

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE TUNISIAN REPUBLIC ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Portuguese Republic, on the one hand, and the Government of the Republic of Tunisia, on the other hand, hereinafter referred to as "Contracting Parties";

Desiring to enhance their economic relations and intensify cooperation between the two countries in order to facilitate their development;

Convinced that investment protection under an international agreement is likely to stimulate private business initiative and increasing prosperity of both countries;

Recognizing the need to provide fair and equitable treatment to investments of natural and legal persons who are nationals of one Contracting Party in the territory of the other Contracting Party;

Have agreed as follows:

Article 1. Definitions

Under this Agreement:

1) "Investments" mean assets and rights of all kinds established or recognized in the host country in accordance with its laws and regulations, from the date of entry into force of this Agreement, in particular, though not exclusively:

a) Ownership of movable and immovable property as well as any other rights in rem or enjoyment guarantees inherent in the property of such goods, such as mortgages and pledges;

b) Shares, stocks and other forms of equity interests in companies;

c) Claims as well as payments to any benefits arising out of a contract;

d) Copyrights, industrial property rights and intangibles goodwill;

e) Business concessions conferred by law or under contract, including concessions to search for or exploit natural resources, extract the recipient giving a legal position of some duration;

2) "Income" means the amounts resulting from an investment and in particular, though not exclusively, any profits, profits, dividends, interests or fees;

c) "Nationals" shall mean:

a) As regards the Portuguese Republic, natural persons on the Portuguese nationality as well as legal persons established in accordance with its laws and regulations, headquartered in the territory of the Portuguese Republic and whose interests are predominant of its nationals;

b) In respect of the Republic of Tunisia, natural persons of Tunisian nationality and any legal person constituted in accordance with its laws and regulations, headquartered in the territory of the Republic of Tunisia and where the interests of its nationals are predominant ;

d) "territory" means:

a) As regards the Portuguese Republic, the territory of the Portuguese Republic;

b) In respect 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 the nationals of the other Contracting Party to invest capital in its territory, create favourable conditions for their investments and subject to its right to exercise powers conferred by its laws, permit the entry of such capital.
2. Investors of either contracting party made in accordance with the conditions laid down by the national legislation of the host State shall enjoy fair and equitable treatment.

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

1. Neither of the Contracting Parties will subject within its territory investments or returns of nationals of the other Contracting Party to the treatment less favourable than that which it accords to returns of investments or its own nationals or returns to investments or of nationals of any third State.
2. Neither of the Contracting Parties in its territory will subject nationals of the other Contracting Party, as regards the management, utilization, disposal, or the enjoyment of their investments to treatment less favourable than that which it accords to its own nationals or nationals of any third State.
3. Notwithstanding the foregoing provisions of this article, if one of the Contracting Parties has concluded with one or more other States an agreement regarding the formation of a customs union or a free-trade area or any other treaty establishing economic cooperation based on a special affinity, shall be free to grant more favourable treatment to investments by nationals of the State or States which are also Parties to the treaty or by nationals or companies of some of these States. A Contracting Party shall also be free to grant more favourable treatment to investments by nationals of other States if such treatment is stipulated by bilateral agreements concluded with these States prior to the date of signature of this Agreement.

Article 4. Compensation for Losses

In the case of nationals of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of emergency, national revolt or riot, insurrection or similar effect occurring in the territory of that other Contracting Party, the treatment accorded by the latter, as regards restitution, indemnification, compensation or other settlement, shall be not less favourable than that it accords to its own nationals or to nationals of any third State, in the event of a decision by the Government to compensate for its own nationals.

Article 5. Expropriation

1. Investments of nationals of either Contracting Party shall not be expropriated or nationalized, subject to any other measure having similar effect in the territory of the other contracting party 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 shall be accompanied by the payment of prompt, effective and adequate 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 the proceeds of an investment.

Article 6. Returns of Investments and Income

1. Subject to its laws and regulations, each Contracting Party shall allow the transfer without delay in any convertible currency of:
 - a) The net profits, dividends, royalties, fees and technical assistance service, interest and other current income related to investments of nationals of the other Contracting Party;
 - b) The proceeds of the total or partial liquidation of any investment made by the nationals of other Contracting Party;
 - c) Repayments of loans by nationals of one of the Contracting Parties to the nationals of other Contracting Party;
 - d) The remuneration of nationals of the other Contracting Party who are allowed to work in its territory in connection with an investment.

2. Each of the Contracting Parties undertakes to accord to transfers referred to in paragraph 1 of this article a treatment no less favourable than that accorded to transfers originating from investments made by nationals of any third State.

Article 7. Subrogation

If a Contracting Party effected after consultation with the other Contracting Party a payment to one of its nationals by virtue of a guarantee it has accorded in coverage under Articles 4, 5 and 6 of this Agreement, the first Contracting Party shall be entered into all rights and obligations with respect to a national of the other contracting party.

Article 8. Submission to the International Centre for Settlement of Investment Disputes

Each Contracting Party agrees to submit to the International Centre for Settlement of Investment Disputes (ICSID) 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, any legal dispute between the 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. If a dispute between the Contracting Parties cannot be settled in this way, it shall be submitted, at the request of either Contracting Party to an arbitral tribunal.
3. The arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party 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 either Contracting Party or if he is unable for any reason to carry out those functions, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also prevented from carrying out the function, the said member of the International Court of Justice in next authority immediately and who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall be taken by a majority of votes. Such decision shall be binding on both Contracting Parties.

Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. However, it is open to the Tribunal in its decision that a higher proportion of direct costs be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The Tribunal shall draw up its own rules of procedure.

Article 10. Entry Into Force

This Agreement shall enter into force on the date on which both Contracting Parties have notified each other that the constitutional requirements have been met.

Article 11. Duration and Termination

This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until the expiration of twelve months from the date on which either of the Contracting Parties denounces by written notification addressed to the other Contracting Party.

However, while investments made in respect of this agreement is in force, the provisions of this Agreement shall continue to be applied, with respect to such investments for a period of ten years after its expiry, subject to the subsequent

implementation of the general rules of international law.

In WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate originals in Tunis on 11 May 1992 in two originals in the French, Arabic, and Portuguese languages, the three texts being equally authentic.

For the Portuguese Republic:

Luís Garcia Braga da Cruz

Minister of the Economy

For the Tunisian Republic:

Fethi Merdassi

Minister of International Cooperation and Foreign Investment.