

AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE ALGERIAN DEMOCRATIC AND POPULAR REPUBLIC ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Italian Republic and the Government of the People's Democratic Republic of Algeria hereinafter referred to as "the Contracting States" wishing to strengthen cooperation between the two States and to create favourable conditions for investment by natural and legal persons of one Contracting State in the territory of the other Contracting State.

Convinced that the encouragement and protection of such investment helps to stimulate a transfer of capital and technology between the two Contracting States, to the mutual benefit of their economic development;

Have agreed as follows

Chapter I. Definitions

Article 1.

For the application of this Agreement:

The term "investments" means any assets and any financial contribution, in kind or services, invested or reinvested in any sector of economic activity, whatever it may be.

In particular, but not exclusively for the purposes of this Agreement, contributions by investors consisting of the following shall be deemed to be investments for the purposes of this Agreement:

- (a) movable and immovable property and other rights in rem of the investor including, to the extent they can be used for investment purposes, rights in rem in respect of third party property;
- (b) shares, units and other equity securities in companies incorporated in the territory of one of the Contracting States;
- (c) bonds, notes and debentures, notes and rights to any benefits having an economic value attached to an investment, as well as government securities and similar instruments, and investment income which have been reinvested;
- (d) copyrights, industrial property rights such as patents, licences, registered trademarks, models and industrial designs; know-how; technical processes; registered names and customers;
- (e) any right conferred by law or by contract, and any other licence deriving from a contract or concession in accordance with the law, including rights deriving from a contract or administrative concession in the field of exploration, extraction and exploitation of natural resources, excluding activities reserved to the State;

The assets and other contributions referred to above shall have been invested in accordance with the laws of the Contracting State in whose territory they are invested after the entry into force of this Agreement.

Investments by a natural or legal person of a Contracting State made in the territory of the other Contracting State prior to the entry into force of this Agreement and made in accordance with the laws and regulations in force at the time may, on request, benefit from the provisions of this Agreement after their adaptation to the law of the latter Contracting State applicable on the date of signature of this Agreement.

Any change in the form of investment and reinvestment of the assets and contributions referred to above shall not affect their investment character provided that such changes comply with the law of the Contracting State in whose territory the investment has been or is made.

- 2) The term 'nationals' shall mean natural persons who are Algerian nationals in Algeria and Italian nationals in Italy. They must have the principal centre of their economic interests in the territory of the respective Contracting State, in accordance with the legislation or regulations of that State.
- 3) The term 'legal person' shall mean any body or institution and any partnership or company with share capital established in the territory of one of the Contracting States in accordance with its legislation and having its registered office there and having its principal centre of economic interests, as defined by the legislation and regulations of each Contracting State.
- 4) The term 'investors' shall mean nationals and legal persons of one of the Contracting States making investments in the territory of the other Contracting State.
- 5) The term 'income' means any sum produced by an investment, such as profits, interest, remuneration, dividends, annuities, royalties or allowances.
- (6) The term 'territory' means, in addition to areas bounded by land frontiers, maritime and submarine areas under the sovereignty of Contracting States or over which they exercise, in accordance with international law, sovereign rights or jurisdiction.

Chapter II. Investment Promotion

Article 2.

Each Contracting State shall accept and encourage, within the framework of its legislation and the provisions of this Agreement, investments made in its territory by nationals and legal persons of the other Contracting State.

Article 3.

Each Contracting State shall accord in its territory to investments and related income of citizens and legal entities of the other Contracting State, treatment no less favourable than that accorded to investments and related income of its own citizens or legal entities, or of citizens and legal entities of Third Countries enjoying the most favourable country clause, if that is the most advantageous.

The treatment shall not, however, extend to the privileges accorded by a Contracting State to nationals or legal persons of a third State as a result of its participation in or association with a Free Trade Area, a Customs or Economic Union, a Common Market or any other form of Regional Economic Organisation, or, provided that the provisions of this Article are compatible with those of other bilateral Agreements between the two Contracting States, to privileges granted as a result of Agreements concluded between a Contracting State and any other third State to avoid double taxation or to facilitate cross-border trade.

Chapter III. Investment Protection

Article 4.

- 1) Investments made by nationals and legal persons of one of the Contracting States shall benefit in the territory of the other Contracting State from constant, full and complete protection and security, to the exclusion of all others.
- (2) an unjustified or discriminatory measure which may adversely affect, in fact or in law, their management, maintenance, use, enjoyment, transformation or liquidation, subject to any measures necessary for the maintenance of public order.
- 3) Each Contracting State shall not take measures of expropriation, nationalisation, requisition or any other measure the effect of which is to deprive, directly or indirectly, the nationals or legal persons of the other of their possession or ownership.
4. Where imperatives of public utility, security or national interest justify derogations from paragraph 2 of this Article, the following conditions shall apply:
 - a. The measures shall be adopted in accordance with the procedure laid down by law;
 - b. the measures are non-discriminatory;
 - c. the measures are accompanied by immediate provisions providing for the payment of adequate and effective compensation.

(5) The appropriate amount of compensation shall correspond to the actual market value of the investments concerned on the day before the measures are adopted or made public. It will be determined on the basis of internationally recognised rules or practices. The compensation shall be paid in convertible currency to be determined by mutual agreement. In the absence of agreement, it shall be paid in the currency in which the investment was made. As soon as the compensation has been determined, it shall be paid promptly and authorised for transfer. In the event of late payment, it shall bear interest at the interbank rate applicable to the currency of payment in the investor's home country on the date of effective implementation of the measures referred to in paragraphs 2 and 3 of this Article.

(6) Nationals or legal persons of one Contracting State whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or insurrection in the territory of the other Contracting State shall be accorded by the other Contracting State treatment no less favourable than that accorded to its own nationals or legal persons, or to nationals or legal persons of the most favoured Nation.

Chapter IV. Transfers

Article 5.

Each Contracting State, in whose territory investments have been made by investors from the other Contracting State, shall grant these investors, after they have fulfilled all tax obligations, a free transfer:

- (a) income from investments and, in particular, dividends, profits, royalties, interest and other current income;
- (b) remuneration derived from the intangible rights referred to in paragraph 1(d) of Article I;
- (c) payments to be made for the repayment of loans regularly borrowed for the financing of investments as authorised, and for the payment of interest thereon;
- (d) the proceeds from the sale or liquidation of all or part of the investment, including increases in the value of the capital invested;
- e) compensation for loss of ownership or loss of property as provided for in Article 4 above, as well as any payment due by subrogation under Article 7 of this Agreement.
- f) Nationals of a Contracting State who have been authorised to work in the territory of the other Contracting State following an eligible investment shall also be authorised to transfer an appropriate portion of their remuneration to their country of origin.

The transfers referred to in the preceding paragraphs shall be made at the official exchange rate or, failing that, at the exchange rate applicable on the date of such transfers, in the State in whose territory the investment is made, in the currency used for such transfers and within six months.

Chapter V. Support and Guarantee Measures

Article 6.

In so far as the legislation of one Contracting State provides for general support or guarantee measures of economic, financial and commercial nature for certain investments made on its own territory, such measures may, following case-by-case examination, be granted to corresponding investments made by investors from that Contracting State on the territory of the other.

Such investments by nationals and legal persons of one of the Contracting States in the territory of the other shall not be eligible for the advantages referred to in the preceding subparagraph unless they have first obtained the approval of the latter Contracting State.

Article 7.

Where a Contracting State or one of its public institutions grants a guarantee against non-commercial risks for an investment made by its investors in the territory of the other Contracting State, the latter shall recognise the transfer of the right of these investors to the guaranteeing Contracting State and the subrogation shall not go beyond the original right of the investors. For the transfer of payments to be made to the Contracting State by virtue of such subrogation, Articles 4.5 and 6 of this Agreement shall apply.

Chapter VI. Settlement of Disputes

Article 8.

- 1) Any dispute relating to investments between one Contracting State and an Investor of the other Contracting State shall, as far as possible, be settled amicably between the parties concerned.
- 2) If the dispute cannot be settled amicably within six months from the date of a written request to that effect, the investor concerned may submit it only to one of the following instances:
 - a) to the competent jurisdiction of the Contracting State in whose territory the investment was made;
 - b) to the "International Centre for the Settlement of Investment Disputes" for the application of the conciliation or arbitration procedures provided for in the Convention of 18 March 1965 on the "Settlement of Investment Disputes between States and Nationals of Other States", as soon as both Contracting States have fully adhered to it.
 - c) To an ad hoc arbitration tribunal established in accordance with the provisions of Article 9 of this Agreement.

Article 9.

- 1) Disputes concerning the interpretation and application of this Agreement shall be settled through diplomatic channels.
- 2) If, within six months after the date on which either Contracting State so requests in writing, the dispute has not been settled, it shall, at the request of either Contracting State, be submitted to an arbitral tribunal.
- 3) The arbitral tribunal referred to above shall be constituted on a case-by-case basis as follows: each Contracting State shall designate one member and these two members shall designate by mutual agreement a national of a third State, who shall be appointed President by the two Contracting States. The members will have to be appointed within two months of the date on which one of the Contracting States has participated in the other one's intention to submit the dispute to arbitration. The President will have to be appointed within three months of the date of appointment of the two above-mentioned members.
- 4) If the time limits referred to in paragraph 3 above have not been met, either Contracting State shall, in the absence of any other 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 State or of the other, or if for some other reason he is unable to carry out the duties, the senior Deputy Secretary-General who is not a national or a national of either Contracting State shall make the necessary appointments.
- 5) The Arbitral Tribunal shall decide by majority vote. These decisions shall be final and enforceable by law for the Contracting States.

The Tribunal shall determine its own rules of procedure. It shall interpret its judgments at the request of either Contracting State. Unless the Tribunal decides otherwise having regard to particular circumstances, the costs of the arbitration proceedings, including the arbitrators' fees, shall be divided equally among the Contracting States.

- (6) The dispute shall be settled by the ad hoc arbitral tribunal applying the domestic law of the Contracting State party to the dispute in whose territory the investment is located, including rules relating to conflict of laws, the provisions of this Agreement, the arrangements of special agreements which have intervened on the investment, as well as principles of international law.

The arbitration awards shall be final and binding on the parties to the dispute. The two Contracting States undertake to enforce them in accordance with their national legislation and the relevant international conventions to which they are a party.

Chapter VII. Miscellaneous Provisions

Article 10.

- (1) Investments which have been the subject of a special undertaking by one Contracting State to the nationals and legal persons of the other Contracting State shall, subject to the provisions of this Agreement, be governed by the terms of that undertaking in so far as the latter contains more favourable provisions.

(2) If a matter is governed both by this Agreement and by another international agreement to which the two Contracting States are parties, this Agreement shall not prevent investors of either Contracting State who have made investments in the territory of the other from benefiting from the more favourable provisions of that international agreement.

3) If any general investment legislation adopted by a Contracting State in accordance with its laws, regulations or other provisions is more favourable than that provided for in this Agreement, the more favourable treatment shall apply.

Article 11.

This Agreement shall also apply to investments made, prior to its entry into force, by investors of one Contracting State in the territory of the other Contracting State provided that such investments comply with the laws and regulations applicable in the latter State at the date of signature of this Agreement.

Chapter VIII. Final Provisions

Article 12.

Each Contracting State shall notify the other Contracting State of the completion of its internal procedures required for the entry into force of this Agreement which shall take effect one month after the day of receipt of the last notification.

The Agreement shall be concluded for an initial period of ten years. It shall be renewable by tacit transfer for a corresponding period unless one of the Contracting States notifies the other through diplomatic channels of its intention to revise or terminate it with one year's notice.

Upon expiry of the period of validity of this Agreement, investments made while it was in force shall continue to benefit from the provisions of this Agreement for a further period of ten years.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Algiers on 18 May 1991 in three copies, each in the Italian, Arabic and French languages, these three texts being equally authentic.

For the Government of the People's Democratic Republic of Algeria

S.E.M. GHAZI HIDOUCI,

MINISTRY OF THE ECONOMY

(ILLEGIBLE SIGNATURE)

For the Government of the Italian Republic

S.E.M. ANTONIO BADINI

AMBASSADOR OF ITALY

(ILLEGIBLE SIGNATURE)