

Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Republic of Tunisia

The Kingdom of the Netherlands

And

The Republic of Tunisia,

Hereinafter referred to as the "Contracting Parties",

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them particularly with respect to investments by the nationals of one Contracting Party in the territory of the other Contracting Party,

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

a) The term "investments" means every kind of asset owned or controlled, directly or indirectly, and more particularly, though not exclusively:

(i) Movable and immovable property as well as any other rights in rem in respect of every kind of asset;

(ii) Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

(iii) Claims to money, to other assets or to any performance having an economic value;

(iv) Rights in the field of intellectual property, technical processes, goodwill and know-how;

(v) Rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.

b) The term "nationals" shall comprise with regard to either Contracting Party:

(i) Natural persons having the nationality of that Contracting Party;

(ii) Legal persons constituted under the law of that Contracting Party.

c) The term "territory" includes any area adjacent to the territorial sea which, in accordance with international law, is the exclusive economic zone or continental shelf of the State concerned, in which it exercises jurisdiction or sovereign rights.

Article 2.

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of nationals of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3.

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting Party shall accord to such investments full security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the national concerned.

3. If a Contracting Party has accorded special advantages to nationals of any third State:

a) By virtue of agreements establishing customs unions, economic unions, monetary unions, regional economic organisations or similar institutions;

b) On the basis of interim agreements leading to such unions or institutions;

c) Under an agreement for the avoidance of double taxation;

d) On the basis of reciprocity with regard to taxation,

That Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.

5. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 4.

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

a) Profits, interest, dividends and other current income;

b) Funds necessary for the operation, maintenance and development of an investment;

c) Funds in repayment of loans;

d) Royalties or fees;

e) An appropriate part of the earnings of natural persons;

f) The proceeds of sale or liquidation of the investment;

g) Payments arising under Article 6. Article 6.

Article 5.

Neither Contracting Party shall take any measure of nationalisation or expropriation or any measure having a similar effect against an investment of a national of the other Contracting Party, unless the following conditions are complied with:

a) The measures are taken in the public interest and under due process of law;

b) The measures are not discriminatory;

c) The measures are taken against just compensation.

Such compensation shall:

– represent the genuine value of the investments affected, and shall, in order to be effective for the claimants, be paid and made transferable without delay to the territory of the Contracting Party of the claimants or any other country agreed upon by the claimants and the expropriating Contracting Party; and

– include an amount to compensate adequately for any delay in payment that may occur from the date of expropriation until the day of real payment, provided that the national cannot in reason be held responsible for the delay of payment.

d) The Contracting Parties guarantee that the transfer referred to in paragraph c) shall be made in the freely convertible currency chosen by the claimants.

Article 6.

Nationals of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

Article 7.

If the investments of a national of the one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said national pursuant to the terms of such insurance or under any other indemnity given shall be recognized by the other Contracting Party.

Article 8.

Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965. A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall in accordance with Article 25 (2) (b) of the Convention for the purpose of the Convention be treated as a national of the other Contracting Party.

Article 9.

The provisions of this Agreement shall apply to all investments which have been made in accordance with the laws and regulations of the Contracting Party in the territory of which investments are made, after 1 January 1957.

Article 10.

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Contracting Party, to an arbitral tribunal, composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Contracting Party.

2. If one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Contracting Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Contracting Party may invite the President of the International Court of Justice, to make the necessary appointment.

4. If, in the cases provided for in the paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of

either Contracting Party the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Contracting Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute ex aequo et bono if the Contracting Parties so agree.

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

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

Article 11.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification provided for in Article 12, paragraph (1) provides otherwise.

Article 12.

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of fifteen years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of fifteen years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph 2 of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

5. On the entry into force of the present Agreement, the Agreement concluded between the Contracting Parties on encouragement of capital investments and protection of property with letters, signed May 23, 1963 at Tunis, as amended in 1971, shall be terminated and shall be replaced by the present Agreement.

Disputes arisen before the entry into force of the present Agreement shall continue to be ruled by the Agreement of May 23, 1963.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE in duplicate at The Hague on 11 May, 1998, in the Netherlands, Arabic and English languages, the three texts being equally authentic. In case of difference of interpretation the English text will prevail.

For the Kingdom of the Netherlands

(sd.) A. VAN DOK-VAN WEELE

For the Republic of Tunisia

(sd.) MOHAMED BACHROUCH