

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF NIGER AND THE GOVERNMENT OF THE REPUBLIC OF TUNISIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Niger on the one hand,

The Government of the Republic of Tunisia on the other hand,

Hereinafter referred to as the "CONTRACTING PARTIES

Desiring to strengthen their economic relations and to intensify cooperation between the two countries with a view to promoting development;

Convinced that reciprocal investment protection under a bilateral agreement is likely to stimulate private economic initiative and increase the prosperity of both countries

Conscious of the need to accord fair and equitable treatment to investments of nationals of one of the Contracting Parties in the territory of the other Contracting Party,

Have agreed on the following provisions:

Chapter I. DEFINITIONS

Article 1.

For the purposes of this Agreement

(a) "Investments" means assets of any kind constituted or recognized in the host country in accordance with its laws and regulations, including but not limited to:

i) movable and immovable property and any other property right, as well as any security interest therein such as mortgages, liens and pledges;

ii) securities, shares and bonds of companies

iii) receivables and any performance for consideration arising out of a Contract;

iv) intellectual and industrial property rights, copyrights, technical processes and tangible and intangible elements of goodwill;

v) commercial concessions conferred by law or by contract, including concessions for the search for, extraction or exploitation of natural resources conferring on their beneficiary a legal position of any duration.

(b) "Income" means the proceeds of an investment, including, but not limited to, any profits, gains, interest, dividends or royalties.

(c) "National" means any company, corporation, association, organization or other legal entity legally constituted under the laws and regulations and having its principal place of business in the territory of either Contracting Party, as well as any natural person of the nationality of that Contracting Party.

(d) "territory" means the national territory of each of the two Contracting Parties.

Chapter II. INVESTMENT PROMOTION

Article 2.

Each of the Contracting Parties shall encourage nationals of the other Contracting Party to invest capital in its territory, in particular by creating favorable conditions for the realization of investments upon the entry of said capital, in accordance with its legislation.

Article 3.

The investments of one of the Contracting Parties made under the conditions established by the national legislation of the host country shall enjoy fair and equitable treatment.

Article 4.

Each Contracting Party shall authorize and treat the investment of nationals of the other Contracting Party and related activities on a basis no less favorable than that which it accords in similar circumstances to the investment or related activities of its own nationals or to nationals of any third country, whichever treatment is more favorable.

The above-mentioned related activities shall be carried out in accordance with the legislation in force in the host country.

Article 5.

Notwithstanding the provisions of Article 4 of this Agreement, a Contracting Party which has concluded with one or more other States an Agreement relating to the establishment of a customs union or a free trade area or any other Agreement establishing economic and/or monetary cooperation shall be free to grant more favorable treatment to investments of the State or States which are also Parties to the said Agreement or by nationals of some of these States. A Contracting Party shall also be free to accord more favorable treatment to investments made by nationals of other States, if such treatment is provided for in Agreements concluded with such States.

Chapter III. PROTECTION OF INVESTMENTS

Article 6.

For nationals of a Contracting Party whose investments in the territory of the other Contracting Party suffer damage by reason of war or other armed conflict, revolution, national emergency, revolt, insurrection, riot or similar effect occurring in the territory of that other Contracting Party, the treatment accorded by the latter, as regards restitution, compensation, indemnity, or any other form of settlement, shall be no less favorable than that accorded to its own nationals or to nationals of any third State.

Article 7.

Investments of nationals of one of the Contracting Parties in the territory of the other Contracting Party and the income derived from such investments shall not be nationalized, expropriated or subjected to any other measure having a similar effect, unless the following conditions are met

(a) the measures are taken in the public interest and in the manner required by law

(b) the measures are not discriminatory; and

(c) the measures are accompanied by prompt, adequate and effective payment of compensation which shall be freely transferable between the territories of the Contracting Parties.

Article 8.

Subject to its laws and regulations, each contracting party shall promptly permit the transfer in any convertible currency of

(a) net profits, dividends, royalties, fees for technical assistance and services, interest and all other current income relating to investments of nationals of the other Contracting Party

(b) the proceeds from the total or partial liquidation of an investment made by nationals of the other Contracting Party

(c) repayments of loans taken out by nationals of one of the Contracting Parties with nationals of the other Contracting Party

(d) the remuneration of nationals of the other Contracting Party who are authorised to work in its territory in connection with an investment.

Chapter IV. SETTLEMENT OF DISPUTES

Article 9.

In the event that a dispute relating to an investment arises between a Contracting Party and a national of the other Contracting Party in the territory of that Party, the Parties to the dispute shall first endeavor to settle the dispute through consultation and negotiation.

Article 10.

If the dispute could not be settled in accordance with Article 9 of this Agreement, within three (3) months from the date of submission of the request for consultation and negotiation each of the Contracting Parties agrees to submit to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on March 18, 1965.

Article 11.

Disputes between the Contracting Parties relating to the interpretation or application of this Agreement shall be settled, to the extent possible, by diplomatic means.

Article 12.

When a dispute between the Contracting Parties cannot be settled through diplomatic channels, it shall be submitted, at the request of one of the Contracting Parties, to an arbitral tribunal.

Article 13.

The arbitral tribunal shall be constituted, in each case, in the following manner

- within two months of the receipt of a request for arbitration, each Contracting Party shall appoint a member of the tribunal;
- these two members shall then choose a national of a third State who, with the agreement of both Contracting Parties, shall be appointed President of the Tribunal;
- the President shall be appointed within two months of the date of appointment of the two members.

Article 14.

If the necessary appointments have not been made within the time limits specified in Article 14 of this Agreement, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the Contracting Parties or if he is prevented for any reason from fulfilling the said functions, the Vice-President shall be invited to make the necessary appointments. If the Vice President is a national of one of the Contracting Parties or if he is also prevented from fulfilling the said functions, the member of the International Court of Justice immediately following in the hierarchical order and who is not a national of one of the Contracting Parties shall be invited to make the necessary appointments.

Article 15.

The arbitral tribunal shall decide by a majority vote. Its decision shall be binding on both Contracting Parties.

Article 16.

Each Contracting Party shall bear the costs of its own member of the tribunal and of his representation during the arbitration proceedings. The costs of the chairman and the other costs shall be borne equally by the Contracting Parties. The tribunal may, however, order in its decision that a greater proportion of the costs be borne by one of the two parties and the award shall be binding on both parties.

Article 17.

If one of the Contracting Parties or a public body of that Contracting Party by virtue of a guarantee given for an investment, makes payment of compensation to its own nationals, the other Contracting Party shall recognize the right of the former or the public body concerned to exercise and enforce by way of subrogation the rights and claims of its own nationals.

Chapter V. FINAL PROVISIONS

Article 18.

This Agreement is concluded for a period of ten (10) years, renewable by tacit agreement, unless one of the Contracting Parties denounces it in writing with one year's notice.

It shall enter into force on the date of exchange of the instruments of ratification by both parties in accordance with their constitutional procedures.

Article 19.

Each Contracting Party may submit to the other Contracting Party, in writing and through diplomatic channels, draft amendments to this Agreement. Any amendment agreed upon by both Contracting Parties shall enter into force in the manner provided for in Article 18 above.

Article 20.

Upon termination, the provisions of this Agreement shall continue to apply to investments made during an additional period of ten (10) years, unless the two Contracting Parties agree otherwise.

In witness whereof, the respective Plenipotentiaries have signed this Agreement.

For the Government of the Republic of Niger

MOHAMED BAZOUM

Secretary of State to the Minister of Foreign Affairs and Cooperation, in charge of Cooperation.

Done at Niamey, this 5th day of June 1992, in two original copies in the Arabic and French languages, both texts being equally authentic.

For the Government of the Republic of Tunisia

SADOK FAYALA

Secretary of State at the Ministry of Foreign Affairs, in charge of African Affairs.