

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

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

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the reciprocal promotion and protection of investments under this Agreement shall be conducive to the stimulation of individual business and shall increase prosperity in both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purpose of the present Agreement:

1. "Investments" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and shall include, in particular, though not exclusively :

- a) Movable and immovable property and any other property rights such as mortgages, liens or pledges and similar rights;
- b) Shares, stocks, debentures and any other form of participation in companies;
- c) Claims to money or to any performance under contract having economic value;
- d) Industrial and intellectual property rights including copyrights, trademarks, patents, industrial designs, technical process, know-how, trade secrets, trade names and any other similar rights;
- e) Business concessions conferred by law or by contract, including concessions to search for, extract or exploit natural resources.

Any change of the legal form in which assets are invested or reinvested shall not affect their character as investment in the meaning of this Agreement.

2. "Investors " means with regard to either Contracting Party:

- a) A natural person having the nationality of the Contracting Party in accordance with its laws, and making investments in the territory of the other Contracting Party;
- b) A legal person having its head office in the territory of either Contracting Party, established under the laws of that Contracting Party and making investments in the territory of the other Contracting Party.

3. "Returns" means the amounts free of tax yielded by investments and includes in particular, though not exclusively, profits, interests, capital gains, dividends and royalties.

4. "Territory" means:

a) With respect to the Kingdom of Morocco: the territory of the Kingdom of Morocco including any maritime area situated beyond the territorial waters of the Kingdom of Morocco which have been or might be afterwards designed by the law of the Kingdom of Morocco, according to international law, as being an area into which the rights of the Kingdom of Morocco relative to sea bed and maritime subsoil as well as to natural resources can be exercised;

b) With respect to the Republic of the Gambia : the territory, including the territorial sea and any maritime area situated beyond the territorial sea over which the Republic of the Gambia may exercise sovereign rights or jurisdiction in accordance with relevant international and domestic laws.

Article 2. Promotion and Protection of Investments

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

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

2. Investments made by investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party under this Agreement.

Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Investment returns, and in case of their reinvestment in accordance with the law of the Contracting Party on which territory investment is made, enjoy the same protection as the initial investment.

Article 3. Treatment of Investments

1. Each Contracting Party shall in its territory accord to investments of the other Contracting Party fair and equitable treatment which is not less favourable than that it accords to investments of its own investors or to investments of investors of any third State.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards to the management, maintenance, use, enjoyment or disposal of their investments a treatment not less favourable than that it accords to its own investors or to investors of any third State.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a) Any existing or future customs union, free trade area, monetary agreement or similar international agreements, including other forms of regional economic cooperation, to which either Contracting Party is or may become a party;

b) Any international agreement or arrangement relating to taxation.

Article 4. Compensation for Losses

1. Investors of either Contracting Party whose investments suffer damages or losses owing to war, armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party a fair and equitable treatment, as regards restitution, indemnification, compensation or other settlement, which shall not be less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to the paragraph 1 of this Article, investors of either Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from requisition or destruction of their property by its forces or authorities, provided that it was not required by the necessity of the situation, shall be accorded by the latter Contracting Party prompt, adequate and effective indemnification or restitution.

Article 5. Expropriation and Compensation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized: or subjected to measures having effect equivalent to expropriation (hereinafter referred to as

"expropriation") except for a public purpose, in accordance with due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the expropriated investment immediately before expropriation has taken place or before impending expropriation become public knowledge whichever is the earlier.

3. Compensation shall be paid without undue delay. In case of delay in the payment, it shall attract interest at the normal commercial rate until the date of payment.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party after payment of tax. the free transfer of payments related their investments. Such transfers shall be made in convertible currency, without undue delay and shall include, in particular, but not exclusively:

a) Capital and additional amount aiming to maintain or to increase an investment;

b) Returns as defined in Article 1 of this Agreement;

c) Repayments of loans related to investments;

d) Proceeds of sale or liquidation of an investment;

e) Compensation under Articles 4 and 5 of this Agreement;

f) Salaries and other remuneration going to nationals of one Contracting Party who have been allowed to work in the territory of the other Contracting Party in connection with an investment.

2. Transfer of payments referred to in paragraph 1 of this Article shall be made at the exchange rate applicable on the date of transfer and under the current exchange regulations in force in the territory of the Contracting Party in which the investments are made.

3. Guarantees provided for by this Article shall be at least equal to those accorded to investors of the most favoured nation who are in similar situation.

Article 7. Subrogation

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

2. According to the guarantee given to the investment concerned, the insurer shall be entitled to claim all the rights that the investor might exercise if those rights had not been subrogated to the insurer.

3. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

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

Article 8. Settlement of Investment Disputes

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning the investment shall be settled, as far as possible, amicably, through consultations and negotiations between the parties to the dispute. If the dispute can not be settled within six months from the date of the settlement request, the dispute shall be submitted as the investor may choose to :

a) The competent court of the Contracting Party on which territory investments are made, or

b) The International Centre on the Settlement of Investment Disputes (ICSID) established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" opened for signature at Washington on March 18, 1965, or

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

2. For this purpose each Contracting Party gives its irrevocable consent that any investment dispute shall be submitted to the above tribunal or to this arbitration proceedings.
3. Neither Contracting Party, involved in a dispute may raise an objection, at any step of the arbitration proceedings or enforcement of an arbitration decision, because the investor, who is a party to the dispute, has received compensation under an insurance contract in respect of all or part of his losses.
4. The arbitral tribunal shall rule on the basis of national law of the Contracting Party involved in the dispute in which territory the investment is situated, including the rules relating to conflicts of laws, the provisions of this Agreement, the provisions of particular agreements between an investor and a Contracting Party which may be concluded about investments as well as principles of international law.
5. Arbitral decisions shall be final and binding on either party to the dispute. Each Contracting Party commits to enforce such decisions in accordance with its national laws and regulations.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties regarding the interpretation or application of this Agreement shall be settled, as far as possible, by negotiations through diplomatic channel.
2. If the dispute cannot be settled within six months from the beginning of negotiations, it shall be submitted to an ad hoc tribunal at the request of either Contracting Party.
3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State to be appointed as Chairman of the tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice President is a national of one of the Contracting Parties or if he is also prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of the Contracting Parties shall be invited to make the appointments.
5. The arbitral tribunal shall rule on the basis of the provisions of this Agreement and rules and principles of international law. The tribunal shall reach its decisions by a majority of votes. The decision shall be final and binding on both Contracting Parties. Each Contracting Party shall enforce these decisions in accordance with its national laws and regulations.
6. The tribunal shall determine its own procedure.
7. Each Contracting Party shall bear the cost of its arbitrator and its representation to the arbitration proceedings. The Cost of the Chairman and any other costs shall be borne in equal parts by the Contracting Parties.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain rules, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11. Other Obligations

1. Investors of one Contracting Party may conclude with the other Contracting Party particular agreements, whose provisions shall not be contrary to this Agreement. Investments made under such agreements shall also be ruled by this Agreement.
2. Each Contracting Party shall observe any obligations it may have entered into with regard to investments of investors of the other Contracting Party.

Article 12. Application

This Agreement shall apply to investments whether made before or after the date of its entry into force. However, this Agreement shall not apply to the disputes arising before its entry into force.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty days after the Contracting Parties notify each other in writing that their respective constitutional requirements for the entry into force of this Agreement have been fulfilled. The entry into force shall be effective thirty days after the last notification.
2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter for successive periods of ten years unless terminated by written notification of either Contracting Party six months at least before the end of the current period.
3. In respect of investments made prior to the date of termination of this Agreement the provisions of Articles 1 to 12 shall remain in force for a period of ten years from the date of the termination of this Agreement

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

Done at Banjul this 20 day of February 2006 in duplicate each one in the Arabic and English languages, the two texts being equally authentic.

For the Government of the Kingdom of Morocco

Mohamed Benaissa

Minister of Foreign Affairs and Cooperation

For the Government of the Republic of the Gambia

Lamin Kabba Bajo

Secretary of State for Foreign Affairs