

# **Agreement Between the Republic of Turkey and the Republic of Tunisia Concerning the Reciprocal Promotion and Protection of Investments**

THE REPUBLIC OF TURKEY AND THE REPUBLIC OF TUNISIA (EACH A "PARTY")

Desiring to promote greater economic cooperation between them, particularly with respect to investment by nationals and companies of one Party in the territory of the other Party.

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of capital and technology and the economic developments of the Parties.

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources, and

Having resolved to conclude an agreement concerning the encouragement and reciprocal protection of investments.

Have agreed as follows:

## **Article I.**

1. For the purpose of this Agreement;

(a) "company" means any kind of juridical entity, including any corporation, company, business association or other organisation, that is duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of a Party.

(b) "nationals" means natural persons who are nationals of one Party under the laws of that Party.

(c) "investment" means every kind of investment in the territory of one Party recognised or admitted according to its laws and regulations in force, including assets, equity, debt, claims, and service and investment contracts; and includes:

(i) Tangible and intangible property including rights, such as mortgages, liens and pledges;

(ii) A company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) A claim to money or a claim to performance having economic value and associated with an investment;

(iv) Industrial property rights, including rights with respect to copyrights, patents trademark, trade names, industrial designs, trade secrets and know-how, and goodwill;

(v) Any right conferred by law or contract, and any licences and permits pursuant to law; and

(vi) Re-investment of returns, and of principal and interest payments arising under loan agreements.

(d) "return" means an amount derived from or associated with an investment, including profit, dividend, capital gain, royalty payment, management and technical assistance or other fee.

(e) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities, for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

2. Any alteration in the form in which assets are invested or re-invested shall not affect their character as investment.

## **Article II.**

1. Each Party shall permit in its territory investments, "and associated activities" on a basis no less favourable than that accorded in like situations to investments of nationals or companies of any third country, and within the framework of its laws and regulations.
2. Each Party shall accord to these investments, once established, treatment no less favourable than that accorded in like situations to investments of its nationals and companies or to investments of nationals and companies of any third country, whichever is the most favourable.
3. Subject to the laws relating to the entry, sojourn and employment 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 under the applicable laws and regulations of one Party, and which are investments of nationals or companies of other Party shall be permitted to engage top managerial personnel of their choice, regardless of nationality.
4. The provisions of this Article shall have no effect in relation to following agreements entered into by either of the Contracting Parties:
  - (a) Relating to any existing or future customs unions, regional economic organization or similar international agreements.
  - (b) Relating wholly or mainly to taxation.
  - (c) Bilateral agreements for the purposes of facilitation cross-border trade.

## **Article III.**

1. Investments shall not be expropriated, or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article II (2).
2. Compensation shall be equivalent to the effective value of the expropriated investment at the time the expropriatory action was taken or became known. Compensation shall be paid without delay, be fully realizable, and be freely transferable.
3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party not less favourable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses.

## **Article IV.**

1. Subject to the laws and regulations each Party shall permit all transfers related to an investment to be made freely and without unreasonable delay into and out of its territory. Such transfers include: (a) returns (b) compensation pursuant to Article III; (c) payments arising out of an investment dispute; (d) proceeds from the sale or liquidation of all or any part of an investment.
2. Transfers shall be made in any convertible currency recognized by both Central Banks of the Contracting Parties at the rate of exchange at the date of transfer.
3. Notwithstanding the provisions of paragraphs 1. and 2., either Party may maintain laws and regulations; (a) prescribing procedures to be followed concerning transfers permitted by this Article, provided that such procedures are completed without delay by the Party concerned and do not impair the substance of the rights set forth in paragraphs 1. and 2. of this Article; (b) requiring reports of currency transfer; and (c) imposing applicable taxes. Furthermore, either Party may protect the rights of creditors or ensure the satisfaction of judgement in adjudicatory proceeding, through the equitable, non-discriminatory and good faith application of its law.

## **Article V.**

If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer stems from the terms of the insurance agreement shall be recognized by the other Contracting Party.

The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article VII of this Agreement.

## **Article VI.**

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Agreement or to discuss any matter relating to the interpretation or application of the agreement.

## **Article VII.**

Any dispute between a national or company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall be settled as follows:

1. 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 consultations or negotiations in good faith. If such consultations or negotiations are unsuccessful, the dispute may be settled through the use of non-binding, third party procedures upon which such national or company and the Party mutually agree. If the dispute cannot be resolved through the foregoing procedures; the dispute shall be submitted for settlement in accordance with any previously agreed, applicable dispute settlement procedures.

2. (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 arbitration, at any time after one year from the date upon which the dispute arose, provided that:

(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) The national or company concerned has not brought the dispute before the courts or justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for Settlement by arbitration.

(c) Arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Disputes between States and Nationals of other States and the "Arbitration Rules" of the Centre.

## **Article VIII.**

1. The Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this agreement. In this regard, the Parties agree to engage in direct negotiations to arrive at such solutions. If such negotiations are unsuccessful, the dispute may be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law.

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. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.

3. The tribunal shall have three months from the date of the selection of the Chairman in which to agree upon rules of procedure consistent with the other provisions of this agreement. In the absence of such agreement, the tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

4. Upon a determination that the Party requesting arbitration has attempted to resolve the dispute through direct and

meaningful negotiation, the tribunal shall proceed to arbitrate the merits of this dispute.

5. The tribunal shall reach its decision by a majority of votes within two months following the close of hearing the decision shall be final and binding.

6. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties. The tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

7. This Article shall not be applicable to a dispute which has been submitted to and is still before the Centre pursuant to Article VII.

## **Article IX.**

1. This agreement shall not preclude the application by either Party of measures necessary for the maintenance of public order and morals, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This agreement shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this agreement.

## **Article X.**

1. This Agreement shall enter into force thirty days after the date on which the exchange of instruments of ratification has been completed. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to existing investments which are recognized or admitted in accordance with the laws and regulations of the Contracting Party concerned and made before the date of entry in force of this Agreement.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

3. This Agreement may be amended by written agreement between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for entry into force of such amendment.

4. With respect 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 of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE in duplicate at Istanbul at the day of 29/5/1991 in the Turkish, Arabic and English languages all texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

FOR THE GOVERNMENT OF THE REPUBLIC OF TUNISIA