

No. 30503

**SWITZERLAND
and
MOROCCO**

**Agreement on the reciprocal promotion and protection of
investments (with protocol). Signed at Rabat on 17 De-
cember 1985**

Authentic texts: French and Arabic.

Registered by Switzerland on 24 November 1993.

**SUISSE
et
MAROC**

**Accord concernant la promotion et la protection réciproques
des investissements (avec protocole). Signé à Rabat le
17 décembre 1985**

Textes authentiques : français et arabe.

Enregistré par la Suisse le 24 novembre 1993.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE SWISS CONFEDERATION AND THE KINGDOM OF MOROCCO ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Swiss Federal Council and the Government of the Kingdom of Morocco, Wishing to strengthen economic cooperation between the two States,

Recognizing the important role of private foreign capital investments in the economic development process, and the right of each Contracting Party to determine that role and to define the conditions under which foreign investments might be integrated into that process,

Recognizing that the only way to establish and maintain an adequate international flow of capital is for each side to sustain a satisfactory climate for investment and, with regard to foreign investments, to respect the sovereignty and laws of the host country having jurisdiction over them, to act in a manner which accords with the policies and priorities adopted by the host country and to strive to make a contribution to its development,

Wishing to create favourable conditions for capital investment in the two States and to strengthen cooperation between nationals and private and public companies of the two States, particularly in the fields of technology, industrialization and productivity,

Recognizing the need to protect investments by nationals and companies of both States and to stimulate the transfer of capital with a view to promoting the economic prosperity of both States,

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement:

(a) “Nationals” are natural persons who, according to the law of each Contracting State, are considered to be citizens of that State.

(b) “Companies” are:

(aa) With regard to the Swiss Confederation, companies, institutions or foundations having legal status, as well as partnership firms or limited partnerships and other associations without legal status in which Swiss nationals have, directly or indirectly, a preponderant interest;

(bb) With regard to the Kingdom of Morocco, any company duly established, set up or otherwise organized in accordance with the laws and regulations of the Kingdom of Morocco in which natural persons who are nationals of the Kingdom of Morocco or of the Kingdom of Morocco and its organs have a substantial interest.

¹ Came into force on 12 April 1991, the date on which the Contracting Parties notified each other (on 8 January and 12 April 1991) of the completion of the required constitutional procedures, in accordance with article 11 (1).

(c) The term “investments” comprises every kind of goods and property, and more particularly, though not exclusively:

- (aa) Movable and immovable property as well as any other rights *in rem*, such as mortgage, lien, usufruct and similar rights;
- (bb) Shares or other kinds of interest in companies;
- (cc) Titles to money and to any benefit having economic value;
- (dd) Copyrights, industrial property rights (such as patents for inventions, trademarks, trade brands, industrial designs), know-how, trade names and goodwill;
- (ee) Concessions or other rights granted by the authorities of the Contracting Parties including concessions to search for, extract or exploit natural resources.

(d) The term “income” means the amounts yielded by an investment as net profit or as interest for a specific period.

Article 2

PROMOTION AND ADMISSION

Each Contracting Party shall promote, as far as possible, investments made in its territory by nationals or companies of the other Contracting Party and shall admit such investments in accordance with its legislation, ordinances and regulations.

Article 3

PROTECTION

Each Contracting Party shall protect within its territory investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments. Each Contracting Party shall endeavour to grant the necessary permits in connection with such investments and shall allow, within the framework of its legislation, the execution of licensing contracts and of technical, commercial or administrative assistance. Each Contracting Party shall endeavour also, whenever necessary, to grant the permits required for the activities of consultants or experts engaged by nationals or companies of the other Contracting Party.

Article 4

TREATMENT

(1) Each Contracting Party shall ensure fair and equitable treatment within its territory in respect of investments made by nationals or companies of the other Contracting Party.

(2) Such treatment shall be no less favourable than that accorded by each Contracting Party in respect of investments made within its territory by its own nationals or companies or than that accorded by each Contracting Party in respect of investments made within its territory by nationals or companies of the most favoured nation, if the latter is more favourable.

(3) Such treatment shall, however, not apply to privileges which either Contracting Party grants to nationals and companies of a third State by virtue of membership in, or association with, a customs union, common market or free-trade area.

Article 5

TRANSFER

Each Contracting Party within whose territory nationals or companies of the other Contracting Party have made investments shall permit these nationals or companies, without undue delay, to transfer, in convertible currency, payments relating to these investments, including:

- (a) Interest, dividends, profits and other current income;
- (b) Royalties and other payments deriving from contracts relating to licensing rights and from commercial, administrative or technical assistance;
- (c) Payments deriving from other contracts, including amortizations or reimbursement of financial or commercial loans;
- (d) Proceeds from the sale or the partial or total liquidation of an investment, including any capital appreciation, if any;
- (d) Compensation paid by reason of expropriation, nationalization or other measures having the same effect or of the same nature.

Article 6

NATIONALIZATION OR EXPROPRIATION

Measures of nationalization, expropriation or any other measure having the same effect or of the same nature which may be taken by the authorities of one Contracting Party against investments belonging to nationals or companies of the other Contracting Party shall be in accordance with the law and shall be neither discriminatory nor taken for reasons other than public use. The Contracting Party taking such measures shall pay to the person entitled to it, without undue delay, adequate and effective compensation.

Article 7

MORE FAVOURABLE CONDITIONS

Provisions more favourable than those of this Agreement which have been agreed upon by either Contracting Party with nationals or companies of the other Contracting Party shall not be affected by this Agreement.

Article 8

PRINCIPLE OF SUBROGATION

Where one Contracting Party has granted financial security against non-commercial risks in respect of an investment by a national or company in the territory of the other Contracting Party, the second Contracting Party shall, by virtue of the principle of subrogation, recognize the rights of the first Contracting Party in the

rights of the investor if a payment has been made under this guarantee by the first Contracting Party.

Article 9

ARBITRATION

(1) Disputes concerning the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channel.

(2) If the two Contracting Parties cannot reach an agreement within nine months, the dispute shall, at the request of either Contracting Party, be submitted to an arbitral tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

(3) If either Contracting Party has not appointed its arbitrator and has not followed up on the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed, upon the request of that Contracting Party, by the President of the International Court of Justice.

(4) If the two arbitrators cannot agree as to the choice of chairman within two months of their appointment, the latter shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

(5) If, in the cases referred to in paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from carrying out his function or if he is a national of either Contracting Party, the appointments shall be made by the Vice-President and, if the latter is prevented or if he is a national of either Contracting Party, they shall be made by the next senior judge of the Court who is not a national of either Contracting Party.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

(7) The decisions of the tribunal shall be final and binding on each Contracting Party.

Article 10

PROTOCOL

The Protocol annexed to this Agreement shall form an integral part thereof.

Article 11

ENTRY INTO FORCE, RENEWAL AND TERMINATION

(1) This Agreement shall enter into force on the day on which the two Governments have notified each other that the constitutional requirements for the entry into force of international agreements have been completed; it shall remain valid for an initial period of 10 years, and may then be renewed by tacit agreement for consecutive periods of two years. Each Contracting Party may give notice to terminate this Agreement in writing six months before the date of expiry.

(2) In the case of termination, the provisions of articles 1 to 10 above shall continue to apply for a period of 10 years to investments made before termination.

DONE at Rabat on 17 December 1985 in four originals, two in French and two in Arabic, both texts being equally authentic.

For the Swiss Federal Council:

ADOLF LACHER

For the Government
of the Kingdom of Morocco:

ABDELLATIF JOUAHRI

PROTOCOL TO THE AGREEMENT BETWEEN THE SWISS CONFEDERATION AND THE KINGDOM OF MOROCCO ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The duly authorized representatives of the two Contracting Parties have agreed on the following provisions, which shall form an integral part of the Agreement:

Article 1

INVESTMENTS WHICH PREDATE THE AGREEMENT

(1) This Agreement shall also apply to investments made within the territory of one Contracting Party, in accordance with its legislation, by nationals or companies of the other Contracting Party before the entry into force of this Agreement.

(2) In the case of transfers provided for in article 5, paragraphs (d) and (e), of the Agreement, prior investments made by a Swiss national or company in Morocco shall be covered by these provisions insofar as the investments were financed by contributions in convertible currency. In the case of transfers provided for in article 5, paragraphs (d) and (e), of the Agreement that relate to prior investments made through contributions other than in convertible currency, they shall be covered by the exchange-control regulations governing investments.

Article 2

TREATMENT

Swiss nationals and companies may not avail themselves of the national treatment provided for in article 4, paragraph (2), of the Agreement in order to benefit from incentive measures (credit facilities, grants, equipment subsidies, guarantees or insurance) granted by the Government of the Kingdom of Morocco to its own nationals or companies in accordance with its laws and regulations governing national development policy, on the understanding that these measures shall not jeopardize the investments of Swiss nationals or companies.

Article 3

TRANSFER

The provisions of article 5 of the Agreement shall not prevent the Contracting Parties from applying their fiscal legislation or legislation prescribing administrative formalities regarding the permits required for the transfer of payments relating to investments; such formalities shall not, however, entail undue delays.

DONE at Rabat on 17 December 1985 in four originals, two in French and two in Arabic, both texts being equally authentic.

For the Swiss Federal Council:

ADOLF LACHER

For the Government
of the Kingdom of Morocco:

ABDELLATIF JOUAHRI