

# **Agreement between the Government of the Sultanate of Oman and the Government of the Kingdom of Morocco on promotion and reciprocal protection of investments**

The Government of the Sultanate of Oman and the Government of the Kingdom of Morocco ((hereinafter referred to as the "Contracting Parties");

Desiring to expand and strengthen the existing economic cooperation between the two countries to serve their common interest and the creation of a favorable climate that leads to increased investments from investors of one of the Contracting Parties in the territory of the other Contracting Party;

Realizing that the encouragement and protection of investments will lead to increased commercial initiatives and transfer of capital and technology between the two countries in a way that serves their economic development;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

1) The term "investment" refers to any type of asset that is executed as an investment in accordance with the laws and regulations of the Contracting Party that accepts investment in its territory and includes, but is not limited to:

A) Movable and immovable property and any other rights in rem such as mortgages, guarantees, and any similar rights.

B) shares, bonds, stocks, premiums any other types of interests in the companies.

C) Debt in cash or required in the implementation of any contractual obligation of economic value.

D) Returns.

E) Copyright and industrial property rights (such as patents, licenses, trademarks, and industrial designs), technical operations, trade names, and goodwill.

F) Commercial concessions conferred by law or under a comprehensive contract, including the concessions to search for, cultivate, extract or exploit natural resources.

Any amendment to the form in which the assets are invested or reinvested should not affect their qualification as investments provided that this amendment is not inconsistent with the legislation of the Contracting Party in which its investment is made.

2) the term "investor" means:

A) A natural person holding the nationality of either of the Contracting Parties,

B) Any legal person incorporated in the territory of one of the Contracting Parties in accordance with the laws of that Contracting Party;

3) The term "returns" means all net funds generated from the investment and reinvestment, including investment in technical assistance and services such as profits, royalties, capital gains, dividends, fees, and interest.

4) The term "territory" means, the soil of the Sultanate of Oman or the Kingdom of Morocco, the regional sea, along the sea and the inner depths of the waters adjacent to the shores of the Contracting Parties and located beyond the territorial areas, and the exclusive economic zone over which the contracting party exercises in accordance with internal law and international their sovereign rights with a view to exploring and exploiting its natural resources (Continental Shelf).

## **Article 2. Promotion and Protection of Investments**

- 1) Each Contracting Party shall, in accordance with its legislation and the provisions of this Agreement, accept, encourage and protect in its territory and maritime area, the investments made by investors of the other Contracting Party.
- 2) Investments made by investors from one of the Contracting Parties shall enjoy full protection and security in the territory of the other Contracting Party.

### **Article 3. Fair and Equitable Treatment**

- 1) Each Contracting Party, shall, in accordance with the principles of international law, provide fair and equitable treatment to the investments of the other party's investors in its territory.
- 2) No Contracting Party may take discriminatory measures that hinder the management, maintenance, exploitation, use, or disposition of the investments of the other Contracting Party established on its territory.
- 3) Return on investment in the event of reinvestment in accordance with the laws of one of the contracting parties shall enjoy the same protection as the original investment.

### **Article 4. Treatment of Investments**

Each Contracting Party shall grant the investors of the other Contracting Party and their investments, a treatment no less favorable than that accorded to their investors and their investments or to the investors of any third country and their investments in relation to the management, operation, maintenance, use and exercise of rights to sell and liquidate the investment, whichever is more appropriate for the investor. This treatment does not include the concessions granted by one of the parties to the citizens and companies of a third country thanks to its participation or affiliation to a free trade area, customs union, or common market, or any form of regional economic cooperation, or any international or bilateral agreement or arrangement related entirely or mainly to the tax system.

### **Article 5. Nationalization and Expropriation**

- 1) Investments of the investors of any of the Contracting Parties may not be nationalized, expropriated or subject to any procedures that have the same effects as nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party unless the expropriation is done for a public interest for a purpose that relates to internal requirements, and in accordance with the laws in force for that Contracting Party, without discrimination.
- 2) Any expropriation measures that can be taken must include immediate, sufficient and effective compensation that is calculated based on the value of the prevailing investments in the market directly before the expropriation decision is announced or before the decision becomes known to the public.

If it is not possible to ascertain the market value easily, the compensation is determined according to the generally accepted principles for valuation and on the basis of fair principles that take into account, among other things, the invested capital, depreciation, capital previously transferred abroad, replacement value and other related items.

- 3) The amount of the said compensation shall be determined, made and payable without delay, within a maximum period of three months from the date of the implementation of the aforementioned measures. In the event of a delay in performance, interest on compensation shall be calculated on the basis of the prevailing interest rate between banks in London known as LIBOR applied to the currency in which the investment was made from the end of the specified period to the date of performance, provided that this period does not extend for three months.
- 4) Compensation must be paid in a convertible currency and transferred freely.

### **Article 6. Compensation for Losses**

Investors from one of the Contracting Parties whose investments are exposed to losses due to war or any other armed conflict or revolution, declared emergencies at the national level, or a rebellion that occurs in the territory of the other Contracting Party, shall enjoy a treatment from the aforementioned party that is no less favorable than that granted for its investors or the investors of any third country, whichever is better for the concerned investors.

### **Article 7. Transfers**

1. The Contracting Party in whose territory the investment of the investors of the other Contracting Party is established, shall

guarantee to these investors - after the performance of their financial obligations - the free transfer, for example, and not limited to the following:

- A) Interest, dividends, profits, and other current income.
- B) royalties and fees.
- C) the amounts needed to pay off the contracted loans related to the investment.
- D) The value resulting from the partial or total liquidation of the investment, including capital gains on the invested capital.
- E) Compensation for expropriation or losses, describes in Articles 5 or 6 above
- F) Wages, salaries and other rewards that belong to the citizens of either of the contracting parties who are authorized to work in the territory of the other contracting party as a result of an approved investment.
- G) Capital and any capital additions that are used to maintain, increase or expand existing investments.
- H) the returns.

The transfers referred to in the preceding paragraphs shall be made immediately at the official currency rate prevailing on the date of the transfer.

## **Article 8. Subrogation**

If one of the Contracting Parties, as a result of a guarantee granted in exchange for an investment made in the territory of the other Contracting Party, makes payments to its investors, then the aforementioned party will have in this case the full rights to replace the investor with respect to the rights and actions of that investor. The said payments shall not affect the rights of the beneficiary of the guarantee in resorting to the International Center for the Settlement of Investment Disputes (ICSID).

## **Article 9. Special Commitments**

Investments that are the subject of a special obligation for one of the Contracting Parties regarding the investors of the other Contracting Party shall be subject - without prejudice to the provisions of this agreement - to the terms of the aforementioned special obligation if the obligation includes provisions are more favourable than what is contained in this agreement.

## **Article 10. Settlement of Disputes between an Investor and a Contracting Party**

1) Any dispute arising out of the investments between one of the Contracting Parties and an investor from the other Contracting Party shall be settled amicably between the two parties concerned.

2) If the dispute is not settled within a period of six months from the date of its creation, the dispute shall be referred by choosing the investor to:

- A) a competent court in the jurisdiction of the Contracting Party in which territory the investment has been made; or
- B) arbitration by the International Center for Settlement of Investment Disputes, which was established under the Agreement on the Settlement of Investment Disputes between States and citizens of other countries and signed in Washington on March 18, 1965.

For this purpose, each contracting party will give its final approval that each investment dispute be subject to these arbitration procedures.

3) One of the Contracting Parties which is a party to the dispute, cannot raise an objection in any moment of the arbitration proceedings or in the implementation of an arbitration award, claiming that the investor of the other party in the dispute has obtained compensation that partially or fully covers his losses under insurance.

4) The arbitral tribunal takes decisions based on the law of the Contracting Party to the dispute in which its investment takes place, as well as the rules relating to conflict of laws, the provisions of this agreement and the special agreements that have been concluded regarding investment, as well as principles of international law.

5) Arbitral decisions are final and binding for both parties to the dispute, and each contracting party is obliged to enforce

them in accordance with its law.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1) Disputes relating to the interpretation or application of this agreement, if possible, shall be settled through negotiation through diplomatic channels.

2) If the dispute is not settled within six months from the date on which the matter was raised by either of the Contracting Parties, then it is permissible, and at the request of either Contracting Party, to refer the dispute to an arbitral tribunal.

3) The arbitral tribunal consists of the following:

Each Contracting Party appoints an arbitrator and the two arbitrators together choose a third arbitrator that shall be national of a third country that has diplomatic relations with both Contracting Parties, as president of the arbitral tribunal. The two arbitrators must be appointed within three months and the president appointed within five months, starting from the date of notification of one of the Contracting Parties to the other party of its intention to submit the dispute to the arbitral tribunal.

4) If the arbitrators have not agreed within the time limits specified in paragraph 3 of this Article, one of the Contracting Parties shall invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice holds the nationality of one of the Contracting Parties or if an impediment prevents him from exercising this task, the Vice-President shall be required to make the necessary appointments, and if the Vice-President holds the nationality of one of the Contracting Parties or if an impediment prevents him from exercising this task, the most senior member of the International Court of Justice who does not have the nationality of one of the Contracting Parties, shall be required to carry out the aforementioned appointments. In all cases, the president is required to be a national of a third country that has diplomatic relations with both parties.

5) The arbitral tribunal shall make its decisions on the basis of the provisions of this agreement and the rules and principles of international law. Decisions are taken by majority of votes. It shall be final and binding for the Contracting Parties.

6) The arbitral tribunal shall determine rules for its working methods.

7) Each Contracting Party shall bear the costs of its judgment and its representation in the arbitration process. The president's expenses and the rest of the expenses are divided equally between the contracting parties, unless the tribunal decides otherwise.

## **Article 12. Entry Into Force and Duration of the Agreement**

1) This agreement shall enter into force as of the date of the last notification in which either of the two Contracting Parties notifies the other Contracting Party in writing through diplomatic channels that he has fulfilled the legal procedures necessary for the agreement to enter into force.

2) This agreement shall also apply to the investments made before its entry into force by the investors of one of the Contracting Parties on the territory of the other Contracting Party - according to the regulations of the latter - but it does not apply to disputes that have arisen before its entry into force.

3) This agreement shall remain in effect for a period of ten years, and thereafter shall remain in effect for a similar period or periods, if one of the Contracting Parties did not notify the other Contracting Party in writing of his desire to terminate it, at least a year before the expiration of its period.

4) For investments made before the termination of the agreement, the provisions of this agreement will remain in effect for an additional period of 75 years from the date of termination of the agreement.

In witness to the foregoing, the representatives and the commissioners with full authorization from their respective governments have signed this agreement.

Done in two copies in Arabic, on this day, 14-Safar-1422 Hijiri, corresponding to 8 May 2011

For the Government of the Kingdom of Morocco,

Fathalla Oualalu

Minister of Economy and Finance

For the Government of the Sultanate of Oman,

Ahmed bin Abdul Nabi Makki

Minister of National Economy

Vice-President of the Financial Affairs and Energy Resources Council