

Agreement between the Government of the French Republic and the Government of the Republic of Tunisia concerning the Reciprocal Encouragement and Protection of Investments

The Government of the French Republic and the Government of the Tunisian Republic hereinafter referred to as "the Contracting Parties",

Desiring to strengthen the economic cooperation between the two States and to create favorable conditions for French investments in Tunisia and Tunisian investments in France,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries, in the interest of their economic development,

Have agreed on the following provisions:

Article 1.

For the application of the present agreement :

1. The term "investment" means assets such as property, rights and interests of every kind and, more particularly but not exclusively:

(a) movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, bonds and similar rights ;

b) Shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;

c) Bonds, debts and rights to any benefits of economic value;

(d) copyrights, industrial property rights (such as patents, licenses, trademarks, industrial models and layouts), technical processes, registered names and goodwill

(e) concessions granted by law or under contract, including concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those in the maritime zone of the Contracting Parties,

it being understood that such assets must be or have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime zone the investment is made.

Any change in the form of investment of the assets shall not affect their qualification as investments, provided that such change is not contrary to the legislation of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "nationals" refers to natural persons possessing the nationality of one of the Contracting Parties.

3. The term "companies" means any legal entity incorporated in the territory of one of the Contracting Parties in accordance with the laws of that Party and having its registered office there or controlled directly or indirectly by nationals of one of the Contracting Parties or by legal entities having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory of each Contracting Party and to the maritime area of each Contracting Party, hereinafter defined as the economic zone and the continental shelf which extend beyond the limits of the territorial waters of each Contracting Party and over which they have, in accordance with international law, sovereign rights and jurisdiction.

Article 2.

Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by the nationals and companies of the other Party in its territory and in its maritime zone.

Article 3.

Each Contracting Party undertakes to ensure in its territory and in its maritime zones fair and equitable treatment, in accordance with the principles of international law, of investments by the nationals and companies of the other Party and to ensure that the exercise of the right so recognized is not hindered either in law or in fact.

Article 4.

1. Each Contracting Party shall apply, in its territory and in its maritime zone :

- to nationals or companies of the other Party in respect of their investments and activities related to such investments, in particular the management, use, enjoyment and disposal of such investments ;
- as well as to nationals authorized, in accordance with the legislation in force in its territory or in its maritime zones, to work in connection with an investment ;

treatment no less favorable than that accorded to its nationals or companies, or the treatment accorded to the nationals or companies of the most favored nation, whichever is more favorable.

2. Such treatment shall not, however, extend to privileges accorded by a Contracting Party to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, customs union, common market or other form of regional economic cooperation.

3. The provisions of this Article shall not apply in fiscal matters.

Article 5.

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime zone of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory and maritime area, except in the public interest and provided that such measures are not discriminatory.

Any measures of dispossession which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which shall correspond to the real value of the investments concerned on the day before the measures are taken or become known to the public.

This compensation, its amount and the manner of its payment shall be fixed at the latest on the date of dispossession. This compensation is effectively realizable, paid without delay and freely transferable.

3. The nationals or companies of one of the Contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime area of the other Contracting Party, shall receive from the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured Nation.

Article 6.

Each Contracting Party, in the territory or maritime area of which investments have been made by nationals or companies of the other Contracting Party, shall grant to such nationals or companies the free transfer of:

- (a) Interest, dividends, profits and other current income ;

- (b) royalties derived from intangible rights referred to in paragraph 1(d) and (e) of Article 1
- c) Payments made for the repayment of loans regularly contracted;
- d) Proceeds from the sale or liquidation of the investment, in whole or in part, including capital gains on the investment;
- (e) the compensation for loss of possession or for losses provided for in Article 5, paragraphs 2 and 3 above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime area of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer, after completion of the procedures in force, insofar as they do not affect the freedom of transfer.

Article 7.

Insofar as the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.

The investments of the nationals and companies of one of the Contracting Parties in the territory or maritime zone of the other Party may only obtain the guarantee referred to in the above paragraph if they have previously obtained the approval of the latter Party.

Article 8.

Any dispute relating to investments between one of the Contracting Parties and a national or a company of the other Contracting Party shall, as far as possible, be settled amicably between the two Parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall be submitted at the request of either party to arbitration by the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

Article 9.

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zone of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of such national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue actions brought before it until the proceedings have been completed.

Article 10.

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of the nationals and companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking in so far as it contains provisions more favourable than those provided for in this Agreement.

Article 11.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.
2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.
3. The said tribunal shall be constituted for each particular case in the following manner:

Each Contracting Party shall appoint one member, and both members shall appoint, by mutual agreement, a national of a third State who shall be appointed by both Contracting Parties as chairman. All members shall be appointed within three months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits set out in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any applicable agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority vote. These decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the parties.

Article 12.

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

As of its entry into force, this Agreement cancels and replaces the agreements between the French Republic and the Tunisian Republic on economic relations and the protection of investments dated 9 August 1963, and on the protection of investments dated 30 June 1972.

The agreement is concluded for an initial period of fifteen years; it will remain in force after this term, unless one of the Parties denounces it through diplomatic channels with a one-year notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for a further period of fifteen years.

Done at Paris, this 20th day of October 1997, in two originals, each in the French and Arabic languages, both texts being equally authentic.

For the Government of the French Republic :

Dominique Strauss-Kahn Minister of the Economy, of Finance and Industry

For the Government of the Tunisian Republic:

Mohamed Ghannouchi

Minister of International Cooperation and Foreign Investment

Exchange of Letters

Paris, 20 October 1997.

Mr. Mohamed Ghannouchi, Minister of International Cooperation and Foreign Investment, Tunis

Dear Mr. Ghannouchi

I have the honor to refer to the agreement signed today between the Government of the French Republic and the Government of the Tunisian Republic on the reciprocal encouragement and protection of investments and to specify to you that the interpretation of this agreement is as follows

1. With regard to Article 1:

This Agreement shall apply to investments made from the date of its entry into force, as well as to investments existing on

that same date, it being understood that the said investments must be or have been made in accordance with the legislation of the Contracting Party in whose territory or maritime zone the investment is made.

2. With respect to Article 3:

(a) The principle of fair and equitable treatment shall apply, inter alia, to the purchase and transportation of raw and auxiliary materials of energy and fuel, as well as means of production and operation of any kind, as well as to the sale and transportation of products within the country and abroad, and to activities related thereto;

(b) The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to stay, work, and travel submitted by nationals of one Contracting Party in connection with an investment in the territory of the other Contracting Party.

3. With regard to Article 4:

The regional economic cooperation referred to in paragraph 2 shall be understood to include economic cooperation between the States of the Arab Maghreb Union.

4. With regard to Article 5:

For the purpose of calculating the amount of compensation actually received by the investor, the compensation shall include an amount calculated in accordance with the principles of Articles 3 and 4 to compensate for any unjustified delay in payment.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Mr. Minister, the assurances of my highest consideration.

Dominique Strauss-Kahn

Paris, 20 October 1997.

Mr. Dominique Strauss-Kahn, Minister of the Economy, Finance and Industry, Paris

Dear Mr. Strauss-Kahn

Today, 20 October 1997, you have kindly sent me a letter with the following wording:

"Dear Minister,

I have the honor to refer to the agreement signed today between the Government of the French Republic and the Government of the Republic of Tunisia on the reciprocal encouragement and protection of investments and to inform you that the interpretation of this agreement is as follows:

"1. with regard to Article 1:

"This Agreement shall apply to investments made from the date of its entry into force, as well as to investments existing on that same date, it being understood that the said investments must be or have been made in accordance with the legislation of the Contracting Party in whose territory or maritime zone the investment is made.

2. With respect to Article 3:

(a) The principle of fair and equitable treatment shall apply, inter alia, to the purchase and transportation of raw and auxiliary materials of energy and fuel, as well as means of production and operation of any kind, as well as to the sale and transportation of products within the country and abroad, and to the activities related thereto ;

(b) The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization for residence, work and movement submitted by the nationals of one Contracting Party in connection with an investment in the territory of the other Contracting Party.

3. With regard to Article 4:

The regional economic cooperation referred to in paragraph 2 shall be understood to include economic cooperation between the States of the Arab Maghreb Union.

4. With regard to Article 5:

"In calculating the amount of compensation actually received by the investor, the compensation shall include an amount calculated in accordance with the principles of Articles 3 and 4 intended to compensate for any unjustified delay in payment.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Mr. Minister, the assurances of my highest consideration.

Dominique Strauss-Kahn"

I hereby confirm the agreement of my Government to the foregoing.

Please accept, Mr. Minister, the assurances of my highest consideration.

Mohamed Ghannouchi