

# **Convention on the promotion and protection of investments between the Government of the People's Democratic Republic of Algeria and the Great Socialist Libyan Arab People's Jamahiriya**

Preamble:

The Government of the People's Democratic Republic of Algeria and the Great Socialist Libyan Arab people's Jamahiriya, hereinafter jointly referred to as the "Contracting Parties" and "Contracting Party" separately;

Desiring to enhance economic cooperation and to create conditions to promote investment between Algeria and Libya.

Convinced that the promotion and protection of investments will stimulate the release of capital, the flow of investment and transfer of technology between the two contracting parties in the interest of development and mutual economic prosperity;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Convention:

a) The term "investment" means every asset and includes in particular, though not exclusively:

- 1) Movable and immovable property and other property rights, such as leases, mortgages, liens, pledges or guarantees;
- 2) Shares, debentures, and obligations of a company and any other form of participation in a company;
- 3) Monetary claims or any performance under contract having an economic value;
- 4) Intellectual property rights, including copyrights, patents, invention designs, trademarks, trade names, trade secrets, and business processes and technical know-how;
- 5) The permits or rights conferred by law or under contract, including concessions to search for, extract natural resources and their exploitation in the agricultural sector.

Any alteration of the form in which assets are invested shall not affect their character as investments.

b) The term "investor" means in respect of either Contracting Party:

- 1) The nationals of either Contracting Party: natural persons who have their status as nationals of a contracting party from the law of that Party;
- 2) Companies of a Contracting Party means any legal person, corporation, firm or association established or constituted in accordance with the law of that Contracting Party.

c) The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, interests, capital gains, profits, dividends, royalties;

d) The term "territory" means:

For the People's Democratic Republic of Algeria and the Great Socialist Libyan Arab People's Jamahiriya and in the geographical sense, the territory of the People's Democratic Republic of Algeria and the territory of the Great Socialist Libyan Arab People's Jamahiriya, including beyond the territorial sea and the other maritime areas over which the People's Democratic Republic of Algeria and the Great Socialist Libyan Arab People's Jamahiriya exercise their jurisdiction or sovereign rights for the purpose of exploration and exploitation of natural resources of the living and non-living sea waters above the sea bed and bed subsoil according to their national laws and / or in accordance with the international law.

## **Article 2. Promotion of Investments**

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote investments in its territory by investors of the other Contracting Party and subject to its domestic law, accepting these investments.
2. Each Contracting Party shall grant, in accordance with its domestic law, the necessary authorizations relating to investments referred to in paragraph 1 of this article and the fulfillment of licences for approval and contracts for commercial, administrative or technical assistance.

## **Article 3. Protection of Investments**

1. Returns of investments and investors of each Contracting Party shall at all times fair and equitable treatment and full protection in the territory of the other Contracting Party. No Contracting Party shall impair unreasonable or discriminatory measures by the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

Each Contracting Party shall accord in its territory to investments and income of investors of the other Contracting Party treatment at least equal to that which it accords to investments and income of its own investors or to investments and returns of a third State.

3. Each Contracting Party shall accord to investors in its territory of the other Contracting Party treatment not less than that which it accords to its own investors to investors or of any third State.
4. The provisions of paragraphs 2 and 3 of Article 3 shall not be construed so as to oblige one contracting party to extend to investors of the other Contracting Party any treatment, preference or privilege resulting from:
  - a) Any customs union, free trade area, common market, similar international agreement or any existing or future interim arrangement leading up to such free trade area, customs union or common market, to which either of the Contracting Parties is or may become a party;
  - b) Any international agreement on arrangements relating wholly or partially to taxation or any domestic legislation relating wholly or partially to taxation.

## **Article 4. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, armed conflict, revolution, state of emergency, national revolt riot, insurrection or occurring in the territory of the latter Contracting Party, shall be accorded by that Contracting Party, with respect to restitution, compensation or any alternative arrangement, treatment no less favourable than that which the latter Contracting Party accords to its own investors to investors or of any third State.
2. Without prejudice to paragraph 1 of this article, investors of one Contracting Party who, in any of the events referred to in that paragraph, suffer, in the territory of the other Contracting Party resulting from requisitioning of loss or damage to their property by the authorities of the latter should be accorded fair and adequate compensation for the losses sustained during the period of the requisitioning or as a result of damage to their property.

## **Article 5. Nationalization or Expropriation**

1. Investments made by investors of either Contracting Party shall not be nationalized or expropriated or subjected to measures having effects equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other contracting party except for public purposes, under due process, on a non-discriminatory basis and against the payment of prompt, fair and adequate compensation.

Such compensation shall be at least equal to the market value of the expropriated investment immediately before the expropriation or before the expropriation is made public, whichever is the sooner such cases, compensation shall include interest at a normal commercial rate until the date of payment and shall be paid without delay and effectively.

2. The Investor affected by the expropriation shall have a right, under the domestic law of the Contracting Party which has designated the expropriation, to prompt review of its case and the valuation of its investment by a court of law or other independent and impartial judicial body of the latter Contracting Party, in accordance with the principles referred to in paragraph 1 of this article.

## **Article 6. Transfers**

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall permit, investors, after the payment of all fiscal obligations to freely transfer:

- a) Investment income set out in article 1 (c) of this Convention;
- b) The payment of instalments loans and interests, entered into by the investor in foreign currencies from abroad, for the financing of investments or extension;
- c) The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- d) Compensation arising from the expropriation or loss of property referred to in articles 4 and 5 of this Convention;
- e) The earnings of nationals of either Contracting Party or of workers other than those nationals who are authorised to work in the territory of the other Contracting Party in connection with an investment approved in accordance with the laws and regulations in force in the host country of the investment.

The transfers referred to in the preceding paragraphs of this article will be made without delay at the rate of exchange in effect on the date of transfer in the host country of the investment.

## **Article 7. 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 investments shall as far as possible, be settled amicably between the parties to the dispute.

2. If the dispute cannot be settled amicably within six (6) months from written notification of the dispute, it shall be submitted at the request of the investor, either to the competent judicial authority of the Contracting Party involved in the dispute to international arbitration. the choice of one of these procedures is final.

3. Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to submit the dispute either to:

- a) The Arab Investment court in accordance with the provisions of Chapter 6 of the Unified Agreement for the Investment of Arab Capital in Arab States of the year 1980, on the settlement of disputes and any amendment to be provided;
- b) To an ad hoc arbitral tribunal which shall be established for each individual case in the following way: each party to the dispute shall appoint one arbitrator and the two arbitrators shall select a third arbitrator in turn a national of a third State who shall be appointed Chairman of the Tribunal. The arbitrators shall be appointed within two months (2) and the Chairman within three (3) months from the date of notification of the investor and the Contracting Party concerned of its decision to refer the dispute to arbitration.

If the necessary designations of arbitrators are not made within the time limit, each Party to the dispute may invite the Secretary General of the League of Arab States to make the necessary appointments.

The ad hoc arbitral tribunal shall determine its own rules of procedure, in accordance with the terms and conditions of the Arbitration Rules of the United Nations Commission on International Trade Law.

4. The arbitral tribunal shall settle the dispute in accordance with the domestic legislation of the Party in whose territory the investment concerned has suffered damage and the principles of international law recognized in general and to this Agreement and any agreement on investment agreement between the investor and the Party concerned.

5. The decision in resolution of the dispute shall be based on the Convention and on the terms of the specific agreement which may have entered into with regard to investment and the principles of international law.

6. The arbitral decision referred to in this article shall be binding on the parties to the dispute and shall be enforceable in the territories of the Contracting Parties.

7. Neither Contracting Party shall pursue the dispute submitted to international arbitration through diplomatic channels unless the other Contracting Party has not complied with and implemented the decision of the arbitral tribunal.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties relating to the interpretation or application of this Convention as far as possible, be settled amicably through negotiations between the contracting parties.
2. If the dispute cannot be settled within a period of six (6) months from the date of the request of either Contracting Party to enter into negotiations in accordance with paragraph 1 of this article, the dispute may be submitted at the request of either Contracting Party to an arbitral tribunal.
3. The Tribunal mentioned in paragraph 2 of this article shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and two members appointed these together select a national of a third State to be appointed as Chairman, after consent of the Contracting Parties. the members of the Tribunal shall be appointed within two (2) months from the date of notification by one party from the other contracting party of its intention to submit the dispute to arbitration.
4. If the periods specified in paragraph 3 of this article have not been complied with, and in the absence of any other agreement, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party or is prevented from performing the functions assigned for any reason, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is also prevented from carrying out the function, the said member of the International Court of Justice successor in the order of precedence and who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall take its decision by a majority of votes and that decision shall be binding on the contracting parties.
6. The tribunal shall determine its own rules of procedure, decide its award and shall decide the dispute in accordance with this Agreement and the principles of international law.

## **Article 9. Subrogation**

1. If one Contracting Party or its representative agency makes payment to one of its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter shall recognise the assignment, by law or by legal proceedings, at the first mentioned Contracting Party of all the rights and claims of the investor indemnified.
2. It shall also recognise that the party or the Agency the representative is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the investor.

## **Article 10. Specific Obligations**

1. If the provisions of the domestic law of either Contracting Party or obligations under international law existing at present or established by the Contracting Parties in addition to this Agreement contain rules, whether general or specific are entitling to returns of investments and investors of the other Contracting Party to more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable to it.
2. Investments which are covered by a specific agreement between one of the Contracting Parties and an investor of the other Contracting Party shall be governed by the provisions of the said agreement, to the extent that they are more favourable than those laid down in this Convention.

## **Article 11. Scope**

This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party, before or after the entry into force of this Convention. However, this Convention shall not apply to disputes which arose before its entry into force.

## **Article 12. Final Provisions**

1. Each Contracting Party shall notify in writing to the other party, the fulfilment of their constitutional procedures for the entry into force of this Convention. It shall take effect from the date of receipt of the last notification.
2. This Agreement shall remain valid for a period of ten (10) years and shall be renewable indefinitely unless one of the

Contracting Parties denounces it, with a one-year notice through diplomatic channels.

3. The Contracting Parties may amend this agreement by mutual consent. any amendment shall enter into force in accordance with the conditions necessary for the entry into force of this Convention.

4. Investments made prior to the termination of this Agreement shall continue to be protected in its provisions for a further period of fifteen (15) years from the date of its termination.

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

Done at Sirte on 6 August 2001 to corresponding 6 / 8 / 1369 the death of the Prophet in two originals in the Arabic.

For the Government of the Great Socialist Libyan Arab People's Jamahiriya

Mourad MEDELICI

Ministry of Finance

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

ADJILI Abdessalam Brini

Secretary of the General People's Finance Committee