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

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

Desiring to intensify the economic cooperation to the mutual benefit of both Contracting Parties;

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

Recognizing that the reciprocal promotion and protection of investments under this Agreement shall be conducive to the stimulation of individual business and increase prosperity in both Contracting Parties;

Have agreed as follows:

Article I
Definitions

For the purpose of this Agreement:

1. The term „investment" shall mean any 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 Party and shall include, in particular, though not exclusively:

(i) movable and immovable property, as well as all other property rights such as mortgages, liens, pledges , usufruct and similar rights;
(ii) shares and other form of participation in companies;
(iii) claims to money or any other claim under contract having an economic value;
except:
a) claims to money that arise solely from commercial contracts for the sale of goods and services; and
b) the extension of credit in connection with a commercial transaction, such as trade financing;

(iv) intellectual property rights as recognised by the World Intellectual Property Organisation including copyrights, patents, trademarks, trade names, industrial designs, technical processes and other similar rights;

(v) business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

Any change in the legal form in which assets are invested shall not affect their character as „investment" in the meaning of this Agreement.

2. The term „investor" shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party;

(i) the term „natural person" shall mean a physical person having the nationality under the law of the Republic of Serbia or of the Kingdom of Morocco respectively; and

(ii) the term „legal person" shall mean any entity constituted or organised on the territory of one Contracting Party in accordance with the laws and regulations in force in that Contracting Party and having its headquarters together with effective economic activities in the territory of that Contracting Party.

3. The term „returns" shall mean the amounts yielded by investments and includes, in particular, though not exclusively profits, interests, dividends and royalties.

4. The term „territory" shall mean:

(i) with respect to the Republic of Serbia: the area over which the Republic of Serbia exercises, in accordance with its national laws and regulations and international law, sovereign rights and jurisdiction;

(ii) 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 which have been or might be in the future designated by the laws of Morocco, in accordance with international law, as being an area into which the rights of the Kingdom of Morocco relative to seabed and maritime subsoil as well as to natural resources can be exercised.

Article 2
Promotion and Protection of Investments

1. Each Contracting Party shall encourage in its territory the investments of investors of the other Contracting Party and shall admit such investments according to its laws and regulations.

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

2. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall enjoy full protection and security.

3. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors in the territory of the other Contracting Party.

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

5. Measures that have to be taken by either Contracting Party for reasons of public security, public order, public health or protection of environment shall not be deemed treatment „less favourable" within the meaning of this Article.

Article 3
Treatment of investments

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

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards to the management, maintenance, use, enjoyment or disposal of their investments a treatment not less favourable than that it accords, in like circumstances, to its own investors or to investments of any third State, whichever is more favourable to the investor concerned.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party to the investors of any third State by virtue of:

(i) any existing or future customs union, free trade area, monetary agreement or similar international agreements, including other forms of regional economic cooperation, to which either Contracting Party is or may become a party;

(ii) any international agreement or arrangement relating 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 subjected to any other measures of dispossession (hereinafter referred to as „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 fair market value of the investment expropriated immediately before the expropriation has taken place or before impending expropriation become public knowledge whichever is the earlier.

3. Compensation shall be paid without any undue delay and shall be freely transferable. In case of a late payment, the compensation shall include interest at a commercial rate from the due date in accordance with national legislation until the date of payment.

Article 5
Compensation for Losses

1. Investors of one of the Contracting Parties whose investments suffer damages or losses owing to war or any other armed conflict, revolution, state of national emergency, riot, revolt or any similar event in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party as regards to restitution, compensation, indemnification, or other settlement a treatment which is not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

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:

(i) requisitioning of their property by the authorities of the other Contracting Party, or

(ii) destruction of their property by the 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 fair and adequate compensation for the losses suffered during the requisitioning or resulting from the destruction of their properties. Resulting payments shall be freely transferable and shall be made without undue delay in freely convertible currency.

Article 6
Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after they have fulfilled their fiscal obligations, the free transfer, in convertible currency, of payment related to their investments. Such transfers shall include, in particular, but not exclusively:

(i) capital and additional amount to maintain or to increase an investment;
(ii) returns as defined in Article 1 of this Agreement;
(iii) amounts necessary to reimburse loans relating to investment;
(iv) proceeds of total or partial sale or liquidation of an investment;
(v) compensations due pursuant to Articles 4 and 5;
(vi) payments arising out of a settlement of a dispute, according to Article 9;
(vii)salaries and other remuneration 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.

2. Transfers referred to in paragraph 1 of this Article shall be made 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, 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; 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 given in respect of investments, indemnities are paid to an investor of one of the Contracting Parties, the other Contracting Party shall recognize the subrogation of the rights of the indemnified investor to the insurer.

2. In accordance with the guarantee given to the investment concerned, 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. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article 6 of this Agreement.

5. Any dispute between one Contracting Party and the insurer of 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

When an issue relating to investments is ruled by this Agreement as well as by national law of one of the Contracting Parties or by international convention to which both Contracting Parties are parties, investors of the other Contracting Party can take advantage of provisions which are the most favourable for them.

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

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning an alleged violation of one or more provisions of this agreement in respect of an investment shall be settled, if possible, amicably through consultations and negotiations between the parties to the dispute.

2. If the dispute cannot be settled within six months from the date of the settlement request, the dispute shall be submitted at the choice of the investor to:

(i) a competent tribunal of the Contracting Party in whose territory the investment has been made; or

(ii) arbitration to the International Centre for the 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, or

(iii) an arbitral ad hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

In case where the investor chooses to submit the dispute to arbitration as provided under the subparagraphs (ii) and (iii) above, such choice shall be irrevocable for the investor.

3. Neither of the Contracting Parties, involved in a dispute, may raise an objection, at any step of the arbitration proceedings or enforcement of an arbitration sentence, because of the investor, who is the opposing party in the dispute, has received an indemnity covering wholly or partially his losses under an insurance policy.

4. The Arbitral Tribunal shall decide on the basis of the national laws and regulations of the Contracting Party, which is a party to the dispute, in whose territory the investment is made, including the rules of conflict of laws, the provisions of this Agreement and the rules and the universally accepted principles of international law.

5. Arbitral decisions shall be final and binding on either party to the dispute. Each Contracting Party commits to enforce these decisions in accordance with its national laws and regulations.

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 Contracting Parties through diplomatic channels.

2. If the dispute cannot be settled within six months from the beginning of negotiations, it shall be submitted to an ad hoc 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 the periods fixed in the paragraph (3) above 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 prevented to exercise 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 one of the Contracting Parties or if he is prevented to exercise this function, the member with the most senior function in the International Court of Justice, who is not a national of the Contracting Parties, shall be invited to make the appointments.

5. The arbitral tribunal decides on the basis of the provisions of this Agreement and rules and principles of international law. The arbitral tribunal shall reach its decisions

by a majority of voices. The decision shall be final and binding for both Contracting Parties.

6. The tribunal decides on its own proceedings.

7. Each Contracting Party shall bear the fees of its arbitrator and its representation in the arbitration proceedings. Fees concerning the President and other fees are borne in equal parts by the Contracting Parties.

Article 11
Application

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

Article 12
Entry into force, duration and termination

1. This Agreement shall enter into force after the Contracting Parties notify each other in writing that their respective constitutional requirements for the entry into force of this Agreement have been fulfilled. The entry into force shall be effective thirty days after the last notification.

2. This Agreement shall remain in force for an initial period of ten (10) years. It shall continue to be in force thereafter for successive periods of ten years, unless terminated by written notification of either Contracting Party six months at least before the end of each duration period.

3. Either Contracting Party can notify the other Contracting Party of its intention to amend the Agreement anytime but not before five years of its entry into force, by giving notice in writing through diplomatic channels six months beforehand. The Agreement will be amended after the consent of both Contracting Parties. The amendment will enter into force pursuant provision of paragraph 1 of this Article. If the consent is not given the concerned Contracting Party has the right to denounce the Agreement. In this case the Agreement is considered as terminated.

4. In respect to investment 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 from the date of termination.

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

Done at Belgrade, this 6th day of June 2013, in two originals each one in Serbian, Arabic and English languages, all texts being equally authentic. In case of difference of interpretation the English text shall prevail.

For the Government
of the Republic of Serbia

Rasim Ljajić
Deputy Prime Minister and
Minister of Foreign and Internal Trade and
Telecommunications

For the Government
of the Kingdom of Morocco

Mohamed Najib BOULIF
Minister Delegate to the Head of the
Government in charge of General Affairs
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