Agreement between the Government of the Republic of Senegal and the Government of the Republic of Tunisia Concerning the Reciprocal Promotion and Protection of Investments

BETWEEN

The Government of the Republic of Senegal

on the one hand,

The Government of the Republic of Tunisia

on the other hand,

hereinafter referred to as the “Contracting Parties”

Desiring to strengthen their economic relations and to intensify co-operation between the two countries with a view to promoting their development;

Convinced that mutual protection of investments under a bilateral agreement is likely to stimulate private economic initiative and increase the prosperity of both countries;

Aware of the need to accord fair and equitable treatment to investments made by nationals of one Contracting Party in the territory of the other Contracting Party.

Have agreed upon the following provisions:

Article 1. Definitions

For the purposes of this Agreement:

(a) The term "investments" means assets of any kind established or recognized in the host country in accordance with its laws and regulations, in particular, and without the following list being exhaustive:

(i) movable and immovable property and any other right of ownership, as well as any other right recognised by the law of the host country, including mortgages, private mortgages and other encumbrances

(ii) the securities, shares, stocks and debentures of companies;

(iii) receivables and any payment arising on a remunerative basis under a contract;

(iv) copyrights, intellectual property rights, technical processes and the tangible and intangible elements of goodwill;

(v) commercial concessions granted by law or contract, including concessions for the exploration, extraction or exploitation of natural resources, conferring on the beneficiary a legal position of any duration.

(b) The term "income" means the proceeds arising from an investment and, in particular, includes profits, gains, interests, dividends or royalties, without this list being exhaustive.

(c) The term "nationals" means:

(i) in the case of the Republic of Senegal, natural persons of Senegalese nationality, as well as any legal person having its registered office within the territory of the Republic of Senegal and in which Senegalese interests are substantial;

(ii) in the case of the Republic of Tunisia, natural persons of Tunisian nationality as well as any legal person whose registered office is situated in Tunisia and in which Tunisian interests are substantial·

(e) "Territory" means:

(i) in the case of the Republic of Senegal, the territory of the Republic of Senegal;

(ii) in the case of the Republic of Tunisia, the territory of the Republic of Tunisia.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage nationals of the other Contracting Party to invest capital in its territory, in particular by creating favourable conditions for the realisation of investments and the entry of such capital, in accordance with its legislation.

(2) Investments made by one of the Contracting Parties under the conditions laid down by the national legislation of the host country shall be accorded fair and equitable treatment.

Article 3. National Treatment and Most-favored-nation Clause

(1) Neither Contracting Party shall, within its territory, subject the investments or income of nationals of the other Contracting Party to treatment less favourable than that which it accords to the investments or income of its own nationals or to the investments or income of nationals of any third State.

(2) Neither Contracting Party shall, within its territory, subject the nationals of the other Contracting Party, with regard to the management, use, enjoyment or disposal of their investments, to a less favourable treatment than that which it accords to its own nationals or to the nationals of any third State.

Article 4. Compensation

Where the investments of nationals of one Contracting Party on the territory of the other Contracting Party suffer damage as a result of war or other armed conflicts, revolution, national state of emergency, revolt, insurrection, riot or similar event occurring in the territory of that other Contracting Party, the treatment accorded by the latter, with regard to restitution, indemnification, compensation, or any other form of settlement, shall not be less favourable than that which it accords to its own nationals or to nationals of any other State.

Article 5. Expropriation

(1) Investments made by nationals of one of the Contracting Parties in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to any other measure having a similar effect, unless the following conditions are met:

(a) the measures are taken in the public interest and in accordance with the procedures required by law;

(b) the measures are not discriminatory and

(c) the measures are accompanied by the prompt, adequate and effective payment of compensation which shall be freely transferable between the territories of the Contracting Parties.

(2) The provisions of paragraph 1 of this Article shall also apply to income derived from an investment.

Article 6. Repatriation of Investments and Incomes

(1) Subject to its laws and regulations, each of the Contracting Parties shall permit, without delay, the transfer in any convertible currency of:

(a) net profits, dividends, royalties, fees for technical assistance and services, interest and other current income relating to investments in the territory of the other Contracting Party.

(b) the proceeds of the total or partial liquidation of an investment made by nationals of the other Contracting Party.

(c) repayments of loans contracted by nationals of one of the Contracting Parties from nationals of the other Contracting Party.

(d) remuneration of nationals of the other Contracting Party who are authorised to work on its territory in connection with

that investment.

(2) Each Contracting Party undertakes to accord to the transfers referred to in paragraph (1) of this Article treatment no less favourable than that accorded to transfers arising from investments made by nationals of any third State.

Article 7. Exceptions

Notwithstanding the provisions of Article 3 of this Agreement, a Contracting Party which has concluded with one or more other States a treaty relating to the establishment of the formation of a customs union or a free trade and or any other treaty establishing economic and/or monetary cooperation, shall be free to accord more favourable treatment to investments from the State or States which are also Parties to the said treaty or by nationals of certain of those States.
A Contracting Party shall also be free to grant more favourable treatment to investments made by nationals of other States, if such treatment is provided for in bilateral agreements concluded with those States prior to the date of signature of this Agreement.

Article 8. Settlement of Disputes between a Contracting Party and a National of the other Contracting Party

(1) In the event that a dispute relating to an investment arises between a Contracting Party and a national of the other Contracting Party within the territory of that Party, the Parties to the dispute shall endeavour, in the first instance, to settle the dispute through consultation and negotiation.

(2) If the dispute has not been settled in accordance with paragraph (1) of this Article within three (3) months of the date on which the request for consultation and negotiation was made, each Contracting Party agrees to submit the matter to the International Centre for the Settlement of Investment Disputes for settlement by conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965, any legal dispute between the said Contracting Party and a national of the other Contracting Party relating to an investment made by that national in the territory of the first Contracting Party concerned.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) Where a dispute between the Contracting Parties cannot be settled by this means, it shall be submitted, at the request of one of the Contracting Parties, to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted, in each specific case, as follows:

- Within two months of receipt of a request for arbitration, each Contracting Party shall appoint a member of the tribunal.

- These two members shall then select a national of a third State who, with the agreement of both Contracting Parties, shall be appointed President of the tribunal.

-The President shall be appointed within two months following the date of appointment of the two members.

4) If, within the time limits specified in paragraph (3) of this Article, the necessary appointments have not been made, either of the Contracting Parties may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the Contracting Parties or is prevented for any reason whatsoever from performing the said functions, the Vice-President 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 likewise prevented from performing the said functions, the member of the International Court of Justice next in seniority who is not a national of one of the Contracting Parties shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs relating to its own member of the tribunal and to its representation during the arbitration proceedings; the costs relating to the President and other costs shall be borne equally by the Contracting Parties. The tribunal may, however, order, in its decision, that a greater proportion of the costs be borne by one of the two Contracting Parties, and such award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

If a Contracting Party, by virtue of a guarantee given in respect of an investment in the territory of the other Contracting Party, makes payments to its own nationals, the other Contracting Party, without prejudice to the rights of the first Contracting Party arising under Article 9, shall recognise the transfer, by operation of law or by contract, of all the rights and claims of those nationals to the first Contracting Party, as well as the subrogation in its favour of all such rights and claims (transferred rights) which the first Contracting Party shall be authorised to exercise to the same extent as its predecessor. With regard to the transfer of payments to be made to the Contracting Party in question pursuant to the transfer of rights, the provisions of paragraphs 2 and 3 of Article 3 and of Article 4 shall apply mutatis mutandis.

Article 11. Entry Into Force

This Agreement shall enter into force on the day on which the two Contracting Parties have mutually notified one another that the constitutional requirements necessary for this purpose have been fulfilled.

Article 12. Duration, Amendment and Termination

(1) This Agreement shall remain in force for a period of ten years and shall continue to be so unless it is terminated in accordance with the provisions of paragraph 3 of this Article.

(2) Each Contracting Party may submit to the other Contracting Party, in writing and through diplomatic channels, draft amendments to this Agreement. Any amendment agreed upon by both Contracting Parties shall enter into force in accordance with the procedures set out in Article 11 above.

(3) Either Contracting Party may, by giving one year’s written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period.

(4) With regard to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all other Articles of this Agreement shall continue to apply for a further period of ten years following the date of termination.

In witness whereof, the respective Plenipotentiaries have signed this Agreement.

Done in two original copies, at Tunis, on 17 February 1984, in the French language, both texts being equally authentic

For the Government of the Republic of Tunisia

Béji CAID ESSEBSI,

Minister for Foreign Affairs

For the Government of the Republic of Senegal

Moustapha NIASSE,

Minister of State for Foreign Affairs