

Agreement between the United Arab Emirates and the Republic of Tunisia to encourage and protect investments

The United Arab Emirates and the Tunisian Republic, referred to hereinafter as "the Contracting Parties", or referred to each of them as the "Contracting Party",

Desiring to create conditions conducive to further economic cooperation between them, and in particular the investments made by investors from one contracting party in the territory of the other contracting party.

Aware that the encouragement and mutual protection in accordance with an international agreement will create an encouraging situation for the revitalization of the commercial initiative and will increase prosperity in both countries of the contracting parties.

They have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" includes all types of assets invested by the natural or legal persons of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the laws and regulations in force in the host country of the investment. Especially and without limitation, the term "investment" Includes:

- a. Movable and immovable assets, as well as any in-kind property rights, such as mortgages, debt concessions, debt guarantees, the right of use, and the like;
- b. Shares, stocks, and participations in companies or any other rights and interests in those companies, and loans and bonds issued by an investor;
- c. Proceeds withheld for the purpose of reinvestment;
- d. Claims for money or any services that have economic value;
- e. Copyright, trademarks, patents, industrial designs, other industrial property rights, expertise, trade secrets, trade name and goodwill; and
- f. Any right granted by law or contract and any licenses or permits issued in accordance with the laws and regulations in force, including the rights to search for, extract and use natural resources.

Any change in the form in which the assets are invested will not affect their classification as an investment, provided that this change is in accordance with the laws and arrangements in force in the host country for the investment.

2. The term "investor" means the government of a Contracting State or any of its natural or legal persons, who invest in the territory of the other Contracting Party.

3 The term "government of a Contracting State" means the government of a Contracting Party as a legal entity.

4. The term "natural person" means in relation to either of the contracting parties that natural person who holds the nationality of that party in accordance with its laws and regulations.

5. The term "legal person":

- a. In relation to the United Arab Emirates means any entity that is established and recognized as a legal person in accordance with the law of the state such as public and private companies, institutions, trade unions, bodies, companies, individuals, associations, commercial institutions, public institutions, agencies, development funds and trade projects,

cooperatives, organizations and similar entities regardless of whether they have limited responsibilities or otherwise.

b. With regard to the Republic of Tunisia, any legal person established in accordance with the laws and regulations in force in the territory of the Republic of Tunisia.

Likewise, the aforementioned term means any entity that arises outside the territory of a Contracting State as a legal person in which that country or any of its citizens is owned, or any legal person established within the territory of its territory and having a dominant interest.

6. The term "returns" means the amounts that an investment achieves and includes but it is not limited to shares and royalties or in particular, profits, interests and capital gains, or fees.

7. The term "territory":

a. For the Republic of Tunisia, means the territory under its sovereignty, including the territorial sea, as well as the deep sea areas and other marine areas over which the rights of its sovereignty or jurisdiction are exercised in accordance with international law.

b. For the United Arab Emirates means all the regions of the United Arab Emirates, which include the territorial sea and islands that apply the laws of the United Arab Emirates, as well as any region outside its territorial sea and exercise sovereign rights over it Related to exploration and exploitation of resources in the seas and neighboring water resources sector, in accordance with international law.

8. "Related activities" include organization, control, operation, maintenance, and disposal of legal persons, branches, agencies, offices, factories or other facilities for the purpose of commercial business, making, executing and implementing contracts, possession, use, protection and disposal of all types of ownership, including intellectual and industrial property rights, borrowing money, buying and issuing shares, ownership and purchase of foreign currency for the purpose of importing in accordance with the laws and regulations in force in the host country for investment.

9. The term "free-to-use currency" means any convertible currency or any other currency commonly used for cash payments in international transactions and is common in international major exchange markets.

Article 2. Promotion and Protection of Investments

1. Each Contracting State shall encourage the investors of the other contracting party to make investments in its territory, and such investments and associated activities shall be accepted in accordance with the powers conferred upon it by its laws and applicable regulations.

2. Investments shall enjoy full protection and safety in accordance with international law.

3. Each Contracting Party shall at all times guarantee a fair and equitable treatment of the investments belonging to the investors of the party to the other Contracting Party and neither of the Contracting Parties may intervene in any way by discriminatory procedures that disturb the management, maintenance, use, enjoyment, and possession of disposal of investments or related rights on the investment and related activities attributable to investors from the other Contracting Party.

4. Each Contracting Party shall endeavor in relation to its tax policies to grant a fair and equitable treatment to the investments of the investors of the other Contracting Party.

5. The investors allowed to invest in any of the Contracting Parties are entitled to appoint senior employees and administrators, according to their choice, regardless of nationality, to the extent permitted by the laws and arrangements of the host Contracting Party for the investment. The contracting parties shall provide all the necessary facilities, including the issuance of residence permits and permits for these administrative employees and their families in accordance with the laws and regulations in force in the host country of the investment.

6. Each Contracting Party will seek to avoid, to the maximum extent possible, performance requirements as a condition for the establishment, expansion or maintenance of investments, which are requirements that demand the implementation of the obligation to export the produced goods, or those that specifically impose the purchase of goods or services locally, or those that impose any other similar requirements. This is in accordance with the laws and regulations in force in the host country.

Article 3. Most-favoured Nation Treatment

1. Each Contracting Party in its territory shall grant to the investments and returns of investors of the other Contracting Party a treatment no less favorable than that accorded to the investments and returns of its investors or to the investments and returns of the investors of any third party, whichever is more favorable.

2. Each contracting party shall grant in its territory to the investors of the other contracting party with regard to the management, maintenance, use, enjoyment, possession or disposal of their investments or any related activity, a treatment no less favourable than that accorded to its investors or to the investors of any third party, whichever is more favourable.

Article 4. Exception

The provisions of this agreement for granting a treatment that is no less favorable than that granted by the Party to its own investors or to investors of any third country are not to be interpreted as requiring a Contracting Party to provide the investors of the other contracting party with the advantages of any transaction, preference, or concession that arises from existing or future customs or economic unions, a free trade area, a monetary union, a similar international agreement, or other forms of regional economic cooperation.

Article 5. Compensation for Unintended Damages or Losses

Investors from a Contracting Party whose investments in the territory of the other Contracting Party are affected by losses arising from war or any other armed conflict, revolution, or state of emergency at the national level, mutiny, disobedience, strikes, or other similar events in the territory of the latter Contracting Party, must be granted by that Contracting Party a treatment in regards to restoring conditions to what they were, compensation for losses, indemnification or any other settlement, that is not less favourable than the treatment granted by the latter contracting party to its investors or to the investors of any third party, whichever is more favourable, provided that the amounts resulting from the compensation are paid in free-to-use convertible currency without delay.

Article 6. Judicial Custody

Investors from the Contracting Parties that are natural or juridical persons will not be subject to judicial custody or any similar procedures except by order of a competent court issued according to the laws in force, and the investor has the right to challenge these procedures in accordance with the laws in force.

Article 7. Expropriation

1. Investments of the investors of one of the Contracting Parties cannot be expropriated, nationalized, or subjected to any procedure that has a similar results to expropriation or nationalization unless the following conditions are met:

a. These measures are taken in the interest of the public interest and according to the due process of law.

b. The procedures are non-discriminatory.

c. The procedures are accompanied by an prompt, adequate and effective compensation.

2. The amount of compensation shall be equal to the real value of the investments concerned, immediately before the day on which the measures are taken or announced to the public. Compensations are paid without delay and are freely transferable.

3. The aggrieved party has recourse to the courts in the host country to challenge such decisions according to the laws and regulations in force.

4. With regard to the matters set forth in this article, each Contracting Party shall grant to the investors of the other Contracting Party a treatment no less favorable than the treatment granted in its territory to its investors or the investors of any third country, provided that the most favorable treatment is granted, and this treatment cannot be in any case less favourable than the treatment recognized by the principles of international law.

Article 8. Returns

1. Each contracting party shall allow without delay the conversion and transfer outside of its territory, in any free-to-use currency of the following:

a. Net profits, dividends, royalties, aid and interest fees and any other ongoing returns due from any investment made by an

investor from the other contracting party.

b. The proceeds accrued from the sale or total or partial liquidation of any investment carried out by an investor from the other Contracting Party.

c. Money paid in exchange for repayment of loans.

d. The incomes of the nationals of the other Contracting Party who are allowed to work in a field linked to an investment in its territory region, according to the laws and regulations in force.

e. Remuneration of the members of the Board of Directors.

2. Subject to the provisions of Article (3) of this agreement, the two Contracting Parties undertake to grant the transfers referred to in paragraph (1) of this article a treatment equal to those granted by them for the transfers that result from investments made by investors from any third country.

3. The currency exchange rates prevailing on the transfers mentioned in paragraph (1) of this article shall be the same as the currency exchange rates at the time of the conversion.

Article 9. Subrogation

1. If one of the Contracting Parties or its designated agency made payments under a guarantee granted by law or contract in favor of an investment based on the territory of the other Contracting Party, then that latter party recognizes the other Contracting Party or its designated agency take the place of its nationals and according to the same conditions by subrogation, with all the rights and debts of the compensated party and the right of the first Contracting Party or its designated agency to exercise those rights and claim those debts.

2. The first Contracting Party or its designated agency has the right to enjoy in all cases the same treatment that the compensated party has the right to enjoy under this agreement and in relation to the investment in question and its returns, in relation to the rights and debts obtained under the agreement and all the payments obtained under those rights and debts.

Article 10. Settlement of Investment Disputes between an Investor and a Contracting Party

1. Every investment related dispute between the investor of one of the Contracting Parties and the other Contracting Party shall be brought by a written notice from the parties of the dispute. As far as possible, the parties to the dispute shall endeavor to settle amicably the dispute through consultations or negotiations through diplomatic means.

2. If the dispute cannot be settled in this way within a period of six months, starting from the written notification, the investor can bring the settlement to the dispute, according to his choice to:

a. The competent judicial authorities of the Contracting Party in which territory the investment is made.

b. The International Center for Settlement of Investment Disputes as required by the Convention On The Settlement Of Investment Disputes Between States And Nationals Of Other States, open to signature in Washington D.C. on March 18, 1965.

c. To special arbitration according to the the arbitration rules of the United Nations Commission on International Trade Law, in the absence of a direct agreement between the parties to the dispute.

3. Therefore, each Contracting Party accepts the offer of submitting every investment related dispute to settlement through conciliation or international arbitration.

4. If the investor chooses to submit the dispute to the judicial authorities of the Contracting Party concerned, to the International Center for Settlement of Investment Disputes, or to private arbitration, the choice of one of the tribunals stipulated in paragraph (2) is final.

5. Neither of the Contracting Parties involved in a dispute at any stage of the arbitration proceedings or the implementation of the arbitration award can object to the argument that the investor of the other Contracting Party to the dispute has received compensation for all or part of its losses in implementation of an insurance contract or the guarantee stipulated in Article 9 of this agreement.

6. Arbitral decisions are binding and not subject to appeal from both parties to the dispute, and each Contracting Party

undertakes to implement the decisions in accordance with its national legislation.

Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes arising between the Contracting Parties related to the interpretation or application of this agreement are resolved as possible through diplomatic channels.
2. If the dispute cannot be settled through diplomatic channels, it can be referred at the request of either of the Contracting Parties to an arbitral tribunal.
3. An arbitral tribunal shall be formed for each case separately in the following way: Within a period of two months from the submission of the request for arbitration, each of the Contracting Parties shall appoint one member of the arbitral tribunal and these two members shall choose a citizen from a third country who will be the President of the arbitral tribunal upon the approval of the two Contracting Parties. The President of the arbitral tribunal must be appointed within two months from the date of appointment of the other two members.

Article 12. Applicability of the Agreement

This Agreement shall apply to existing investments made by or reinvested by investors from either Contracting Party in the territory of the other Contracting Party, starting from the beginning of January 1957 in accordance with its laws and regulations, provided that the agreement does not apply to existing disputes before they enter into force.

Article 13. Special Obligations

1. Where there is an investment governed simultaneously by this agreement and other agreements to which both Contracting Parties are a party, or are governed by general legal principles recognized by both Contracting Parties, or by local law of the host country of the investment, the provisions on this agreement should not prohibit any of the two contracting parties or any of its investors who own investments in the territory of the other Contracting Party to benefit from any rules that are more favorable to their cases.
2. Investments subject to special contracts or obligations pledged by a Contracting Party to investors from the other Contracting Party are governed - regardless of the provisions of this agreement - by the provisions of those contracts and obligations where their provisions are more favourable than those stipulated in this agreement.
3. Each of the Contracting Parties respects any commitment that it has committed to in the investment approval documents or in the approved investment contracts for the investors of the other Contracting Party.

Article 14. Entry Into Force of the Agreement

This agreement shall enter into force after each Contracting Party communicates to the other Contracting Party that the necessary constitutional procedures for this purpose have been carried out.

Article 15. Duration and Termination

This agreement remains in effect for a period of ten years and shall remain in force thereafter until the end of a period of twelve months starting from the date of its termination by one of the Contracting Parties through a written notice sent to the other Contracting Party. The provisions of this agreement shall remain in effect for a period of other ten years starting from the date of the termination of this agreement with respect to the investments that were made during the validity of the agreement, taking into account the application of the rules of international law after the expiration of this period.

In witness thereof, this agreement was signed in two original copies in the Arabic language, each equally authentic.

Tunis, 1996/4/10, Year 1416 AH

For the United Arab Emirates

For the Republic of Tunisia