

Agreement between the Government of the French Republic and the Great Socialist People's Libyan Arab Jamahiriya on the reciprocal encouragement and protection of investments

The Government of the French Republic and the Great Socialist People's Libyan Arab Jamahiriya, hereinafter referred to as the "Contracting Parties",

Desiring to enhance economic cooperation between the two States and to create favourable conditions for French investments in Libya and Libyan investments in France,

Convinced that the promotion and protection of such investments will be conducive to stimulating the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property rights and interests of all kinds, and particularly but not limited to:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufructs, deposits and similar rights;
- b) shares, stocks, claims and other forms of participation in companies established in the territory of one of the Contracting Parties
- c) The obligations and rights to any performance having financial value related to an investment;
- d) Intellectual and industrial property rights of any proposed investment such as copyrights, patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources.

It is understood that such assets must be or have been invested in accordance with the law of the Contracting Party in whose territory the investment is made before or after the entry into force of this Agreement.

Changes in the form of investment of assets shall not affect their classification as an investment provided that such alteration is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

2. The term "investor" means any national or company of a Contracting Party who invest in the territory of the other contracting party.

- a) The term "national" means natural persons having the nationality of one of the Contracting Parties.
- b) The term "companies" means any juridical person in the territory of one of the Contracting Parties in accordance with its law and having its registered office.

3. The term means all amounts yielded returns by an investment such as profits, royalties or interests.

Investment income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

4. The term "territory" means the territory of each Contracting Party as well as the sea, including the seabed and subsoil adjacent to the limits of the territorial waters, i.e. the exclusive economic zone and the continental shelf of that Contracting Party, including its airspace above it, over which that contracting party exercises sovereign rights, in accordance with international law, for the purpose of exploring for or exploit natural resources.

5. No provision of this Agreement shall be construed as preventing a contracting party from taking any action to regulate the investment of foreign companies and the terms and conditions of employment of those companies in the framework of policies designed to preserve and promote cultural and linguistic diversity, in accordance with the laws and regulations of that Contracting Party.

6. The term "convertible currency" means any currency freely transferable, valid for the cash payments in international business transactions and tradable on major foreign markets.

Article 2. Promotion and Admission of Investments

Each Contracting Party shall promote and admit, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other Contracting Party.

Article 3. Fair and Equitable Treatment

Each Contracting Party undertakes to provide, in its territory, fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other contracting party and to ensure the enjoyment of the right thus recognized is hampered in either law or in fact.

The Contracting Parties shall afford sympathetic consideration, within the framework of their national legislation, applications for entry and residence permits, and labour movement presented by nationals of one Contracting Party in respect of an investment in the territory of the other contracting party.

Article 4. National Treatment and Most-favoured-nation Treatment

Each Contracting Party shall, in its territory, to nationals or companies of the other contracting party as regards their investments and activities associated with such investments, treatment no less favourable than that accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation, whichever is more favourable.

In this connection, nationals who are authorised to work in the territory of either Contracting Party shall enjoy adequate physical facilities for the performance of their professional activities.

This treatment does not extend to the privileges which either Contracting Party accords to nationals or companies of any third State by virtue of its association or participation in a free trade area, customs union, common market or any other form of regional economic organization.

The treatment granted under the present article shall not apply to tax deductions and tax exemptions granted by either contracting party to the investors of a third State by virtue of a double taxation agreement or other agreements regarding tax matters.

Article 5. Expropriation and Compensation

1. Investments made by companies or nationals of either Contracting Party shall enjoy, in the territory of the other Contracting Party full protection and security.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measure the purpose of which is directly or indirectly dispossessing nationals and companies of the other contracting party of the investments in their territory, except for a public purpose and under the conditions laid down by law and provided that they are neither discriminatory nor contrary to a specific engagement.

All dispossession measures that might be taken shall be subject to the payment of prompt and adequate compensation in an amount equal to the real value of the investment concerned must be assessed in relation to economic normality prior to the threat of dispossession.

Such compensation, its amount and has no later than the date of dispossession. the compensation shall be paid without

delay, and effectively realisable freely transferable. It produces until the date of payment, shall include interest at the market rate of interest.

3. Companies or nationals of either Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other contracting party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own nationals or companies or to nationals or companies of any third State.

Article 6. Free Transfer

Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:

- a) of capital and profits, dividends, interests and other current income;
- b) royalties arising out of intangible rights referred to in paragraph 1 (d) and (e) of Article 1;
- c) payments made for the reimbursement of loans contracted regularly;
- d) the proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) compensation for loss or dispossession referred to in paragraphs 2 and 3 of Article 5.

The nationals of either Contracting Party who have been authorised to work in the territory of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

The transfers referred to in the preceding paragraphs shall be effected without delay formally at the normal rate of exchange applicable on the date of transfer.

If, in exceptional circumstances, the movement of capital to or from third countries cause or threaten to cause serious balance of its balance of payments, either Contracting Party may apply temporary safeguard measures concerning transfers, provided that such measures are strictly necessary, are imposed in a manner that is fair, non-discriminatory and in good faith, and for a period not exceeding six months.

Article 7. Settlement of Disputes between an Investor and a Contracting Party

1. Disputes concerning investments between one of the Contracting Parties of an investor and the other Contracting Party shall as far as possible, be settled amicably between the two parties to the dispute.

2. If, within a period of six months from the time at which it was raised by one of the Parties to the dispute, which is not settled, it shall be submitted, at the request of the investor of the other Contracting Party, to international arbitration.

3. In the event of international arbitration, the dispute is submitted for resolution by international arbitration to one of the following institutions, at the choice of the investor:

- an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL);

- 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 on 18 March 1965, when each of the States Parties to this Agreement is a party to the New York Convention. as long as this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the rules of ICSID Additional Facility;

- The Court of Arbitration of the Paris International Chamber of Commerce.

4. At any stage of the arbitration proceedings or of the execution of an arbitral award, one of the contracting parties involved in a dispute shall not be permitted to the objection that the investor, opposing party in the dispute has received an indemnification covering the whole or part of its losses due to an insurance policy or to the guarantee provided for in article 8 of this Agreement.

5. The arbitral awards shall be final and binding on the parties to the dispute.

Article 8. Guarantee and Subrogation

1. If the laws of either Contracting Party shall provide a guarantee scheme for investments abroad, it may be granted within the framework of a case-by-case review, to investments made by companies or nationals of that Party in the territory of the other party.
2. Investments made by companies and nationals of one Contracting Party in the territory of the other Contracting Party may request the Security referred to in the preceding paragraph only if they have previously obtained accreditation of that other party.
3. If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment made in the territory of the other contracting party makes payment to its own nationals or companies, it is thereby entered into the rights and claims of the national or company.
4. Such payments shall not affect the right of the holder of the security of the Tribunal referred to in Article 7 or to carry out the measures introduced to until the end of the procedure.

Article 9. Other Provisions

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

The provisions of Article 7 of this Agreement shall be applicable in the event of specific commitment to renounce the international arbitration or to designate an arbitral body other than that referred to in Article 7 of this Agreement.

Article 10. Settlement of Disputes between Contracting Parties

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.
2. If, within a period of six months from the time at which it was raised by either contracting party, the dispute is not settled, it shall be submitted, at the request of either contracting party to an arbitral tribunal.
3. The Tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be appointed Chairman of the Tribunal by both Contracting Parties. All members shall be appointed within two months from the date one Contracting Party has informed the other contracting party of its intention to submit the dispute to arbitration.
4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, 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 otherwise prevented from exercising this function, the Vice-President shall make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is otherwise prevented from exercising this function, as the most senior judge and who is not a national of either Contracting Party shall make the necessary appointments.
5. The tribunal shall reach its decisions by a majority of votes. such decisions shall be final and enforceable automatically to the contracting parties.
6. The tribunal shall determine its own rules of. it shall interpret its decision at the request of either Contracting Party.
7. Each Contracting Party shall bear the business of its own arbitrator and its representation in the arbitration proceedings. the other costs, including those relating to the Chairman of the arbitral tribunal shall be borne in equal parts by the contracting parties.

Article 11. Scope

This Agreement shall apply to investments made before or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party.

However, this Agreement shall not apply to disputes arising before its entry into force.

Article 12. Entry Into Force and Termination

Each Party shall notify the other of the completion of the constitutional procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This Agreement is concluded for an initial period of ten years. It shall remain in force after the term unless one of the Parties denounces through diplomatic channels with one year notice.

On the expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of twenty years.

For the Government of the French Republic:

François Loos,

Minister Delegate for Foreign Trade

For the Great Socialist People's Libyan Arab Jamahiriya

Ammar Mabrouk Itaïef,

Secretary of the General People's Tourism Committee