

Agreement between the Government of the Republic of Tunisia and the Government of the Republic of Albania republiqùe on the promotion and protection of investments

The Government of the Republic of Tunisia and the Government of the Republic of Albania;

Hereinafter referred to as the Contracting Parties.

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

Convinced that reciprocal protection of investments under a bilateral agreement is likely to stimulate entrepreneurship and increasing prosperity of both countries.

Recognizing the need to provide fair and equitable treatment to investments of nationals of either Contracting Party in the territory of the other Contracting Party.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means the rights, property, and assets of any kind constituted or established in the territory of a Contracting Party in accordance with its laws and regulations and in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and similar rights;
- b) The actions, the values, shares, and debentures of companies or any other form of participation in companies;
- c) Lendings and all rights and claims to performance having an economic value;
- d) Intellectual and industrial property rights, technical processes, know-how, and goodwill;
- e) The concessions conferred by law or under contract, including concessions to search for, extract, or exploit natural resources.

Any alteration of the form of investment does not affect their status as investments provided that such change is not contrary to the legislation of the Contracting Party concerned.

2. The term "returns" means the amounts resulting from an investment, such as profits, interests, dividends, royalties or other fees.

3. The term "investor" refers with regard to either Contracting Party:

- a) Natural persons having the nationality of that Contracting Party in accordance with its laws and making an investment in the territory of the other Contracting Party;
- b) Legal persons constituted in accordance with the laws and regulations of that Contracting Party and having their registered office within its territory and making an investment in the territory of the other Contracting Party.

4. - The term "territory" means either Contracting Party in respect of the territory under its sovereignty, including the territorial sea, as well as the underwater areas and other maritime areas over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and admits such investments in accordance with its legislation.
2. Investments made by investors of either Contracting Party, shall be accorded fair and equitable treatment as well as full protection and security in the territory of the other Contracting Party. Each Contracting Party undertakes to ensure that the maintenance, use, enjoyment or disposal within its territory of the investments of investors of the other contracting party are not hindered by unjustified or discriminatory measures.
3. Reinvestment of the returns of an investment in accordance with the law of the Contracting Party in whose territory the investment is made, shall be regarded as an investment and it shall enjoy the same protection as the initial investment.

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

1. Neither Contracting Party shall subject, in its territory, the investments of investors of the other Contracting Party to treatment less favourable than that which it accords to the investments of its own investors or to the investments of investors of any third State, whichever treatment is the more favourable.
2. Neither Contracting Party shall subject investors of the other Contracting Party in its territory to less favourable treatment in respect of activities related to their investments than that which it accords to its own investors or to investors of any third State, whichever is the more favourable.

Such treatment shall not extend to any privileges or advantages which a Contracting Party grants to investors of a third State:

(a) by virtue of its participation in, or association with, a customs union, a common market, a free trade area, or any other form of regional economic organization.

(b) under an agreement on the avoidance of double taxation; or any other agreement concerning taxation.

Article 4. Expropriation

Investments of investors of either Contracting Party shall not be nationalized or expropriated, or subject to any other measures having an effect equivalent to expropriation or nationalization unless the following conditions are met:

- a) The measures are taken in the public interest and in accordance with the due process of law;
- b) The measures are not discriminatory; and
- c) The measures shall be accompanied by the payment of prompt, effective, and adequate compensation. The amount of compensation must correspond to the actual value of the investments concerned, immediately before the above measures become public knowledge. Such compensation shall be effectively realizable and freely transferable in convertible currency at the official rate of exchange prevailing on the date of transfer.

Article 5. Compensation

Investors 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 effects, shall be granted by the latter, as regards compensation, restitution, compensation or other indemnities, treatment no less favourable than that accorded to its own investors or to investors of any third State, whichever is the more favourable treatment.

The compensation payable pursuant to this article shall be paid without delay and freely transferable.

Article 6. Transfer of Investments and Returns

1. Each Contracting Party shall allow in respect of investments of investors of the other Contracting Party, the transfer of their investments returns:

- a) Profits, dividends, interests and other current income;

- b) Payments made for the reimbursement of loans contracted regularly;
- c) Royalties and other fees
- d) The proceeds of the sale of or the partial or total liquidation of the investment including capital gains on investment.
- e) The compensation paid pursuant to article 5 above.

2. The nationals of either Contracting Party who have been authorised to work in the territory of the other Contracting Party in respect of an investment shall be authorized to transfer in the country of origin of a proportion adequate remuneration in accordance with the legislation in force.

3. The transfer shall be effected without delay in a freely convertible currency, at the official rate of exchange prevailing on the date of transfer, in accordance with the procedures laid down by the legislation of the country concerned.

Article 7. Subrogation

1. If one of the Contracting Parties or the body designated by that Party makes a payment under a given guarantee in the case of an investment made in the territory of the other Contracting Party, the said other Party shall recognise the assignment to the first Contracting Party or to the body designated by the said Party of all the rights and claims of the Party concerned. compensation and the right of the first Contracting Party or of the body designated by that Party to exercise such rights and to claim the said claims, by subrogation, in the same conditions as the indemnified party.

2. The first Contracting Party or the designated organisation by the said Party shall be entitled, in all circumstances, to the same treatment, with respect to rights and claims acquired under the of the assignment and any payments received in respect of such rights, and claims, that the indemnified party was entitled to receive in under this Agreement for the investment concerned and its related investment returns.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible, be settled through diplomatic channels.

2. Where a dispute cannot be settled in this way within six months from the beginning of negotiations, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

3. The arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall select a national of a third State as Chairman of the arbitral tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date of receipt of the notice of arbitration.

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 immediately next in seniority, and who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of respect for the Law, the provisions of this Agreement as well as the principles of international law.

6. The tribunal shall determine its own procedure. It will interpret the award at the request of either Contracting Party. The tribunal shall reach its decision by a majority of votes. such decision shall be final and binding on the parties.

7. Each Contracting Party shall bear the cost of its own arbitrator and its representation. the costs related to the Chair and any remaining costs shall be borne in equal parts by the Contracting Parties.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party relating to an investment shall, as far as possible, be settled amicably.

2. If such a dispute cannot be settled within six months from the time when it was raised by either party to the dispute, it

may be submitted:

- To the national courts of the Contracting Party involved in the dispute,
- To 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, opened for signature at Washington DC on 18 March 1965.

Once the investor has submitted the dispute to the courts of the Contracting Party concerned or to the Centre, the choice of one of these procedures is final.

3. The arbitral award shall be binding and shall not be subject to appeal procedures other than those laid down by the Washington Convention. The award shall be enforced in accordance with domestic law.

4. During the period of the arbitration proceedings or the enforcement of the award, the Contracting Party concerned, may not invoke that the investor of the other Contracting Party has received compensation under a guarantee.

Article 10. Application of the Agreement

This Agreement shall apply to investments made after its entry into force.

Article 11. Entry Into Force - Duration - Termination

1. This Agreement shall enter into force one month after the date of the exchange of instruments of ratification. It shall remain in force for a period of ten years.

2. Unless one of the Contracting Parties denounces it in writing, at least one year before the expiration of the initial period of validity, this Agreement shall be extended tacitly for consecutive periods of ten years. Each Contracting Party may denounce it then, with a written notice of at least one year.

3. In respect of investments made prior to the expiration of the validity of this Agreement, they will continue to benefit from the protection of its provisions for a further period of ten years.

Done at Tunis on 30 October 1993 in two originals in the Arabic, French and Albanian languages. in the event of a dispute concerning the interpretation, the English text shall prevail.

For the Government of the Republic of Tunisia

(signed)

Mohamed GHANNOUCHI

For the Government of the Republic of Albania

(signed)

M. Artan Hoxha