

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

The Kingdom of Morocco and the Slovak Republic (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation to the mutual benefit of both States,

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

Conscious that the reciprocal promotion and protection of investments, according to the present Agreement, stimulates business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" shall mean 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 in particular, though not exclusively, includes:

- a) Movable and immovable property and any other property rights such as mortgages, liens, leases, pledges, usufruct or similar rights;
- b) Shares, stocks and debentures of, and any other form of participation in an enterprise;
- c) Claims to money or title to any 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 but not limited to: industrial property rights, copyrights and related rights, trademarks, patents, industrial design and technical processes, rights in plant varieties, geographical indications, know-how, trade secrets, trade names and goodwill;
- 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 shall not affect their character as an investment.

2. "Return" shall mean the amount yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

3. "Investor" shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party:

- a) The term "natural person" shall mean a natural person having the nationality of that Contracting Party in accordance with its law; and
- b) The term "legal person" shall mean any entity, which is incorporated or constituted in accordance with the laws and regulations of one of the Contracting Parties and which has its registered office, central administration or principal place of business in the territory of one of the Parties. However, should such a legal person have only its registered office in the territory of one of the Parties, its operations must possess a real and continuous link with the economy of one of the

Contracting Parties.

4. "Territory" shall mean:

a) As regards 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 has been or might be in the future designed by the laws of the Kingdom of Morocco, in accordance with international law, as being an area into which the rights of the Kingdom of Morocco relative to the sea-bed and to the maritime subsoil as well as to natural resources can be exercised;

b) As regards the Slovak Republic, the land territory, internal waters and the air space above them, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

5. "Freely convertible currency" shall mean the currency that is widely used in international transactions and widely exchanged in international exchange markets.

6. "Public purpose" shall mean as established under the national legislation of each of the Contracting Parties.

Article 2. Promotion and Protection of Investments

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

Extension, modification or transformation of an investment, performed according to the laws and regulations in force in the Contracting Party in the territory of which the investment is made, is considered as a new investment.

2. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

3. 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 by investors of the other Contracting Party.

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

Article 3. National and Most-favoured-nation Treatment

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

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment treatment which is fair and equitable and not less favourable than that, which it accords to its own investors or investors of any third State, whichever is more favourable.

3. The non-discrimination and most-favoured-nation treatment provisions of this Agreement shall not apply to advantages accorded by a Contracting Party pursuant to its obligations:

a) Arising from any international agreement or arrangement relating wholly or mainly to taxation;

b) As a member of a customs, economic or monetary union, a common market or a free trade area.

4. The Contracting Parties understand the obligations of a Contracting Party as a member of a customs, economic or monetary union, a common market or a free trade area to include advantages accorded to:

– Investors of any State member of that union, common market or free trade area;

– Investors of a third State, by virtue of an international agreement or reciprocity arrangement, concluded or to be concluded, by that customs, economic, or monetary union, common market or free trade area with that third State.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other forms of

settlement, which is no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

2. Without prejudice to paragraph (1) of this Article, investors of one 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;

- Requisitioning of their property by forces or authorities of the other Contracting Party; or
- Destruction of their property by forces or authorities of the other Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation no less favourable than that, which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any other State.

Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier. Compensation shall be freely transferable in a freely convertible currency. The compensation shall be paid without undue delay. In case of a delay in payment, the compensation shall carry interest calculated at the commercial rate from the due date until the date of payment.

2. In both expropriations and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

3. The investor affected shall have a right, under the laws and regulations of the Contracting Party that has taken the expropriation, to prompt review by a judicial authority of that Contracting Party, of the legality of the administrative procedure of the expropriation and the valuation of the amount of the compensation

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfilment of their fiscal and financial obligations, the free transfer of payments related to their investments. Such transfers shall include, in particular, though not exclusively:

- a) Capital and additional amount aiming to maintain or increase an investment;
- b) Returns as defined in Article 1 of this Agreement;
- c) Amounts necessary to reimburse loans related to investments;
- d) Proceeds of sale of total or partial liquidation of investments;
- e) Compensation pursuant to Articles 4 and 5;
- f) Earnings of nationals or residents of the other Contracting Party who are allowed to work in connection with investments in its territory;
- g) Payments arising out of the settlement of an investment dispute;

2. Transfers referred to in paragraph 1 of this Article shall be made in a freely convertible currency, without undue delay, at the exchange rate applicable on the date of transfer and under the exchange regulations in force in the territory of the Contracting Party in which investments have been made.

3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may 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) In the exceptional cases of economic sanctions.

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; and

c) Be promptly notified to the other Contracting Party.

Article 7. Subrogation

If a Contracting Party or its designated agency (hereinafter referred to as "insurer") makes a payment to its own investors under a guarantee or insurance against non-commercial risks in respect of investments made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation to the insurer of all the rights and claims ensuing from such an investment, and shall recognize that the insurer is entitled to exercise these rights and to enforce the claims to the same extent as the original investor.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

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

2. If the dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, the dispute shall be submitted at the choice of the investor:

a) To a competent tribunal of the Contracting Party in which territory the investment has been made,

b) To arbitration by the International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States in case both Contracting parties are parties to this Convention, or

c) To an international ad hoc arbitral tribunal, which unless otherwise agreed upon by the parties to the dispute, is established under the Arbitration Rules of the United Nations Commission on international Trade Law (UNCITRAL).

Each Contracting Party shall give its consent to the submission of disputes to international arbitration set out in subparagraphs b) and c).

3. Neither of the Contracting Parties, which is a party to a dispute, may raise an objection, at any step of the arbitral proceedings or of the execution of an arbitration sentence, on account of the fact that the investor, which is the opposing party in the dispute, had received an indemnification covering the whole or part of its losses by virtue of an insurance.

4. The Arbitral Tribunal shall give its ruling on the basis of the national law of the Contracting Party, which is a party to the dispute, in the territory of which the investment is situated, including the rules of conflict of laws, the provisions of the present Agreement, the terms of particular agreements which may be concluded in respect of investment as well as the principles of international law.

5. The award shall be final and binding to the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

Article 9. Settlement of Disputes between the Contracting Parties

1. The Parties agree to consult promptly, on the request of either, to resolve any dispute in connection with this Agreement.

2. If the dispute cannot be thus settled within six months from the beginning of negotiations, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

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 the periods fixed in the paragraph 3 of this Article have not been respected, either 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 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 appointments, If the Vice-President also happens to be a national of one of the Contracting Parties or 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 appointments.

5. The Arbitral Tribunal shall rule on the basis of the provisions of this Agreement and rules and principles of international law. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding for both Contracting Parties. The Arbitral Tribunal decides on its own proceedings.

6. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the other remaining costs shall be borne in equal parts by both Contracting Parties.

Article 10. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are signatories, nothing in this Agreement shall prevent either Contracting Party or any of its investors, who owns investments in the territory of the other Contracting Party, from taking advantage of whichever rules are more favourable to this case.

2. If the treatment to be accorded by one Contracting Party to investments and to investors of the other Contracting Party, in accordance with its laws and regulations or other specific provisions of contracts, is more favourable than that accorded by this Agreement, the more favourable shall be accorded.

Article 11. Consultations

The Contracting Parties agree to consult, at the request of either, on questions relating to the interpretation and application of this Agreement.

Article 12. Applicability of this Agreement

This Agreement shall apply to investments made prior to its entry into force for the Contracting Parties consistent with the laws and regulations of the Contracting Party in whose territory it was made as well as investments made thereafter. 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 is subject to an approval in accordance with procedures required by law of both Contracting Parties for bringing this Agreement into force and it shall enter into force on the ninetieth (90th) day after the date of Contracting Parties' notification confirming that all constitutional formalities required by law for bringing this Agreement into force have been fulfilled.

2. This Agreement shall remain in force for an infinite period of time. Each Contracting Party may terminate this Agreement by giving a written notice with a twelve-month period.

3. With respect of investments made prior to the date of the termination of this Agreement the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of its termination unless the Contracting Parties decide otherwise.

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

DONE in duplicate at Rabat on the 14 June 2007 in the Arabic, Slovak and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

For the Kingdom of Morocco

Mohamed BENAÏSSA

Minister of Foreign Affairs and Cooperation

For the Slovak Republic

Jan KUBIS

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