

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Morocco and the Government of the Socialist Republic of Viet Nam hereinafter referred to as the "Contracting Parties";

- Desiring to intensify economic cooperation by creating favourable conditions to make investments by investors of one Contracting Party in the territory of the other Contracting Party;
- Considering the beneficial influence which such an Agreement will exert to promote business contacts and to reinforce confidence in the investments field;
- Recognizing that the promotion and reciprocal protection of investments shall be conducive to stimulate business initiatives and to increase economic prosperity in both Contracting Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

1. The term "Investment" 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, pledges, usufructs and similar rights;
- b) shares, securities and any other form of participation in companies;
- c) claims to money or to any other performance having an economic value;
- d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are Parties to them, including copyrights, patents, trademarks, trade names, franchises, industrial designs, technical processes and other similar rights.
- e) any rights conferred by law or by contract, including concessions to search for, extract or exploit natural resources;

But investment does not mean claims to money that arise solely from:

- (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Contracting Party to an enterprise in the territory of the other Contracting Party; or
- (ii) the extension of credit in connection with a commercial transaction, such as trade financing; or
- (iii) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) through (e) above.

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

2. The term "Investor means:

- a) any natural person having Moroccan or Vietnamese nationality under the law of the Kingdom of Morocco or the Socialist Republic of Viet Nam respectively and making an investment in the territory of the other Contracting Party;

b) any legal person having its head office in the territory of the Kingdom of Morocco or the Socialist Republic of Viet Nam and constituted under Moroccan or Vietnamese law respectively and making an investment in the territory of the other Contracting Party.

3. The term "Returns" means the amounts yielded by an investment such as profits, interests, capital gains, dividends and royalties or fees.

4. The term "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 and which has been or might be afterwards designated by the law of the Kingdom of Morocco, according to international law, as being an area into which the Kingdom of Morocco may exercise rights with regard to the sea bed and maritime subsoil as well as the natural resources.

b) with respect to the Socialist Republic of Viet Nam, its land territory, islands, internal waters, territorial sea and airspace above them, the maritime areas beyond territorial sea including seabed and subsoil thereof over which the Socialist Republic of Viet Nam exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law.

5. The term "Freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

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

1. Each Contracting Party shall in its territory encourage investments by 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 of the Contracting Party on which territory the investment is made, is considered as a new investment.

2. Each Party shall accord to covered investments of investors of any other Party fair and equitable treatment and full protection and security.

For greater certainty:

(a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;

(b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investments; and

(c) the concepts of fair and equitable treatment and full protection and security do not require treatment in addition to or beyond that which is provided under the customary international law and do not create additional substantive rights.

3. Subject to its laws and regulations and in accordance with the provisions on the Most Favoured Nation treatment provided for in

This Agreement, each Contracting party shall commit to ensure that the management, maintenance, use, enjoyment or disposal of investments of investors of the other Contracting Party on its territory shall not be impaired by unreasonable or discriminatory measures. Each Contracting Party shall observe any legal obligation arising out of this Agreement it may have entered into with regard to investments of investors of the other Contracting Party.

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

4. This article shall not apply to measures that have to be taken by either Contracting Party for reasons public security, order or public health or protection of environment provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustified discrimination

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall in its territory accord to investments by investors of the other Contracting Party a treatment which is not less favourable than that which it accords, in like circumstances, to investments of its own investors or to

investments of the most favoured nation.

2. Each Contracting Party shall in its territory ensure to investors of the other Contracting Party, concerning the use, management, conduct, operation, and sale or other disposition of their investments, a treatment not less favourable than that which it accords, in like circumstances, to its own investors or to investors of the most favoured nation.

3 The national treatment, as provided in paragraph (1) and (2) above, shall be accorded in accordance with the applicable laws and regulations of the host Contracting Party and in accordance with the provisions on the Most Favoured Nation treatment provided for in this Agreement. The linking of national treatment to the applicable laws and regulations of the host Contracting Party preserves the right of the host Contracting Party to apply, a treatment to investors of the other Contracting Party and their investments different than that which applies to its own investors and their investments and in accordance with the provisions on the Most Favoured Nation treatment provided for in this Agreement. In this way each Contracting Party may maintain any economic sector or activity as reserved for its own investors within the framework of its development policy.

4. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any customs union, economic union, free trade area, monetary union, or other form of international, regional and bilateral economic agreement or other similar international agreement, to which either of the Contracting Parties is or may become a party;

(b) any international, regional or bilateral agreement or other similar arrangement to which either of the Contracting Parties is or may become a party relating wholly or mainly to taxation.

## **Article 4. 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 subject to measures having an equivalent effect (hereinafter referred to 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 market value of the expropriated investment immediately before expropriation has taken place or become public knowledge whichever is the earlier.

3. Compensation shall be paid without undue delay and shall be transferable in freely usable currency. In case of a late payment, the compensation shall include interest at the rate determined by the Contracting Party on which territory the investment is made, from the due date until the date of payment.

4. The investor shall have the right to a prompt review of the legality of the administrative procedure of expropriation and the valuation of the amount of compensation by a judicial authority of the Contracting Party making the expropriation.

## **Article 5. Compensation for Losses**

Investors of one of the Contracting Parties whose investments suffer damages or losses owing to war or any other armed conflict, revolution, a state of national emergency, riot, revolt or other similar events in the territory of the other Contracting Party, shall be

accorded by the latter Contracting Party a non discriminatory treatment which is at least equal to that accorded to its own investors or to investors of the most favoured nation, whichever is more favourable, as regards to restitutions, compensations, indemnifications or other settlements.

## **Article 6. Transfer of Payments**

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

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

b) profits, dividends, interests, royalties and other current returns;

c) amounts necessary to repayment of loans related to investments;

d) proceeds from the total or partial liquidation of an investment;

e) compensations under Articles 4 and 5;

f) salaries and other remunerations 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;

g) payments resulting from the settlement of disputes under Article 9.

2. Transfers referred to in paragraph 1 shall be made at the exchange rate applicable on the date of transfer and under the current exchange regulations of the Contracting Party on which territory investment is made.

3. Notwithstanding paragraphs 1 and 2 of this Article, either Contracting Party may, on non-discriminatory basis, adopt or maintain measures relating to cross-border capital and payment transactions:

a) in the event of serious balance of payments and external financial difficulties or threat thereof; or

b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies; or

c) to protect the rights of creditors.

4. Measures referred to in paragraph 3 of this Article shall:

a) not exceed those necessary to deal with the circumstances set out in paragraph 3 of this Article;

b) be temporary and shall be eliminated as soon as conditions permit it; and

c) be promptly notified to the other Contracting Party.

## **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 recognize the subrogation of the insurer in the rights of the indemnified investor.

2. According to the guarantee given to the concerned investment, 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 investment of an investor of the other Contracting Party shall be settled in accordance with the provisions of Article 9 of this Agreement.

## **Article 8. Application of other Rules**

If the legislation of either Contracting Party or conventions under international law existing at present or established hereinafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such regulations shall, to the extent that it is more favourable, prevail over this Agreement.

The disputes arising from obligations under particular agreements shall be settled only under the terms and conditions of these agreements.

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

1. A legal dispute under the provisions of this Agreement arising directly out of an investment, between one Contracting Party (disputing Party) and an investor of the other Contracting Party (disputing investor) shall be settled, as far as possible, amicably, through consultations and negotiations between the parties to dispute.

2. If an investment dispute referred in paragraph 1 cannot be settled through direct arrangement between the parties in the dispute within six months from the date of its written notification, the disputing investor referred to in paragraph 1 may submit to arbitration or tribunal under paragraph 3 a claim that:

- a. the disputing Party has breached one or more of its obligation under this Agreement related to the management, conduct, operation or sale or other disposition of investment of the disputing investor, and
  - b. the disputing investor has incurred loss or damage by reason of that breach
3. A claim referred to in paragraph 2 shall be submitted, at the disputing investor choice, either to:
- a. the competent court of the Contracting Party on which territory the investment is made; or
  - b. the arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the "Convention for the Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington on March 18th 1965, provided that the said Convention has entered into force for both Contracting Parties, or according to Additional Facility Rules of the ICSID if the said Convention has not entered into force for either of the Contracting Parties; or
  - c. an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)
4. Once the investor has submitted the dispute to the competent court of the Contracting Party on which territory the investment is made or to one of the arbitration procedures stipulated in paragraphs 3(b) and 3(c) of this Article, the choice is final.
5. Neither of the Contracting Parties, which is a party to the dispute, cannot raise an objection, at any stage of the arbitration proceedings or of the enforcement of an arbitration award, on the fact that the investor, which is the other party to the dispute, has received an indemnity covering wholly or partially his losses under an insurance policy.
6. The arbitral tribunal shall rule on the basis of national law of the Contracting Party involved in the dispute on which territory the investment is made, including the rules relating to conflicts of law, the provisions of this Agreement as well as principles of international law.
7. 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 law.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties regarding interpretation or application of this Agreement shall be settled, as far as possible, between the Contracting Parties through diplomatic channels.
2. If the dispute cannot be settled within six months from the beginning of the negotiations, it shall be submitted to an arbitral 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 decision by a majority of votes. The decision shall be final and binding on both Contracting Parties.
6. The tribunal shall determine its own procedure.
7. Each Contracting Party shall bear the costs of its arbitrator and its representation to the arbitral proceedings. The cost of the Chairman and any other costs shall be borne in equal parts by the Contracting Parties.

## **Article 11. Application**

This Agreement shall apply to all investments made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations. However, this Agreement shall not apply to the disputes arising before its entry into force.

## **Article 12. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty days after the receipt of the last of the two written notifications concerning the fulfilment by the two Contracting Parties of the respective constitutional procedures required in their two countries.
2. This Agreement shall remain in force for a period of ten (10) years, and shall continue in force, unless one of the Contracting Parties notifies the other in writing of its intention to terminate the Agreement in twelve (12) months before the expiration of the initial ten (10) years period or any time thereafter.
3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

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

Done in duplicate at Rabat on June 15, 2012 in the Arabic, Vietnamese and English languages, all texts being equally authentic. In the case of divergence between the texts of this Agreement, the English text shall prevail.

For Government of the Kingdom of Morocco

Nizar BARAKA

Minister of Economy and Finance

For Government of the Socialist Republic of Viet Nam

Bui Thanh SON

Deputy Minister for Foreign Affairs