

Agreement between the Government of the Kingdom of Morocco and the Government of the Republic of Senegal concerning the reciprocal promotion and protection of investments

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

DESIRING to strengthen economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party;

CONSIDERING the beneficial influence that may exercise such an agreement with a view to improving the business contacts and to enhance confidence in the field of investment;

RECOGNIZING the need to promote and protect foreign investment with a view to promoting economic prosperity of both contracting parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any direct or indirect assets and contributions in any company or undertaking in any sector of economic activity, including, but not limited to :

(a) movable and immovable property and all other real rights such as mortgages, pledges, security interests, usufruct and similar rights;

(b) shares and other forms of participation in companies;

(c) claims and rights to all benefits having an economic value;

(d) copyrights, trademarks, patents, technical processes, trade names and any other industrial property rights, as well as goodwill;

(e) concessions under public law, including concessions for the exploration, extraction or exploitation of natural resources.

No change in the legal form in which the assets and capital have been invested or reinvested shall affect their character as investments within the meaning of this Agreement.

Such "investments" shall be made in accordance with the laws and regulations in force in the host country.

If the investment is made by an investor through an organization referred to in subparagraph 2 (c) below in which it has an equity interest, such investor shall enjoy the benefits of this Agreement to the extent of such indirect participation, provided, however, that such benefits shall not accrue to it if it avails itself of the dispute settlement mechanism provided for in another Agreement on the Protection of Foreign Investment concluded by a Contracting Party in whose territory the investment is made.

2. The term "investor" means:

a) any natural person having Moroccan or Senegalese nationality under the legislation of the Kingdom of Morocco or the Republic of Senegal 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 Republic of Senegal and Senegalese or incorporated under Moroccan legislation and making an investment in the territory of the other Contracting

Party.

c) The legal entities established in accordance with the law of any country, which are directly or indirectly controlled by nationals of a Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party; it is understood that the control requires a significant part of the property.

3. The term "income" refers to the net amount of profit, interest, dividends and license fees earned from an investment, including but not limited to profits, interest, dividends and license fees.

4. The term "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 by the legislation of the Kingdom of Morocco, in accordance with international law, as an area within which the rights of the Kingdom of Morocco with respect to the seabed and subsoil and natural resources may be exercised.

b) For the Republic of Senegal: the territory of the Republic of Senegal, as well as the maritime areas beyond the limits of the territorial waters and on which the Republic of Senegal exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

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

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy the latter part of this fair and equitable treatment as well as, subject to the measures strictly necessary for the maintenance of public order, of full protection and security. Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal within its territory of the Investments of the other Contracting Party shall not be affected by unjustified or discriminatory measures.

Investment income, in case of reinvestment in accordance with the legislation of one Contracting Party shall enjoy the same protection as the original investment.

Article 3. Treatment of Investments

1. Each Contracting Party shall in its territory for Investments of the other Contracting Party which is fair and equitable treatment no less favourable than that which it accords to its own investments of investors or to investments of the most favoured nation, if it is more favourable.

Each Contracting Party shall in its territory for investors of the other contracting party, in respect of activities related to their investments, a treatment no less favourable than that it accords to its own investors or investors of the most favoured nation treatment, whichever is more favourable.

2. The most-favoured-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs or economic union, a common market or any other form of regional economic organization or similar international agreement or any agreement for the avoidance of double taxation in taxation or any other arrangement relating to taxation.

Article 4. Expropriation and Compensation

1. The measures of expropriation, nationalization or any other measures having the same nature or the same effect (hereinafter referred to as expropriation) that may be taken by the authorities of one Contracting Party against the investments made by investors of the other Contracting Party shall not be discriminatory or other than for reasons of public interest.

2. The Contracting Party taking such measures shall pay to the person entitled thereto without undue delay, fair and equitable compensation in the amount will correspond to the market value of the investment concerned on the day before the date on which the measures taken or are publicly available.

3. The provisions for the purpose of fixing and paying of compensation shall be made promptly and no later than at the moment of the expropriation. In the event of late payment, the compensation shall include interest at market conditions as from the date of its receipt. The compensation shall be paid to investors in convertible currency and freely transferable.

Article 5. Compensation for Losses

Investors of one of the Contracting Parties whose investments suffer damage or loss as a result of war or any other armed conflict, revolution, national emergency, revolt, insurrection or any other similar event in the territory of the other Contracting Party, shall be accorded non-discriminatory treatment at least equal to that accorded to its own investors or to investors of the most-favoured-nation in respect of restitution, compensation, indemnification or other damages, whichever is the more favourable.

Article 6. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to investors, after the fulfilment of their tax obligations, the free transfer in convertible currency and without undue delay of liquid assets associated with such investments, and in particular:

- a) capital and additional amounts to maintain or increase the investment;
- b) interests, profits, dividends, royalties and other current income;
- c) funds in repayment of loans related to investments;
- d) Proceeds of sale or the total or partial liquidation of the investment;
- e) compensation payable pursuant to articles 4 and 5;
- f) wages and other remuneration accruing to nationals of one Contracting Party who have been authorised to work in the territory of the other contracting party in connection with an investment.

2. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

3. The guarantees provided for by this article shall be at least equal to those accorded to investors of the most favoured nation in similar situations.

Article 7. Subrogation

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

2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.

3. Any dispute between one Contracting Party and the insurer to an investment of the other Contracting Party shall be settled in accordance with the provisions of article 9 of this Agreement.

Article 8. Applicable Rules

Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or under existing international conventions or undertaken by the parties in the future, investors of the other Contracting Party may avail itself of the provisions that are most favourable.

Article 9. Settlement of Investment Disputes

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled amicably, as far as possible through consultations and negotiations between the parties to the dispute.

2. In the absence of an amicable settlement by direct arrangement between the parties to the dispute within six months from the date of the written notification, the dispute shall be submitted, at the choice of the investor:

- a) either to the competent court of the Contracting Party in whose territory the investment has been made;
- b) or to arbitration by the International Centre for 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 18 March 1965.

To this end, each Contracting Party gives its irrevocable consent to that any investment dispute may be submitted to the arbitration procedure.

3. Neither of the Contracting Parties, Party to the dispute, can raise as an objection, at any stage of the arbitration proceedings or of the execution of an arbitral award, on account of the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy.
4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party, party to the dispute, in whose territory the investment is situated, including the rules relating to conflict of laws, the provisions of this Agreement, the terms of any special agreements which may be concluded in respect of the investment, and the principles of international law.
5. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the award according to its national law.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible, between the two Contracting Parties through diplomatic channels.
2. Failing that, the dispute shall be submitted to an ad hoc mixed commission composed of representatives of the Parties; it shall meet without delay and at the request of either party.
3. If the ad hoc joint commission cannot settle the dispute within six months after the beginning of negotiations, it shall be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.
4. The said tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator, and the two arbitrators shall together appoint a third arbitrator, who shall be a national of a third State, as President of the tribunal. The arbitrators shall be appointed within three months, the President within five months from the date on which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.
5. If the periods specified in paragraph (4) above have not been complied with, 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 either Contracting Party or if he is unable to perform this 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 either Contracting Party or if he is prevented from exercising this task, the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.
6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and principles of international law. The decision of the Tribunal shall be adopted by a majority of votes. It shall be final and binding on the contracting parties.
7. The tribunal shall determine its own rules of procedure.
8. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 11. Application

This Agreement shall also cover investments made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with its laws and regulations. However, this Agreement shall not apply to disputes that may arise before its entry into force.

Article 12. Entry Into Force, Duration and Termination

1. The present Agreement shall be subject to ratification and shall enter into force 30 days after the date of receipt of the last of the two notifications relating to the completion by the two Contracting Parties of the constitutional procedures in

their respective countries.

It will remain in force for a period of ten years. Unless one of the Contracting Parties denounces it at least six months before the expiry of its period of validity, it shall each time be tacitly renewed for a further period of ten years, each Contracting Party reserving the right to denounce it by written notification at least six months before the date of expiry of the current period of validity.

2. Investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from the date of its termination.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement.

Done at Dakar on 15 November 2006, each in two originals in the Arabic and French languages, both texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Morocco

For the Government of the Republic of Senegal

Mohamed BENAÏSSA

Ministry of Foreign Affairs Minister and Cooperation

Cheikh TIDIANE GADIO

Minister of State, Minister for Foreign Affairs