

**TREATY BETWEEN**  
**THE UNITED STATES OF AMERICA**  
**AND THE KINGDOM OF MOROCCO**  
**CONCERNING THE ENCOURAGEMENT**  
**AND RECIPROCAL PROTECTION OF INVESTMENTS**

Preamble:

The United States of America and The Kingdom of Morocco (each hereinafter referred to as a "Party")

Desiring to promote greater economic cooperation between them, particularly with respect to investments by nationals and companies of one Party in the territory of another Party;

Recognizing that agreement upon the treatment to be accorded such investments will stimulate the flow of private capital and the economic development of both Parties;

Convinced that the development of economic relations between the two countries tends to create favorable conditions for investors from each of the Contracting Parties in the territory of the other Party;

Recalling that the two Parties have already concluded an agreement in the form of an exchange of notes dated March 31, 1961, amended by an exchange of notes signed October 2, 1963, concerning investment guaranties that might be granted by the United States Government for certain investment projects, said agreement still being in force,

Have resolved to conclude a treaty concerning the reciprocal encouragement and protection of investments; and

Have agreed as follows:

**ARTICLE I**

For the purposes of this Treaty,

1. "Parties" means the Kingdom of Morocco, and the United States of America.
2. "Company" means any kind of juridical entity, including any corporation, company, association, or other organization that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is organized for pecuniary gain, privately or governmentally owned, or organized with limited or unlimited liability.
3. "Company of a Party" means:
  - (a) In the case of the Kingdom of Morocco, a company duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of Morocco in which:
    - (i) natural persons who are nationals of Morocco, or
    - (ii) Morocco or its agencies or instrumentalitieshave a substantial interest.

(b) In the case of the United States, a company duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of the United States or its political subdivisions in which:

(i) natural persons who are nationals of the United States, or

(ii) the United States (or its political subdivisions) or its agencies or instrumentalities

have a substantial interest.

Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of this Treaty, except with respect to recognition of juridical status and access to courts, if nationals of any third country control such company, provided that whenever one Party concludes that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution of this matter.

4. "Investment" means investment owned or controlled by a national or company of a Party and includes:

a. financial contributions in the form of foreign exchange or reinvested profits provided as participation in the capital of a company or to acquire shares or any other interest in a company;

b. other contributions, financial or in kind, provided as participation in the capital of a company, or to acquire shares, or any other interest in a company;

c. intellectual and industrial property rights, copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill;

d. provision of services and concessions of licenses and permits issued pursuant to law or a contract, including those issued for manufacture and sale of products;

e. any right conferred by law or contract, including rights to search for or utilize resources, and rights to manufacture, use, and sell products;

f. tangible and intangible property;

g. mortgages, liens, and pledges; and

h. financial or commercial debts which are associated with an investment.

5. "Ownership or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates. In case of differences, the two Parties shall undertake consultations.

6. "National" of a Party means a natural person who is a national of a Party under its applicable law.

7. "Proceeds" means an amount derived directly or indirectly from an investment, such as:

a) Earnings from capital, in particular profits, dividends, extra dividends, and rents;

b) Proceeds from the complete or partial sale or liquidation of an investment, including capital gains;

- c) Royalty payments, management, technical assistance or other fees;
- d) Payments under contract, including interest or amortization payments on financial or commercial loans.

## ARTICLE II

1. Each Party shall permit in its territory investments, and activities associated therewith, by nationals and companies of the other Party on a basis no less favorable than that accorded in like situations to investments of nationals or companies of any third country and, within the framework of its existing laws and regulations, no less favorable than that accorded in like situations to investments of its own nationals and companies.
2. Each Party shall accord to these investments, once established, and associated activities, treatment not less favorable than that accorded in like situations to investments of its own nationals and companies or to investments of nationals and companies of any third country, whichever is the most favorable.
3. Investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party, in a manner consistent with international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party. Each Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Party.
4. Subject to laws relating to the entry and sojourn of aliens:
  - a) Nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.
  - b) Companies which are legally constituted, or otherwise organized under the applicable laws or regulations of one Party, and which are investments of nationals or companies of the other Party, shall be permitted to engage, within the territory of the first Party, top managerial personnel of their choice, regardless of nationality.
5. Each Party shall seek to avoid imposing, as a condition of establishment of an investment by nationals or companies of the other Party, the obligation to export its production or to purchase products locally, this being without prejudice to the general import programs and the national economic policy of the Party.
6. Each Party shall make public all laws and regulations that pertain to or affect investments in its territory of nationals or companies of the other Party. Administrative practices and procedures, and adjudicatory decisions of the Party can be consulted by investors of the other Party.
7. In order to maintain a favorable environment for investments in its territory by nationals or companies of the other Party, each Party shall take the necessary steps to enforce rights with respect to investment agreements, investment authorizations, and properties. Each Party shall grant to nationals or companies of the other Party, on terms and conditions no less favorable

than those which it grants in like situations to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to use the skills of persons of their choice who otherwise qualify under applicable laws and regulations of the forum, for the purpose of asserting claims and enforcing rights with respect to investments.

### ARTICLE III

1. Nationalization or expropriation measures, or any other public measure having the same effect or nature, which might be taken by either Party against investments of nationals or companies of the Party, shall be neither discriminatory nor taken for reasons other than a public purpose. Any such measures shall only be taken under legal procedures which afford due process of law.
2. When such measures are taken, each Party shall pay promptly just and effective compensation to the nationals or companies of the other Party.
3. The compensation shall be equivalent to the full value of the expropriated investment on the date of the expropriation.
4. A national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of such other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the principles set forth in this Article.
5. Nationals or companies of either Party, whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, or civil disturbance, shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or Companies of any third country, whichever is the most favorable treatment, as regards restitution or compensation.

### ARTICLE IV

1. Each Party shall permit prompt transfers of the proceeds of an investment.
2. To the extent that a national or company of either Party has not made another arrangement with the appropriate authorities of the other Party in whose territory the investment of such national or company is situated, transfers made pursuant to this Article shall be permitted in a convertible currency. Such transfer shall be made at the prevailing rate of exchange used for commercial purposes on the date of transfer in the country from which such transfers are being made.
3. Notwithstanding the preceding paragraphs, either Party may maintain laws and regulations (a) requiring reports of currency transfer, (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers and (c) prescribing or maintaining procedural formalities governing transfers related to investments. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through equitable, non-discriminatory and good faith application of its laws.

### ARTICLE V

1. At the written request of either Party, the Parties shall consult promptly to discuss the interpretation or application of the Treaty or to resolve any dispute in connection with the Treaty.

2. If one party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

## ARTICLE VI

1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; or (b) a complaint concerning an alleged violation of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation. If the dispute cannot be resolved through these consultations and negotiations, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute settlement procedures. Any dispute settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

3.(a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Centre for Settlement of Investment Disputes ("Centre") for settlement by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose, provided:

(i) the dispute has not, for any reason, been submitted by the national or company for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute; and

(ii) (a) in the case of a dispute between the United States and a national or company of Morocco, the national or company has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the United States; or

(ii) (b) in the case of a dispute between the Kingdom of Morocco and a national or company of the United States, the dispute has been brought before the court of justice or administrative tribunal or agency of primary jurisdiction under the laws of Morocco and (1) such court, tribunal or agency has rendered a final judgement, or (2) one year has elapsed since the date on which the proceedings before such court, tribunal or agency were initiated. Upon submission of the dispute to the Centre, the complaint before the domestic courts of Morocco shall be withdrawn.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States and the Regulations and Rules of the Centre.

4. In any proceeding involving an investment dispute, a Party shall not assert as a defense that the national or company concerned has received or will receive from another source, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

5. For the purposes of this Article, any company constituted under the applicable laws and regulations of a Party that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25(2) (b) of the Convention, be treated as a national or company of such other Party.

## ARTICLE VII

1. Any dispute between the Parties concerning the interpretation or application of this Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. The tribunal shall set its own rules of procedure. However, for problems not resolved by the Tribunal or this Treaty, and in the absence of any other arbitral procedure agreed by the Parties, the Model Rules on Arbitral Procedure adopted by the United Nations International Law Commission in 1958 as referred to in U.N. General Assembly Resolution 1262 (XIII) will be applied.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the Tribunal shall render its decision within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceeding shall be paid for equally by the parties, unless the Tribunal decides otherwise.

## ARTICLE VIII

1. This Treaty shall not supersede, prejudice, or otherwise derogate from:

(a) Laws and regulations, administrative practices or procedures, or adjudicatory decisions of either Party;

(b) International legal obligations; or

(c) Obligations assumed by either Party, including those contained in an investment agreement or investment authorization,

whether extant at the time of entry into force of this Treaty or thereafter, that entitle investments, or associated activities, of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situations.

2. This Treaty shall not supercede or cancel any other agreement between the two Parties that is in force on the date upon which this Treaty enters into force.

#### ARTICLE IX

1. This Treaty shall not preclude the application by either Party in its territory of the domestic measures necessary for the maintenance of public order and morality or the protection of peace and international security or its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments in its territory by nationals and companies of the other Party, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

#### ARTICLE X

1. This Treaty shall be ratified by each Party in conformity with its constitutional procedures.

2. This Treaty shall enter into force thirty (30) days after the date of exchange of ratifications. It shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with Paragraph 3 of this Article.

3. Either Party may, by giving one (1) year's written notice to the other Party, terminate this Treaty at the end of the initial ten (10) year period or any time thereafter.

4. In the event of termination, this Treaty shall continue to apply to investments covered by this Treaty for a further period of ten (10) years from such date of termination.

5. This Treaty, after a preliminary exchange of diplomatic notes, may be amended by mutual agreement.

Such amendment shall enter into force for the two Parties on the same constitutional conditions as this Treaty.

#### PROTOCOL

1. This Treaty shall apply to the political subdivisions of the United States.

2. (a) With respect to Article II(1) and (2), the Kingdom of Morocco reserves the right to:

(i) extend government grants, assistance, loans, or insurance exclusively to its own nationals or companies within the framework of national development activities and programs; and

(ii) extend to nationals or companies of a third country advantages required by virtue of its participation or association with a common market, regional customs union or free trade association.

(b) With respect to Article II(1) and (2), the United States reserves the right to limit the extent to which nationals or companies of Morocco or their investments may within U.S. territory establish, acquire interests in, or carry on investments engaged in air transportation, ocean and coastal shipping, banking, insurance, energy and power production, use of land and natural resources, ownership of real estate, radio and television broadcasting, telephone and telegraph services, submarine cable services and satellite communications. The United States also reserves the right to limit the extent to which nationals or companies of Morocco or their investments may be eligible for government grants, insurance or loan programs. Other than

with respect to the ownership of real estate, the treatment accorded by the United States to investments of nationals or companies of Morocco shall be no less favorable than that accorded in like situations to investments of nationals or companies of any third country. Rights to engage in mining on the U.S. public domain shall be dependent on reciprocal rights being granted to investments of U.S. nationals or companies within the territory of Morocco.

(c) Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of any laws, regulations and policies limiting the extent to which investment of nationals or companies of the other Party may within its territory establish, acquire interests in or carry on investments.

3. The treatment accorded by the United States to nationals or companies of the Kingdom of Morocco under the provisions of Paragraphs 1 and 2 of Article II shall in any state, territory, possession, or political or administrative subdivision of the United States be the treatment accorded therein to companies incorporated, constituted to companies incorporated, constituted or otherwise duly organized in other states, territories, possessions, or political or administrative subdivisions of the United States.

4. For purposes of Article III(3), the full value shall not be affected by prior notice or public announcement by the government of the expropriatory action. The compensation shall include, as appropriate, an amount to compensate for any delay in payment that may occur from the date of expropriation. Prompt transfer of the compensation at the rate of exchange used for commercial purposes shall be guaranteed in order to maintain the value of the compensation.

5. With regard to Article IV, investments in Morocco of the type described in Article I(4) (a) of the Treaty, which are financed by contribution in the form of foreign exchange or reinvested profits, may be made freely. However, a report of these investments should be sent promptly to the Moroccan authority in charge of exchange control. If the reinvested profits are turned over to a U.S. national residing in Morocco, the investor must obtain the approval specified below.

For investments described in Article I(4) (b), financed by any other contributions, financial or in kind; rendering of services and technical assistance in general, as described in Article I(4) (c) and (d); and the transactions described in Article I(4) (e), the investor must obtain approval from the Moroccan authority in charge of exchange control.

The transfers related to the above mentioned types of investments shall be permitted if the procedures required by the Moroccan authority in charge of exchange control have been fulfilled.

Transfers relating to an investment of nationals of the United States resident in Morocco shall be carried out in accordance with existing Moroccan laws and regulations.

6. The provisions of Article VI and VII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means.

7. On issues of taxation arising under Article II or involving the provision of tax information under Article V, the provisions of the Convention between the Government of the United States of America and the Kingdom of Morocco for the Avoidance of Double Taxation and



the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed August 1, 1977, shall prevail.

8. Consistent with the provisions of Article II(3), this treaty shall apply to investments existing at the time of entry into force of the Treaty provided such application conforms with the specific provisions of agreements or contracts approved at the time the investment was made.

IN WITNESS WHEREEOF, the respective plenipotentiaries have sign this Treaty.

DONE in duplicate at Washington on the twenty-second day of July, 1985, in the English, Arabic and French languages, the three texts being equally authentic.

**FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA: THE KINGDOM OF MOROCCO:  
CLAYTON YEUTTER MOULAY ZINE ZAHIDI**