

# **Agreement between the Government of the Portuguese republic and the Government of the Tunisian Republic for the Promotion and Protection of Investments**

The Portuguese Republic and the Republic of Tunisia (hereinafter referred to as the Contracting Parties) shall:

Desiring to create favorable conditions for strengthening economic cooperation between the two countries;

Convinced that the reciprocal protection of investments under a bilateral agreement will help to stimulate private economic initiative and increase the prosperity of the two countries;

Aware of the need to agree on a fair and equitable treatment with regard to the investments of the investors of one of the Contracting Parties in the territory of the other Contracting Party;

Agree as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1) The term "investments" means any kind of property and rights invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the law of the other Contracting Party, including in particular but not exclusively:

(a) Property on movable and immovable property, As well as any other rights in rem, such as mortgages, pledges, securities, usufruct and similar rights;

(b) Shares, quotas and other shares or other forms of equity interest in companies, credit rights or other rights to economic benefits;

(c) Intellectual property rights such as copyrights and other related rights, patents, licenses, designs, trademarks, technical processes, know-how and goodwill, and concessions granted by law or under the terms of a contract, including concessions for exploration, extraction and exploitation of natural resources. Property over furniture and real estate, as well as any other real rights, such as mortgages, pledges, collateral, usufruct and similar rights;

(d) Credit rights or other rights to benefits with economic value; Intellectual property rights such as copyright and other related rights, patents, licenses, designs, trademarks, technical processes, know-how and customers and goodwill;

(e) Concessions granted by law or under the terms of the contract, namely concessions for exploration, extraction and exploitation of natural resources.

Any change in the form of realization of investments shall not affect their qualification as investments, provided that such change is made in accordance with the law of the Contracting Party in whose territory the investments were made;

2) The term "income" means all income generated by investments, including, in particular, profits, capital gains, dividends, interests, royalties or commissions.

Investment income and, where reinvested, income from reinvestments shall enjoy the same protection as investment;

3) The term "investors" means: Natural persons, with the nationality of either Contracting Party, who make an investment in the territory of one of the Contracting Parties; Legal persons constituted under the laws of that Contracting Party and investing in the territory of that Contracting Party Contractor; Natural persons, with the nationality of either Contracting Party, who make an investment in the territory of one of the Contracting Parties; Legal persons, constituted under the laws of that Contracting Party and making investments in the territory of that Contracting Party;

4) The term "territory" shall comprise, for each of the Contracting Parties, its territory as well as maritime and submarine areas extending beyond the limit of territorial waters and over which, in accordance with international law, Sovereign rights and jurisdiction.

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

1. Both Contracting Parties shall admit and encourage, on their territory and in accordance with their legislation, the carrying out of investments by investors of the other Contracting Party.
2. Investments made in the manner described by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy fair and equitable treatment, protection and full security.

## **Article 3. National and Most-favored Nation Treatment**

1. Each Contracting Party shall grant to investments made by investors of the other Contracting Party in the territory of the first treatment no less favorable than that accorded to the investments of its own investors or to investments of investors of third States; The most favorable treatment for the investor shall be applied.
2. Both Contracting Parties shall accord to investors of the other Contracting Party, in respect of the management, maintenance, use, enjoyment or disposal of investments in their territory, treatment no less favorable than that accorded to their own investors or to investors Third States; The most favorable treatment for the investor shall be applied.
3. The provisions of paragraphs 1 and 2 of this Article do not imply the granting of preferential treatment or privilege by one of the Contracting Parties to investors of the other Contracting Party that may be granted by virtue of:
  - i) Participation in customs unions, free trade areas, common markets or other similar international agreements, including other forms of economic cooperation to which any of the Contracting Parties has acceded or acceded; and
  - ii) Conventions intended to avoid double taxation or other international conventions of a fiscal nature.

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

Investors of either Contracting Party who suffer losses in investments made in the territory of the other Contracting Party by virtue of armed conflict, revolution, national state of emergency, revolt, insurrection or other events deemed to be equivalent shall receive no less favorable treatment from that Contracting Party Than that granted to its own investors or to investors of third States, whichever is the more favorable, as regards the refund or other form of compensation.

## **Article 5. Expropriation**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party may not be expropriated, nationalized or subject to other measures having equivalent effect to the expropriation or nationalization (hereinafter referred to as "expropriation"), over the territory of the other Party Contractor, save for reasons of public utility, in accordance with the applicable legal procedures and provided that the measures are not discriminatory.

Expropriation should result in the payment of an immediate and adequate compensation that should correspond to the actual value that the expropriated investments had at the date immediately prior to the moment the expropriation occurred or at the time the future expropriation becomes public knowledge. The compensation must be effective, paid without delay and freely transferable. The compensation shall comprise an amount to compensate for any unjustified delay in the respective payment caused by the Contracting Party which has expropriated.

2. The investor whose investments have been expropriated shall have the right, in accordance with the law of the Contracting Party in whose territory the assets have been expropriated, to review his or her case, in judicial or other proceedings, and to evaluate his investments, In accordance with the principles set forth in this article.

## **Article 6. Downloads**

1. Both Contracting Parties shall guarantee to investors of the other Contracting Party the free transfer of amounts related to their investments, in particular, but not exclusively:
  - i) Of the initial capital and the additional amounts required to maintain or expand the investments;
  - ii) Income;
  - iii) The amounts necessary for repayment of loans contracted in accordance with applicable law and regulations;
  - iv) The proceeds from the sale or the total or partial liquidation of the investments;

v) The compensation provided for in Articles 4 and 5 of this Agreement;

vi) An appropriate percentage of the wages of workers authorized to work in connection with the investment in the territory of the other Contracting Party;

vii) Of all preliminary payments made on behalf of the investor in accordance with Article 7 of this Agreement.

2. Transfers referred to in paragraph 1 of this Article shall be made without delay in convertible currency at the rate of exchange applicable on the date of transfer in the territory of the Contracting Party in which the investment is located.

## **Article 7. Subrogation**

1- In the case of one of the Contracting Parties or its representative making payments to one of its investors by virtue of a guarantee given to an investment carried out in the territory of the other Contracting Party, the latter recognizes:

i) The transfer to the first Contracting Party or its representative of all rights and obligations of the investor, by legal or contractual means;

ii) The subrogation of the other Contracting Party or its representative in all the rights that they are entitled to exercise and in all duties related to the investment.

2- The rights or duties subject to subrogation shall not exceed the rights of the investor.

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

1. Disputes arising between the Contracting Parties on the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the Contracting Parties do not reach agreement within six months of the start of negotiations, the dispute shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The arbitral tribunal provided for in paragraph 2 of this article shall be established on an ad hoc basis as follows: each Contracting Party shall appoint an arbitrator within three months of receipt of Dispute to the arbitral tribunal. Both arbitrators, within two months, by common accord shall propose a third-country national as the chairman of the arbitral tribunal.

4. If the time limits set out in the preceding paragraph are not observed, both Contracting Parties may, in the absence of any other provision, request the President of the International Court of Justice to make the necessary appointments. If the President is prevented or is a national of either Contracting Party, the Vice-President of the International Court of Justice shall be required to make such appointments. If the latter is also prevented or is a national of one of the Contracting Parties, the member of the International Court of Justice shall be requested to continue in the hierarchy that makes the appointments, provided that such member is not a national of either Contracting Party.

5. The arbitral tribunal shall decide on the basis of the law, the provisions of this Agreement and the principles of applicable international law. The arbitral tribunal shall decide by majority vote. Their sentences shall be final and enforceable for both Contracting Parties. The arbitral tribunal shall define its own rules of procedure.

6. Each Contracting Party shall bear the expenses of the respective arbitrator, as well as their representation in the arbitration proceedings. Both Contracting Parties shall bear the costs of the President and the other expenses of the arbitration proceedings in equal parts.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes between an investor of one Contracting Party and the other Contracting Party relating to an investment of the former in the territory of the second shall be settled, as far as possible, in an amicable manner.

2. If disputes can not be settled within six months of the date on which one of the parties to the dispute has raised the dispute, the investor may submit the dispute:

To the competent courts of the Contracting Party, party to the dispute; An ad hoc arbitral tribunal established in accordance with the arbitration rules of the United Nations Commission on Trade and Development (UNCTAD); The International Center for Settlement of Investment Disputes (CIRDI), pursuant to the Convention on the Settlement of Disputes between States

and Nationals of Other States, done at Washington DC on 18 March 1965. The decision to refer the dispute to One of the three procedures referred to above is irreversible.

3. Either Contracting Party, parties to a dispute, shall refrain from objecting at any stage of the arbitration procedure or from the execution of an arbitral award by virtue of the payment of compensation to the investor, Accordance with Article 7 of this Agreement.

4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party, party to the dispute and in the territory of which the investment, without prejudice to the conflict-of-law rules, of the provisions of this Agreement, Investment and the principles of international law.

5. The arbitral award shall be final and binding on both parties to the dispute, which undertake to enforce it in accordance with their national law.

## **Article 10. Application of other Rules**

If, in addition to this Agreement, the provisions of the domestic law of one of the Contracting Parties or the obligations under international law in force or which may come into force between the two Contracting Parties establish a general or special regime that confers on the investments made by investors of the other Contracting Party Contracting Party more favorable treatment than provided for in this Agreement, the more favorable regime shall prevail over it.

Both Contracting Parties shall comply with any obligations, not included in this Agreement, undertaken by one of the Contracting Parties in respect of investments made by investors of the other Contracting Party in its territory.

## **Article 11. Application of the Agreement**

This Agreement shall apply from its entry into force to all investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with their respective legal provisions.

This Agreement shall also apply to investments existing on the date of their entry into force in the territory of one of the Contracting Parties by investors of the other Contracting Party in accordance with their legislation in force after 1 January 1957. Agreement shall not apply to disputes arising prior to their entry into force, which shall be governed by the Agreement on the Promotion and Protection of Investments between the Portuguese Republic and the Republic of Tunisia, signed in Tunis in May 1992.

## **Article 12. Entry Into Force, Duration and Termination of the Agreement**

1. Each Contracting Party shall notify the other Contracting Party of the completion of the internal procedures necessary for the entry into force of this Agreement, which shall enter into force one month after the date of receipt of the last notification.

2. As from its entry into force, this Agreement cancels and replaces the Agreement on the Promotion and Protection of Investments between the Portuguese Republic and the Republic of Tunisia, signed in Tunis on 11 May 199

3- This Agreement shall remain in force for a period of 10 years, which shall be tacitly extended for equal periods unless the Agreement is terminated in writing by either Contracting Party 12 months before the expiration of the 10-year period ongoing.

4. In the event of termination of this Agreement, in accordance with the preceding paragraph and with respect to the investments already made, the provisions of Articles 1 to 11 shall remain in force for a further period of 10 years from the date of termination of this Agreement. Wake up.

In witness whereof the plenipotentiaries of the two Governments have signed this Agreement.

Done in duplicate at Tunis on the 28th day of February of the year 2002 in the Portuguese, Arabic and French languages, all three texts being equally authentic. In case of divergence of interpretation, the French version shall prevail.

For the Portuguese Republic:

Luís Garcia Braga da Cruz, Minister of Economy.

For the Republic of Tunisia:

Fethi Merdassi, Minister for International Cooperation and Foreign Investment.