

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Kingdom of Great Britain and Northern Ireland of the one part and the Government of the Tunisian Republic of the other part, hereinafter referred to as the Contracting Parties;

Desiring to strengthen their economic relations and intensify co-operation between the two countries in order to encourage their development;

Convinced that the protection of investments is likely to stimulate private economic initiative and to increase prosperity in both countries;

Conscious of the necessity of according fair and equitable treatment to the investments of physical and legal persons who are nationals of one of the Contracting Parties in the territory of the other Contracting Party;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) "investment" means every kind of investment admitted into the territory of one Contracting Party in accordance with its laws and regulations and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares in and stock and debentures of a company and any other form of participation in a company;

(iii) Claims to money or to any performance for valuable consideration deriving from a contract;

(iv) Intellectual property rights and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, extract, exploit or develop natural resources, conferring on their beneficiaries a legal position for the duration of the concession.

A change in the form in which assets are invested does not affect their character as investments. The provisions of this Agreement shall also apply to investments admitted in accordance with the laws and regulations of the Contracting Party concerned and made before the date of entry into force of this Agreement;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "nationals" means:

(i) In respect of the United Kingdom: physical persons of British nationality in accordance with United Kingdom legislation and legal persons, firms or associations constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 11;

(ii) In respect of Tunisia: physical persons of Tunisian nationality in accordance with Tunisian law and legal persons, firms or associations constituted under the law in force in any part of Tunisia;

(d) "territory" means:

(i) In respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 11;

(ii) In respect of Tunisia: the territory of the Tunisian Republic.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals of the other Contracting Party to invest capital in its territory, and, subject its right to exercise powers conferred by its laws, shall admit such capital.

(2) Investments of nationals of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.

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

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own nationals or to investments or returns of nationals of any third State.

(2) Neither Contracting Party shall in its territory subject nationals of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own nationals or to nationals of any third State, unless the advantages deriving from such treatment require the approval of the third State concerned, in which case the Contracting Party shall seek to obtain such approval.

Article 4. Compensation for Losses

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, a state of national emergency, revolt, insurrection or riot or similar effect in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own nationals or to nationals of any third State. Any resulting payments shall be freely transferable.

Article 5. Expropriation

(1) Investments made by nationals of one Contracting Party shall not be expropriated or nationalized or subjected to similar measures (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party and against compensation. The compensation must be adequate, and correspond to the actual value of the investment immediately before the expropriation, must be made without undue delay and be freely transferable in convertible currency at the official rate of exchange applicable at the date of transfer. The transfer must be made not later than three months from the date of deposit of full documentation as required by the exchange regulations of each Contracting Party. The lawfulness of the expropriation and the amount of compensation must be able to be submitted to and, at the request of the Party concerned, checked by, the competent court of the country in which the investment has been made. The national shall have the right by virtue of the legislation of the expropriating Contracting Party to a rapid examination of the legality of the expropriation, the valuation of the investment and the amount of the compensation payable by a judicial authority of the expropriating Party in conformity with the principles established in the present paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is corporate or constituted under the law in force in any part of its own territory, and in which nationals of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals of the other Contracting Party who are owners of those shares.

Article 6. Repatriation of Investment and Returns

Each Contracting Party shall in respect of investments guarantee to nationals of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns, subject to the right of each Contracting Party in

exceptional balance of payments difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws. Such powers shall not however be used to impede the transfer of profit, interest, dividends, royalties or fees; as regards investments and any other form of return, transfer shall take place as soon as possible, and at least shall be spread equitably over a period of not more than five years. Transfers of currency shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions in this Agreement relative to the grant of treatment not less favorable than that accorded to the nationals of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals of the other the benefit of any treatment, preference or privilege resulting from:

- (a) Any existing or future customs union or free trade zone to which either of the Contracting Parties is or may become a party; or
- (b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;
- (c) Any agreement establishing co-operation based on regional economic partnership or other bilateral agreements for the purposes of specific operations or facilitating cross-border trade.

Article 8. Reference to International Centre for Settlement of Investment Disputes

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") 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(1) any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of the latter in the territory of the former. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a national of the other Contracting Party. If any such dispute should arise and agreement cannot be reached within six months between the parties to this dispute through pursuit of local remedies or otherwise, then, if the national affected consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the national affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(2) Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless

- (a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or
- (b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an 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. Those two members shall then select a national of a third State who on approval by 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 other 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 any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, 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 too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated Agency of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, under the same conditions as the party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 11. Territorial Extension

After the entry into force of this Agreement, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 12. Entry Into Force

Each Contracting Party shall notify the other Contracting Party in writing that the constitutional conditions required for the entry into force of the present Agreement have been fulfilled. The Agreement shall enter into force on the date of the later of these notifications⁽¹⁾.

Article 13. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments covered by this Agreement, its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Tunis this Fourteenth day of March 1989 in the English, Arabic and French languages, each text being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

[ALAN CLARK]

[S. P. DAY]

For the Government of the Tunisian Republic:

[NOURI ZORGATI]

1 Treaty Series No. 25 (1967), Cmd. 3255.

1 This Agreement entered into force on 4 January 1990.