

# AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF TUNISIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

THE REPUBLIC OF AUSTRIA AND THE TUNISIAN REPUBLIC

Hereinafter referred to as the 'Contracting Parties'

DESIRING to create favorable conditions for greater economic cooperation between the Contracting Parties,

CONVINCED that the promotion and protection of investment should strengthen the willingness to undertake such investments and thereby make an important contribution to the development of economic relations,

RECOGNIZING the need to treat the investments made by the investors of one Contracting Party in the territory of the other Contracting Parties fairly and fairly,

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" means all assets of any kind which have been assessed or recognized in the host country in accordance with its legislation, and in particular but not exclusively:

- a) Ownership of movable and immovable property as well as other rights in rem, such as mortgages, liens, usufructuary rights and similar rights;
- b) Securities, shares, participation rights and company bonds;
- c) Claims for money that has been surrendered to create an economic value or claims for a service having an economic value;
- d) Copyrights, industrial property rights, such as inventor's patents, trademarks, industrial designs and utility models, technical procedures, know-how, trade names and goodwill;
- e) Public-law concessions for the exploration and extraction of natural resources;

(2) The term "investor" means:

- a) Any natural person who is a national of a Contracting Party and who makes an investment in the territory of the other Contracting Party;
- b) Any legal person or company governed by commercial law established in accordance with the legislation of a Contracting Party is established in the territory of that Contracting Party and makes an investment in the territory of the other Contracting Party;

(3) The term "income" means the amounts that an investment provides and, in particular, but not exclusively, profits, interest, dividends, royalties, royalties and other charges;

(4) The term 'expropriation' also includes nationalization or any other measure having equivalent effect;

(5) The term "territory"

(i) Concerning the Tunisian Republic, the territory of the Republic of Tunisia;

(ii) Concerning the Republic of Austria, the territory of the Republic of Austria.

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

(1) Each Contracting Party shall, as far as possible, promote the investments of the investors of the other Contracting Parties in its territory, permit such investments in accordance with its legislation and shall treat them in a fair and fair manner.

(2) Investments referred to in paragraph 1 and their income shall benefit from the protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the event of a re-assessment of the income also for its income. The legal extension, alteration or conversion of an investment made in accordance with the legislation of the host country shall be considered as a new investment. Paragraph 1 and its income shall benefit from the protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the event of a re-assessment of the income also for its income. The legal extension, modification or conversion of an investment made in accordance with the legislation of the host country is considered a new investment.

## **Article 3. Treatment of Investment**

(1) Each Contracting Party treats the investors of the other Contracting Parties and their investments no less favorably than their own investors and their investments or investors of third States and their investments.

(2) The provisions of paragraph 1 can not be construed as requiring a contracting party to grant to the investors of the other Contracting Parties the present or future advantage of any treatment, preference or privilege which may be derived from: Paragraph 1 can not be construed as such Shall require a Contracting Party to grant to the investors of the other Contracting Parties the present or future advantage of any treatment, preference or privilege resulting from:

a) A customs union, a common market, a free trade area or membership of an economic community or any other agreement which creates regional economic cooperation;

b) An international agreement or bilateral agreement on the basis of reciprocity on tax issues;

c) A scheme to facilitate border traffic or any bilateral agreement on specific measures within a regional framework.

## **Article 4. Expropriation**

(1) Investments by the investors of a Contracting Party may be expropriated in the territory of the other Contracting Parties only in the public interest, on the basis of a legal procedure and against compensation. The compensation must correspond to the value of the investment immediately before the date on which the expropriation became public. The compensation must be paid without undue delay; It must in fact be usable and freely transferable. At the latest at the time of the expropriation, appropriate provisions must be taken to determine the compensation.

(2) Where a Contracting Party acquires the assets of a company which is to be regarded as a separate company of that Contracting Party pursuant to Article 1 (2) of this Agreement and in which the investor of the other Contracting Party has share rights, it shall apply the provisions of paragraph 1 of this Article That the appropriate compensation of that investor is ensured. The second paragraph of this Agreement is to be regarded as a separate company of that Contracting Party and in which the investor of the other Contracting Party has share rights, it shall apply the provisions of paragraph 1 of this Article in such a way that the appropriate Compensation of the investor.

(3) The investor has the right to have the legality of the expropriation reviewed by the competent organs of the contracting party which prompted the expropriation in accordance with its legislation.

(4) The investor shall have the right to have the amount of the compensation reviewed by the competent organs of the contracting party which caused the expropriation or by an international arbitration body pursuant to Article 8 of this Agreement. Article 8 of this Agreement shall be reviewed.

## **Article 5. Transfer**

(1) Each Contracting Party guarantees the investors of the other Contracting Parties without undue delay the free transfer in freely convertible currency of the payments connected with an investment, and in particular but not exclusively,

a) Of income;

b) Repayment of loans;

c) Of the fees;

d) Of the proceeds in case of complete or partial liquidation or disposal of the investment;

e) Of indemnities referred to in Article 4 (1) of this Agreement.

(2) Payments pursuant to this Article shall be made at the exchange rates applicable on the day of the transfer payment.

(3) Notwithstanding the provisions of paragraph 1, one or other of the Contracting Parties may: Paragraph 1, one or the other Contracting Party may:

a) Laws which entitle the issuing of the foreign exchange transfer and entitle to the levying of taxes on income;

b) Protect the creditor's rights or ensure the enforcement of judgments on the basis of a court action in a fair and non-discriminatory application of their laws.

## **Article 6. Subrogation**

Where a Contracting Party or an institution empowered by the Contracting Party makes payments to one of its investors on the basis of a guarantee for an investment in the territory of the other Contracting Party, this other Contracting Party shall recognize, without prejudice to the rights of the investor of the first Contracting Party referred to in Article 8 of this Agreement and the rights of the Contracting Party The Contracting Party referred to in Article 9 of this Agreement, the transfer of all the rights of that investor by law or by virtue of a legal transaction to the former Contracting Party subject to the existence of counterclaims. The other Contracting Party shall also recognize the entry of the former Contracting Party into all these rights, subject to the existence of any claims which the former Contracting Party is entitled to exercise to the same extent as its predecessor.

Article 4 and Article 5 of this Agreement shall apply mutatis mutandis to the transfer of payments to a Contracting Party on account of the rights of entry assigned to them.

## **Article 7. Other Obligations**

If, under the law of a Contracting Party, or under international law obligations which exist between the Contracting Parties or which are established in the future, a general or special rule under which provisions of the investment of the investors of the other Contracting Parties will be treated more favorably than under this Agreement is to be granted, this arrangement shall be subject to the provisions of this Agreement in so far as it is more favorable.

## **Article 8. Settlement of Investment Disputes**

(1) If disputes arise from an investment between a contracting party and an investor of the other Contracting Parties, the latter shall be consigned as much as possible between the parties.

(2) If a disagreement as referred to in paragraph 1 can not be settled within six months from a written communication of sufficiently definite claims by the use of national remedies or otherwise, the dispute shall be settled at the request of the Contracting Party or the investor of the other Contracting Parties for the purpose of conducting a conciliation procedure or arbitration The International Center for the Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States \*, which was opened for signature in Washington on March 18, 1965. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, without the existence of an individual agreement between a Contracting Party and an investor, to submit such differences of opinion to the Center. Paragraph 1 shall not be submitted within six months from a written communication of sufficiently definite claims by the The dispute shall be submitted to the International Center for the Settlement of Investment Disputes set up by the Convention on the Settlement of Investment Contracts, at the request of the Contracting Party or the investor of the other Contracting Parties to conduct a conciliation or arbitration proceedings Between States and nationals of other States \*, which was opened for signature on March 18, 1965, in Washington urde. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance to submit such differences of opinion to the Center, even without the existence of an individual arbitration agreement between a Contracting Party and an investor through this Agreement.

(3) A Contracting Party which is a party to the dispute shall not, at any stage of the conciliation or arbitration proceedings or the enforcement of an arbitration award, make any objection to the fact that the investor constituting the other party to the dispute is to be compensated for all or parts of his guarantee by virtue of the guarantee provided for in Article 6 Losses. Article 6 of the guarantee provided that the applicant had received compensation for all or part of his losses.

## **Article 9. Disputes between the Contracting Parties**

- (1) Differences of opinion between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by friendly negotiations.
- (2) If an opinion disagreement can not be settled within six months pursuant to paragraph 1, it shall be submitted to an arbitration tribunal at the request of one of the contracting parties. If paragraph 1 is not submitted within six months, it shall be submitted to an arbitration court at the request of one of the contracting parties.
- (3) The arbitral tribunal shall be formed on a case-by-case basis, by appointing a member to each of the parties to the contract, and both members agreeing to a third person as chairman. The members shall be appointed by the chairman within a further two months within two months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.
- (4) If the time limits laid down in paragraph 3 are not met, each Contracting Party may, in the absence of any other agreement, ask the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General of the United Nations has the nationality of one of the Contracting Parties or if he is prevented from exercising this function for any other reason, the United Nations Deputy Secretary-General may be invited under the same conditions to make the appointments. For 3 stipulated deadlines, In the absence of any other agreement, any Contracting Party may request the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General of the United Nations has the nationality of either Contracting Party or if he is prevented from exercising this function for any other reason, the United Nations Secretary-General may be invited under the same conditions to make the appointments.
- (5) The arbitral tribunal shall decide its own rules of procedure.
- (6) The arbitral tribunal shall decide on the basis of this Agreement as well as on the basis of generally accepted rules of international law. It decides with multiple votes; The arbitration award shall be final and binding.
- (7) Each Contracting Party shall bear the costs of its member and its representation in the arbitration proceedings. The costs of the chairman and the other costs are borne equally by the two contracting parties. The court may, however, in its arbitral award, adopt a different cost regime.

## **Article 10. Application of this Agreement**

This Agreement shall apply to investments made by the investors of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory both before and after the entry into force of this Agreement.

## **Article 11. Entry Into Force and Duration**

- (1) This Agreement shall be ratified and shall enter into force on the first day of the third month following the date on which the instruments of ratification have been exchanged.
- (2) The Agreement shall remain in force for ten years; It shall remain in force unless one of the two Contracting Parties terminates by giving notice at least one year before the end of the period of validity or at any other time thereafter.
- (3) For investments made up to the date of the expiry of this Agreement, this Agreement shall continue to apply for a further ten years from the date of expiry of the Agreement.

DONE at Vienna, this 1st June 1995, in two originals, each in the German, Arabic and French languages, each text being equally authentic.

For the Republic of Austria:

Schüssel

For the Tunisian Republic:

Yahia m. p.