they are parties.

45.4 Except as otherwise provided, in the event of any inconsistency between this Agreement and the Agreements referred to in subsection 45.3, this Agreement shall prevail to the extent of the inconsistency.

45.5 Non-discriminatory measures taken in good faith by the Host Party to comply with its international obligations under other international agreements shall not constitute a violation of this Agreement.

Article 46. Entry Into Force and Application

46.1 This Agreement shall enter into force after the Parties notify each other in writing that all their respective internal procedures for entry into force of international agreements have been completed. The entry into force shall be effective 30 days after the date of receipt of the last notification.

46.2 Without prejudice to the provisions of Article 26 (Joint Committee) of this Agreement, 10 (ten) years after the entry into force of this Agreement, the Joint Committee shall conduct a general review of its implementation and make recommendations, if necessary, to improve its effectiveness, including the possibility of introducing an amendment to the Agreement.

Article 47. Amendment

47.1 This Agreement may be amended at the request of any Party. The request for amendment shall be in writing and shall explain the reasons why the amendment should be made. Following any consultations between the two Parties regarding the amendment request, the other Party shall respond in writing.

47.2 If the Parties fail to reach agreement on the amendment of this Agreement within six (6) months from the date of the written request of the Party seeking such amendment, the latter Party may unilaterally terminate this Agreement within thirty (30) days from the date of expiration of the six (6) month period. The denunciation shall be notified through diplomatic channels and shall be considered notice of termination of this Agreement. In such event, the Agreement shall terminate six (6) months after the date of receipt of such notification by the other Party, unless such notification is withdrawn by mutual agreement prior to the expiration of such notice period.

47.3 If the Parties agree to amend this Agreement, the amendment shall be confirmed by an exchange of diplomatic notes.

47.4 The amendment shall enter into force in accordance with the procedures required for the entry into force of this Agreement under Article 46(1) and shall become an integral part of this Agreement.

47.5 The amendment shall become binding on arbitral tribunals constituted under Section VI of this Agreement to adjudicate disputes arising after the effective date of the amendment.

Article 48. Validity and Expiration

48.1 This Agreement shall remain in force until either Party notifies the other Party in writing of its intention to terminate it, in which case it shall terminate one year after receipt of the notice of termination by the other Party.

48.2 With respect to investments made prior to the expiration of this Agreement, the provisions of Articles 1 through 45 of this Agreement shall remain in effect for an additional five years from the effective date of termination.

In witness whereof, the undersigned representatives, duly authorized by their respective Governments, have signed this Agreement.

Done at in two originals, in Arabic, the ... texts being equally authentic.