

# **AGREEMENT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF TUNISIA**

Agreement for the reciprocal promotion and protection of investments between the Kingdom of Spain and the Republic of Tunisia

The Kingdom of Spain and the Republic of Tunisia, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen economic cooperation between the two States.

Recognizing the important role of foreign capital investment in the process of economic development and the right of each Contracting Party to determine the role and to define the conditions under which foreign investments might participate in that process.

Recognizing that the only way to establish and maintain an international flow of capital is adequate to maintain a mutually satisfactory and investment climate for foreign investment respecting the sovereignty and national laws anfitriín that have jurisdiction over them to act in a manner consistent with the policies and priorities adopted by the host country and endeavour to contribute to its development.

Concerned by creating favourable conditions for the capital investment in both States and by strengthening cooperation between investors of the two States, especially in relation to technology, industrialization and productivity,

Recognizing the need to protect investments of investors of the two States and encourage 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 the present Agreement, investors are:

- a) Natural persons: any natural person resident of nationality of a Party in accordance with its legislation.
- b) Legal persons: any company, firm, association or any other organization legally constituted under the law in force of a Contracting Party.
- c) The term "investment" means every kind of assets, such as property and rights of any kind, acquired or recognized in accordance with the legislation of one Contracting Party and in particular, though not exclusively:
  - ca) Ownership of movable and immovable property as well as other rights in rem such as mortgages, pledge, usufructs and similar rights;
  - cb) Shares and other forms of participation in companies and goodwill;
  - cc) Financial or commercial loans connected to an investment;
  - cd) Rights of the Auto, industrial property rights, such as patents, trademarks.
  - ce) Other rights or concessions agreed by the authorities of the Contracting Parties, including concessions of exploration, extraction or exploitation of natural resources;
  - cf) The term "investment income" refers to the amounts of the net profits, interest related to an investment for a specified period.

d) The term "territory" means the land territory and territorial waters of each of the Parties, as well as the exclusive economic zone and the continental shelf extends beyond the limits of the territorial waters of each of the Contracting Parties on which the contracting parties are or may be in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation and preservation of natural resources.

## **Article 2. Promotion, Admission**

Each Contracting Party shall promote as far as possible investments made in its territory by investors of the other Contracting Party and shall admit such investments according to its legislation in force.

## **Article 3. Protection**

Each Contracting Party shall protect within its territory investments made in accordance with its legislation by investors of the other Contracting Party and shall not hinder unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, extension and sale or, where appropriate, the liquidation of such investments.

Each Contracting Party shall endeavour to grant the necessary permits in connection with such investments and shall, within the framework of its laws, the performance of contracts, licence técnica, commercial or administrative assistance.

Each Contracting Party shall endeavour, whenever necessary, grant the necessary authorizations concerning the activities of consultants and experts appointed by investors of the other contracting party, in accordance with its legislation in force.

## **Article 4. Treatment**

1. Each Contracting Party shall in its territory a fair and equitable treatment of the investments by investors of the other contracting party.

2. This treatment shall not be less favourable than that granted by each contracting party to investments made within its territory or by its own investors than that accorded by each contracting party to investments made in its territory by investors of the most favoured nation treatment, if this latter is more favourable.

3. However, this treatment shall not extend to the privileges which one contracting party has accorded to investors of a third State by virtue of its participation with a customs union or association, a common market or a free trade area or any other agreement to establish a regional economic cooperation based on complementarity.

## **Article 5. Transfers**

Each Contracting Party shall in its territory in which investors of the other Contracting Party, have invested shall accord to investors of the other Contracting Party in convertible currency transfer of payments related to these investments, particularly:

- a) Profits, dividends, interests and other current income.
- b) Royalties and other payments resulting from contracts relating to the licence fees and commercial, administrative and technical assistance.
- c) Other payments arising from contracts, including payments amortisation repayments of loans or financial or commercial.
- d) The sale of products or of the partial or total liquidation of the investment, including possible capital gains.
- e) Compensation paid by reason of expropriation, nationalization or other measures having the same nature or the same effect.

Net tax transfers shall be made after the fulfilment by the investor of tax obligations provided for by the laws in force in the host contracting party of the investment.

The Contracting Parties undertake to expedite procedures necessary for Estes transfers without undue delay. In this context, both contracting parties understand that the effective implementation of a transfer, once the investor has submitted the proper application should take place in a relatively short period of time in accordance with banking practices to use.

Each Contracting Party shall endeavour to accelerate the formalities required for the acquisition of currency by the investor

and its effective transfer abroad.

## **Article 6. Expropriation / Nationalization**

The measures of expropriation, nationalization or any other similar measures that may be taken by the authorities of one Contracting Party against investments of investors of the other Contracting Party, shall be in conformity with the laws and must not be discriminatory or for reasons other than those of the public interest; the contracting party to take such measures shall be paid to the person entitled thereto without undue delay, effective and adequate compensation.

## **Article 7. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war or other similar circumstances occurring in the territory of that Contracting Party, shall be accorded treatment accorded by the latter Contracting Party by way of restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own nationals or to those of nationals of any third State.

## **Article 8. More Favourable Terms**

More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

## **Article 9. Principle of Subrogation**

In the case where a contracting party makes a payment to an investor in relation to a guarantee agreement on non-commercial risks relating to an investment made in the territory of the other contracting party, the latter shall accept the subrogation of the first contracting party into the rights of the investor indemnified.

As regards the real rights derived from the inversión (property rights of use, usufruct), the subrogation not occur only after the approval of the competent authorities and in accordance with the laws and regulations of the Contracting Party where the investment was made.

## **Article 10. Arbitration**

1. Disputes concerning the interpretation or application of this Agreement shall be settled through diplomatic channels.
2. If both Contracting Parties cannot reach an agreement before nine months, the dispute shall, upon the request of either contracting party to an arbitral tribunal composed of three members. Each Contracting Party shall appoint an arbitrator. The two arbitrators so nominated shall appoint a chairman who shall be a citizen of a third State.
3. If one of the Contracting Parties has not appointed its arbitrator and has not accepted the invitation of the other contracting party to proceed before two months of such appointment, the arbitrator shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.
4. If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
5. If in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is unable to exercise its mandate or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is unable to or if he is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of any of the Parties contratantes.
6. Unless otherwise agreed by the contracting parties, the tribunal shall determine its own procedure.
7. The decisions of the Tribunal are final and binding on the contracting parties.
8. Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. the other expenses, including the President, shall be borne equally by the parties.

## **Article 11. Settlement of Disputes**

1. Disputes between a Contracting Party and an investor of the other Contracting Party shall be notified to the first written. to the extent possible, the Contracting Parties shall endeavour to settle the dispute by means of a friendly settlement.
2. If these disputes cannot be settled in this way within nine months from the date of notification referred to in paragraph 1, the dispute shall be submitted, at the choice of the investor: paragraph 1, the dispute shall be submitted, at the choice of the investor:

The International Centre International Centre for Settlement of Investment Disputes (ICSID) provided for 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, when both contracting parties have adhered to.

To an ad hoc arbitral tribunal established under the arbitration procedures of the United Nations Commission on International Trade Law.

Within two months of receipt of a request, each Contracting Party shall appoint an arbitrator. The two arbitrators thus appointed shall select a third arbitrator as Chairman who shall be a national of a third State. The UNCITRAL Rules governing the appointment of the members of the Group of Three Members shall apply mutatis mutandis to the designation of the arbitration panel. The cost of the Chairman, the arbitrators and other costs of the proceedings shall be borne in equal parts by the contracting parties. However, the court may at its discretion, decide that a higher proportion of costs be borne by one of the Contracting Parties.

3. Either of the Contracting Parties to the dispute may refer it to the bodies referred to in paragraph 2 of this article provided that: paragraph 2 of this article, provided that:

a) A dispute shall not be submitted by the investor to the settlement of the dispute settlement procedure applicable and previously agreed between the Contracting Parties to the dispute.

b) The investor has concerned the dispute brought before the Court of Justice or the administrative tribunals or agencies of the competent court of the Contracting Party, Party to the dispute.

4. The arbitration decisions shall be final and binding on the contracting parties. Each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

## **Article 12. Entry Into Force , Extension and Termination**

1. This Agreement shall enter into force on the day on which the contracting parties have notified each other that their respective constitutional formalities required for the Entry into Force of international agreements have been completed. The provisions of this Agreement shall also apply to investments made or acquired after 1956, according to the Law of the Party concerned and existing at the date of Entry into Force of the Agreement.

This Agreement shall remain in force for an initial period of ten years and, by tacit renewal, for consecutive periods of ten years.

Each Contracting Party may denounce this Agreement by a written notification, one year before the date of expiry.

2. In the event of a complaint, the provisions of articles 1 to 11 of this Agreement shall continue to apply to investments made before the claim for a period of ten años.artículos 1 to 11 of this Agreement shall continue to apply to investments made before the claim for a period of ten years.

This agreement is made in three originals in the Spanish, Arabic and French languages. The first two are equally authentic.

Done in Madrid the 28th May 1991.

For the Kingdom of Spain,

Francisco Fernández Ordóñez,

Minister of Foreign Affairs

For the Republic of Tunisia,

Habib Ben Yahia,

Minister of Foreign Affairs