

# **THE GOVERNMENT OF THE KINGDOM OF MOROCO AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

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

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples:

Desiring to create favourable conditions for greater economic cooperation between the Contracting Parties and in particular through investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising the importance of the promotion and protection of investments and its contribution to stimulate inflows of capital and business initiative and to increase prosperity in both countries;

Have agreed as follows

## **Article 1. Definitions**

For the purpose of this Agreement

1. The term "investment" shall mean any kind of asset invested by investors on one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, but not exclusively:

- a. Moveable and immovable property and any other property rights such as mortgages, pledges and liens;
- b. Shares, stocks or any other form of participation in companies;
- c. Claims to money or to any performance under contract having a financial value;
- d. Intellectual property rights in accordance with the relevant laws of the respective Contracting Party;
- e. Business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

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

2. The term "investor" means in respect of each Contracting Party:

- a. Any natural persons having Moroccan or Indian nationality under the law in force in the respective Contracting Parties;
- b. Any legal person or entity constituted under the law in force in each of the Contracting Parties and having effective economic activity in the territory of that Contracting Party.

3. "Returns" means amounts after payment of tax yielded by such investments and in particular, though not exclusively includes profits, interest, capital gains, dividends, royalties or fees.

4. The term "without delay" shall be deemed to be fulfilled if a transfer is made within such period as is normally required as per procedural requirement.

5. "Territory" means.

(a) In respect of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has

sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

(b) In respect of 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 in the future be designated by the laws of the Kingdom of Morocco in accordance with international law as an area within which the Kingdom of Morocco may exercise rights with regard to the seabed and subsoil and the natural resources.

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

1. Either Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such investments in accordance with its laws and regulations.
2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security of the other Contracting Party.
3. Any alteration or change in the nature of an investment made according to the laws and regulations in force in the host country is considered as a new investment,
4. Returns on investments, in case of their reinvestment in accordance with the law in force in each of the Contracting Parties, shall enjoy the same protection accorded to the initial investment.

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

1. Each Contracting Party, shall in its territory accord to investments of investors of the other Contracting Party treatment no less favourable than that it accords to investments of its own investors or investors of any third State, whichever is the most favourable.
  2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards to management, maintenance, use, enjoyment or disposal of their investments treatment no less favourable than that It accords to its own Investors or investors of any third State, whichever is the most favourable.
  3. The provisions in this Agreement relative to the grant of treatment no less favourable than that accorded to the investors of either Contracting Party or any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from;
- (a) Any economic or customs union or a free trade area or a common market, or any similar international agreement or any form of regional economic organisation to which either of the Contracting Parties is or may become a party.
- (b) Matters relating wholly or mainly to taxation, which shall be governed by a separate bilateral Agreement on taxation issues.

## **Article 4. Expropriation and Compensation**

1. Measures of nationalisation, expropriation or any other measure having an equivalent effect, hereinafter referred to as an expropriation, that might be taken by one of the Contracting Parties against investments of the investors of the other Contracting Party must be neither discriminatory nor taken other than for a public purpose.
2. The Contracting Party taking such measures shall give a fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated on the date of expropriation or when expropriation become public knowledge, whichever is earlier.
3. The amount of the said compensation shall be effectively realizable, and shall be paid without delay. In case of a late payment, interest at a normal commercial rate shall be calculated from the due 'date until the date of payment. Compensation shall be paid to investors in convertible currency and be 'freely transferable.

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

Investors of one Contracting Party whose investments are affected by losses as a result of War or armed conflict, revolution, a State of national emergency, revolt, insurrection or other similar events in the territory of the other Contracting Party, shall receive treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State; whichever is more favourable treatment being adopted as regards restitution, indemnification,

compensation or other settlement in respect of the said losses.

## **Article 6. Transfers**

1. Each Contracting Party shall assure to investors of the other Contracting Party free transfer, after payment of tax, of their assets invested, in particular, though not exclusively:

- (a) Capital invested and any additional amount used for maintenance or extension of the investment;
- (b) Operating profits, dividends, interests, royalties or other current revenue;
- (c) Amounts necessary to repay loans accorded in connection with investments;
- (d) Proceeds from sale or liquidation of all or any part of an investment;
- (e) Compensation payable pursuant to Articles 4 and 5;
- (f) Salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits relative to an investment.

2. Transfers mentioned in paragraph 1 shall be effected without delay in convertible currency at the rate of exchange applicable on the date of transfer.

## **Article 7. Subrogation**

1. Where one Contracting Party or an insurer has guaranteed any indemnity against noncommercial risks, in accordance with its laws, in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payments to such investors in respect of their claims under this Agreement, the other Contracting Party or the insurer is entitled by virtue of subrogation to exercise the rights and to assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

2. In case of a dispute between one Contracting Party and the insurer of an investment of the other Contracting Party the provisions of the Article 8 of this Agreement shall apply.

## **Article 8. Settlement of Investment Disputes**

1. Disputes between the Contracting Party and an investor of the other Contracting Party, in connection with investment, shall be settled, as far as possible amicable, by consultations and negotiations between the parties to the dispute.

2. If these disputes cannot be settled in this way within six months following the date of a written notification, the dispute can be submitted, as the investor may choose:

(a) Either to a competent court, arbitral or administrative tribunal of the Contracting Party in whose territory the investment was made, as the investor may choose; or:

b)(i) To arbitration to the International Centre for Settlement of Investment Disputes (ICSID) set up by the convention on Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on March 18th, 1965, when both contracting Parties are party to the said Convention; or:

Or

b)(ii) As long as the above mentioned requirement is not fulfilled, to arbitration under the ICSID Additional Facility for the Administration of Conciliation, Arbitration and fact finding proceedings;

Or:

b)(iii) To an ad-hoc arbitration tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to that the arbitral tribunal shall state the basis of its decision and give reasons upon the request of either Party.

(c) The recourse to the arbitration provided in (b)(i), (b)(ii) and (b) (iii) hereabove is subject to the mutual consent of the parties to the dispute.

(d) Once a party to the dispute has submitted the dispute to a competent court of the Contracting Party in whose territory

the investment was made or to international arbitration, that choice shall be final.

3. Neither Contracting Party to the dispute may raise as an objection at any stage of proceedings or enforcement of an arbitral award because the investor who is the other party to the dispute has received, an indemnity covering wholly or partially his losses under an insurance contract.

4. The arbitral tribunal shall base its decision on the national law of the contracting Party involved in dispute in whose territory the investment was made, including the rules, relative to conflicts of law, the provisions of this Agreement, the provisions of particular agreements between the investor and the contracting Party relative to investment.

5. The arbitration award shall be final and binding on all parties to the dispute. Each Contracting Party commits itself to execute the award according to its national law.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties thus cannot be settled within 6 (six) months, it shall upon the request of either contracting Party be submitted to an arbitral tribunal as agreed upon by the Contracting Parties.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way:

(a) Within 2 (two) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal.

(b) Those two members shall then select a national of third State who on approval by the two Contracting Parties shall be appointed as the Chairman of the Tribunal.

(c) The Chairman shall be appointed within two months from the date of the appointment of the other two members.

4. If within the period specified in Paragraph 3 of this Article the necessary appointment has not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointment. If the President is a national of either contracting Party or if he is otherwise prevented from discharging the said function the Vice- President shall be invited to make the necessary appointments. If the vice-President is a national of either contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointment.

5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decision shall be final and binding on both contracting Parties. Each contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining cost shall be borne in equal parts by the contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

## **Article 10. Entry and Sojourn of Personnel**

A contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investment.

## **Article 11. Applicable Laws**

1. Except as otherwise provided in this Agreement, all Investments shall be governed by the laws in force, in the territory of the Contracting Party in which such investments are made.

2. Nothing in this Agreement precludes the host contracting Party from taking action strictly necessary for the maintenance of the public order, the protection of its essential security interests or in circumstances of extreme emergency, in accordance with its laws normally and reasonably applied on a non discriminatory basis.

## **Article 12. Application of other Provisions**

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

### **Article 13. Applicability of this Agreement**

This Agreement shall also cover, concerning its future application, investments made in convertible currency, before 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 a dispute that might arise before its entry into force.

### **Article 14. Consultation and Amendment**

1. Either contracting party may request that consultations be held on any matter concerning this agreement. The other party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.
2. This Agreement may be amended at any time, if deemed necessary, by mutual consent,

### **Article 15. Entry Into Force, Duration and Termination**

1. This Agreement shall be subject to ratification and shall enter into force on the thirtieth day after the date of receipt of the latter notification by which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement at least 12 months before its expiration.
3. With respect to investments made prior to the date of termination of this Agreement the provisions of this Agreement shall continue to be effective for a period of ten years (10) from the date of termination.

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

Done at Rabat this thirteenth day of February of 1999 in duplicate In Hindi, Arabic, English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

Sd/-For the Government of the Republic of India

Sd/-For the Government of the Kingdom of Morocco