

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

The Government of the Republic of Finland and the Government of the Republic of Tunisia, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen the economic relations and intensify cooperation to the mutual benefit of both countries,

Desiring to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of such investments will contribute to stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "Investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party (host Party) in accordance with the laws and regulations of the latter Contracting Party including, in particular, though not exclusively:

(a) movable and immovable property as well as any other rights in rem, such as leases, mortgages, liens, pledges and usufructs;

(b) shares, stocks, debentures and any other kind of participation in companies;

(c) claims to money or to any right to performance having an economic value;

(d) intellectual and industrial property rights, such as copyrights, patents, industrial designs, trade marks, trade names, know-how and goodwill;

(e) any right conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(2) The term "Investor" means:

(a) any natural person who is a national of the Contracting Party in accordance with its legislation,

(b) any legal person such as a company, corporation, association or other legal entity organized under the laws and regulations of the Contracting Party.

(3) The term "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interest, capital gains, royalties and other fees. Reinvested returns in conformity with the laws and regulations of the contracting party in the territory of which the investment was realised shall enjoy the same treatment as the original investment.

(4) The term "Territory" means the land territory, internal waters and territorial sea of the Contracting Party and the airspace above them, as well as the maritime zones beyond the territorial sea over which the Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments full security and protection.

(3) Each Contracting Party shall publish, or otherwise make publicly available, its laws and regulations which may affect the investments of investors of one Contracting Party in the territory of the other Contracting Party.

Article 3. Treatment of Investments

(1) Each Contracting Party shall in its territory accord investments by investors of the other Contracting Party and returns on these investments fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or investors of the most favoured nation, whichever is the more favourable to the investor.

(2) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments and returns, fair and equitable treatment which in no case shall be less favourable than that which it accords to its own investors or to investors of the most favoured nation, whichever is the more favourable to the investor.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, armed conflict, revolution, state of national emergency, revolt, insurrection or riot shall be accorded by the host Party treatment, as regards restitution, compensation or other settlement, no less favourable than that which the host Party accords to its own investors or investors of the most favoured nation, whichever is the more favourable to the investor.

Article 5. Expropriation

(1) Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measures, direct or indirect, having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public interest, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.

(2) Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or became public knowledge, whichever is earlier.

(3) The compensation shall be paid and made transferable without delay to the territory of other Contracting Party of the claimants or any other country agreed upon by the claimants and the expropriating authority of the Contracting Party and include a fair compensation for any delay in payment caused by the Contracting Party.

Article 6. Free Transfer

(1) Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer of payments in connection with an investment in convertible currencies. Such payments shall include in particular, though not exclusively:

(a) the principal and additional amounts to maintain, develop or increase the investment;

(b) returns;

(c) proceeds obtained from the total or partial sale or disposal of an investment, including the sale of shares;

(d) the amounts required for payment of expenses which arise from the operation of the investment, such as loans repayments, payment of royalties, management fees, licence fees or other similar expenses;

(e) compensation payable pursuant to Articles 4 and 5;

(f) payments arising out of the settlement of a dispute;

(g) maximum amount of earnings and other remuneration of personnel engaged from abroad working in connection with

an investment permitted by the prevailing laws and regulations of the host party.

(2) The Contracting Parties shall further ensure that transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer with respect to spot transactions in the currency to be transferred and shall be effectively realisable and immediately transferable.

Article 7. Exceptions

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

(a) any existing or future free trade area, customs union, common market or regional labour market agreement or other economic regional agreement to which one of the Contracting Parties is or may become a party,

(b) any international agreement or arrangement relating wholly or mainly to taxation, or

(c) any multilateral convention or treaty relating wholly or mainly to investments.

Article 8. Subrogation

if a Contracting Party or its designated agency makes a payment to its own investor under a guarantee against non-commercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the host Contracting Party shall recognise the assignment, whether under the law or pursuant to a legal transaction to the first Contracting Party of all the rights and claims resulting from such an investment, and shall recognise that the first Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

Article 9. Disputes between an Investor and the Host Party

(1) Any legal dispute arising directly out of an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties concerned.

(2) If the dispute has not been settled within six (6) months, from the date at which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

(a) to the competent courts of the Contracting Party in whose territory the investment is made;

(b) or to arbitration by the International Centre for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened [or signature at Washington on 18 March 1965;

(c) or an ad-hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Both Contracting Parties give their irrevocable consent in respect of the fact that all disputes relating to investments are submitted to the above mentioned court, tribunal or alternative arbitration procedures.

(3) If the investor submits the dispute to the competent court of the host Contracting Party or to international arbitration mentioned in paragraph 2 of this Article, the choice shall be final.

(4) Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitration sentence, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.

(5) The award shall be final and binding for the parties to the dispute and shall be executed according to national law.

Article 10. Disputes between Contracting Parties

(1) Any dispute arising between the Contracting Parties concerning the application or interpretation of this Agreement shall, if possible, be settled within six months from the date at which either Contracting Party requested negotiations.

(2) If such a dispute cannot thus be settled within six months from the date at which either Contracting Party requested

negotiations, either Contracting Party may by written notice to the other Contracting Party submit the matter to arbitration under this Article.

(3) The arbitration tribunal shall be constituted for each individual case. Each Contracting Party shall appoint one member. These two members shall then agree upon a national of a third state, to be appointed by the Contracting Parties to their Chairman. The members shall be appointed within two months and the Chairman within four months from the date of the receipt of the written notice under paragraph (2) of this Article.

(4) If the time limits referred to in paragraph (3) of this Article have not been complied with, either Contracting Party may, 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 a Contracting Party or is otherwise prevented from discharging this task, the most senior deputy of the President who is not a national of either Contracting Party and who is not otherwise prevented from discharging this task shall make the appointments.

(5) The arbitration tribunal shall take its decisions by a majority of votes and determine its own procedures. The tribunal shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law. The arbitral award shall be final and binding upon the Contracting Parties.

(6) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties. The tribunal may, however, at its discretion direct that a higher proportion of the costs shall be borne by one of the Contracting Parties.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall prevail over this Agreement.

Article 12. Scope of the Agreement

This Agreement shall apply to all investments established or acquired after the 1st day of January 1957 and existing at its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 13. Final Clauses

(1) This Agreement shall enter into force on the thirtieth day after the day on which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force for twelve months from the date on which either Contracting Party has in writing notified the other Contracting Party of its decision to terminate this Agreement.

(3) In respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 remain in force for a further period of fifteen years from the date of notification referred to in paragraph (2) of this Article.

Done at Tunis on the 4th of October 2001 in duplicate in the Finnish, Arabic and English languages, all texts being equally authentic. However, in case of any divergency of interpretation, the English text shall prevail.

For the Government of the Republic of Finland:

KIMMO SASI

For the Government of the Republic of Tunisia:

FETHI MERDASSI

Appendix to the agreement between the government of the republic of finland and the government of the republic of tunisia on the promotion and protection of investments

On the signing of the Agreement between the Government of the Republic of Finland and the Government of the Republic of Tunisia on the Promotion and Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement:

(1). With Reference to Article 2

Each Contracting Party shall endeavour not to impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

(2).

Subject to the laws and regulations relating to the entry and sojourn or employment of non-nationals, each Contracting Party shall:

- give sympathetic consideration to application for necessary permits in connection with investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice, regardless of nationality,
- permit, from time to time, natural persons of the other Contracting Party and other personnel employed in connection with the investment by an investor of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments, as well as members of their families.

Done at Tunis on the 4th of October 2001 in duplicate in the Finnish, Arabic and English languages, all texts being equally authentic. However, in case of any divergency of interpretation, the English text shall prevail.

For the Government of the Republic of Finland:

For the Government of the Republic of Tunisia: