

# Treaty between the Federal Republic of Germany and the Republic of Tunisia on the Promotion and Reciprocal Protection of Capital Investments

THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF TUNISIA

DESIRING to deepen economic cooperation between the two countries,

DECLARING to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State;

RECOGNIZING that the promotion and the contractual protection of these investments are likely to stimulate private economic activity and increase the prosperity of the two peoples,

HAVE AGREED AS FOLLOWS:

## Article 1.

Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws. It will in any case treat these investments fairly and cheaply.

## Article 2.

(1) Each Contracting Party shall, in its territory, treat capital investments which are the property of nationals or companies of the other Contracting Party or which are directly or indirectly attributable to them in any other way than investments of the own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall, in its territory, treat nationals or companies of the other Contracting Parties with regard to their activities in connection with investments no less favorably than their own nationals and companies or nationals and companies of third States.

## Article 3.

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may only be expropriated in the territory of the other Contracting Parties for the general good and for compensation. The compensation must correspond to the value of the expropriated investments, be actually usable and freely transferable, and be made immediately. At the latest at the time of expropriation, appropriate provisions must be made for the setting and performance of the compensation. The legality of the expropriation and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments are freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## Article 4.

Each Contracting Party guarantees to the nationals or companies of the other Contracting Parties the free transfer of the capital and the income of an investment and, in the case of liquidation, the liquidation proceeds of the investment.

## **Article 5.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by virtue of the rights of the former Contracting Party On the basis of legal transactions to the former Contracting Parties and their entry into all these rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 3 (2) and (3) and Article 4 shall apply mutatis mutandis to the transfer of payments to the Contracting Party concerned on the basis of the transferred claims.

## **Article 6.**

(1) Provided that the parties concerned have not made a derogation from the competent authorities of the Contracting Party in whose territory the investment is situated, transfers pursuant to Article 3 (2) or (3), Article 4 or Article 5 shall be effected without delay and with regard to current transactions On the date of the transfer.

(2) The rate applicable to current transactions is based on the par value (par value) agreed with the International Monetary Fund and must be parity within the limits of the fluctuation margin permitted under Article IV (3) of the Agreement on the International Monetary Fund.

(3) If there is no conversion rate for a Contracting Party at the time of transfer, as defined in paragraph 2, the official rate determined by that Contracting Party for its currency in relation to the US dollar or any other freely convertible currency or gold shall be applied. Where such a price is not fixed, the competent authorities of the Contracting Party in whose territory the capital is invested shall allow a conversion rate which is fair and fair.

## **Article 7.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 8.**

(1) The term "investments" includes all assets, in particular but not exclusively:

- a) Ownership of movable and immovable property and other rights in title such as mortgages, liens or the like;
- b) Share rights in companies and other types of participations;
- c) Claims for money or services having an economic value;
- d) Copyright, industrial property rights, technical procedures, trade names and goodwill;
- e) Public-law concessions, including concession and concession concessions.

A change in the form in which assets are invested does not affect their property as an investment.

(2) The term "income" refers to the amounts that are attributable to an investment as a profit or interest for a certain period of time.

(3) The term "nationals"

a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) As regards the Republic of Tunisia:

Natural persons of Tunisian nationality within the meaning of the nationality law.

(4) The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality established in the territory of the Federal Republic of Germany and which, according to the law, is justified as to whether the liability of its shareholders, members or members is restricted or unrestricted, is aimed at profit or not;

b) As regards the Republic of Tunisia:

Any legal person or any commercial or other company or association with or without legal personality established in the territory of the Republic of Tunisia and which is lawful according to the law whether or not the liability of its members, members or members is restricted or unlimited and whether or not its activities is aimed at profit or not.

## **Article 9.**

This contract shall also be subject to investments already made prior to its entry into force but not before 20 December 1963 by nationals or companies of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation.

## **Article 10.**

(1) Any disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to order the chairman within three months after the one party to the agreement has informed the other that they intend to submit the dispute to an arbitration court.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the Vice-President also has the nationality of either Contracting Party or if he is also prevented from attending, the next member of the Court of Justice who is not a national of either Contracting Party shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

## **Article 11.**

The provisions of this Agreement shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which may be permitted on the basis of the general rules of international law. Measures of this kind will be lifted no later than the actual end of the dispute, regardless of whether diplomatic relations are restored.

## **Article 12.**

This Agreement shall apply to the Land of Berlin, except for the provisions of Protocol 7, relating to aviation, unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Republic of Tunisia within three months after the entry into force of this Treaty ,

## Article 13.

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended indefinitely unless terminated in writing by one of the two Contracting Parties a year before its expiry. After ten years, the contract may be terminated at any time but remains in force for one year after termination.

(3) For investments made up to the date of the expiry of the contract, Articles 1 to 12 shall continue to apply for a further twenty years from the date of termination of this contract.

DONE at Tunis, this 20th day of December 1963, in four originals, two in German and two in French, each text being equally authentic.

For the Federal Republic of Germany:

Tannstein

Oskar Schlitter

For the Republic of Tunisia:

Ahmed ben Salah

## Protocol

At the time of the signature of the Treaty on the mutual encouragement and protection of capital investments, concluded between the Federal Republic of Germany and the Republic of Tunisia, the undersigned Plenipotentiaries have agreed, in addition, on the following arrangements which shall be considered as forming an integral part of the Treaty

(1) Ad Article 1

Investments made in the territory of one of the Contracting Parties, in accordance with its legislation, by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty. To the extent that an approval procedure is required for an investment, the latter shall enjoy such protection from the date of approval.

(2) Ad Article 2

(a) "Activity" within the meaning of paragraph 2 of Article 2 shall include, but not be limited to, the administration, use, enjoyment and use of an investment. The following in particular shall be considered as "less favourable treatment" within the meaning of paragraph 2 of Article 2: any restriction on the purchase of raw and auxiliary materials, of energy and fuel, and of means of production and operation of any kind, any impediment to the sale of products within the country and abroad, and any other measures having a similar effect. Measures taken for reasons of public safety, order, health or morals shall not be considered as "less favourable treatment" within the meaning of Article 2.

(b) Paragraph 2 of Article 2 shall not apply to entry, residence and employment as an employee.

(3) Ad Article 3

(a) Ad Paragraph 2

The provisions of paragraph 2 of Article 3 shall also apply to the transfer of a capital investment into public ownership, to its placing under public control or to similar interventions by public authorities. "Expropriation" means the withdrawal or limitation of any property right which, alone or together with other rights, constitutes a capital investment.

b) Ad Paragraph 3

By way of derogation from the second sentence of paragraph 3 of Article 3, and upon the granting of a benefit due under the first sentence of paragraph 3 of Article 3, each Contracting Party may decide that such benefit shall be reinvested in its

territory, if such action is necessary for the interests of reconstruction and can be imposed without prejudice to the rightful claimant. In each case, however, the Contracting Parties shall ensure the transfer on the same conditions as those which would be granted in similar cases to nationals or companies of third States.

(4) Ad Article 4

(a) The term "free transfer of capital" refers to capital imported into the territory of one of the Contracting Parties.

(b) Any alienation effected with a view to the total or partial renunciation of the investment shall also be considered as "liquidation" within the meaning of Article 4.

(5) Ad Article 6

Any transfer which takes place within the period of time normally required for compliance with the transfer requirements shall be considered to be effected "without delay" within the meaning of paragraph 1 of Article 6. The time limit shall begin to run on the date of the submission of a request relating thereto and shall in no case exceed two months.

(6) Ad Article 8

(a) The proceeds of the investment and, in case of reinvestment, the proceeds of their reinvestment shall enjoy the same protection as the investment.

(b) For the purposes of paragraph 2 of Article 8, "profit" and "interests" shall mean net amounts.

(c) Without prejudice to other procedures for determining nationality, any person who holds a national passport issued by the competent authorities of the Contracting Party in question shall be considered to be a national of that Party.

(7) Each Contracting Party shall refrain from taking any measures contrary to the principles of free competition and likely to eliminate or hinder the participation of the sea or air navigation of the other Contracting Party in the carriage of goods intended for capital investments within the meaning of this Treaty, or of persons whose carriage takes place in connection with such investments. This provision shall also apply to goods acquired in the territory of a Contracting Party or of a third State with funds from an enterprise in which property has been invested within the meaning of this Treaty, and to persons whose transportation is carried out on behalf of such an enterprise.

DONE at Tunis, this 20th day of December 1963, in four originals, two of which are in the German and two in the French language, each text being equally authentic.

For the Federal Republic of Germany

Tannstein

Oskar Schlitter

For the Tunisian Republic:

Ahmed ben Salah

1.

The President of the Tunisian Delegation

Tunis, December 20, 1963

Dear Mr. President

Referring to the treaty signed today between the Tunisian Republic and the Federal Republic of Germany concerning the encouragement and mutual protection of capital investments, I have the honor to confirm that during our negotiations, a supplementary agreement has been reached on the following point

"The provisions of Article 2 shall not apply to the more favorable treatment accorded by one of the Contracting Parties to nationals or companies of a third State under an international agreement within the framework of an economic union with respect to customs, taxes and other charges, provided that such treatment does not seriously affect the profitability of the enterprises of nationals or companies of the other Contracting Party".

I would be grateful if you could confirm your agreement to the above.

Please accept, Mr. President, the assurance of my highest consideration.

Ahmed ben Salah

To the President of the German Delegation

Mr. Oskar Schlitter

Tunis

The President of the German Delegation

Tunis, December 20, 1963

Dear Mr. President

I have the honor to acknowledge receipt of the letter dated this day and whose terms follow:

"The provisions of Article 2 shall not apply to the more favorable treatment accorded by one of the Contracting Parties to nationals or companies of a third State under an international agreement within the framework of an economic union with respect to customs, taxes and other charges, provided that such treatment does not seriously affect the profitability of the enterprises of nationals or companies of the other Contracting Party.

I would be grateful if you could confirm your agreement to the above".

I have the honor to confirm my agreement to the above.

Please accept, Mr. President, the assurance of my highest consideration.

Oskar Schlitter

To the President of the Tunisian Delegation

Mr. Ahmed ben Salah

Tunis

2.

The President of the Tunisian Delegation

Tunis, December 20, 1963

Dear Mr. President

I have the honour to refer to paragraph 7 of the Protocol annexed to the Treaty on the encouragement and mutual protection of capital investments signed today between the Federal Republic of Germany and the Republic of Tunisia, which reads as follows

"Each Contracting Party shall refrain from taking any measures contrary to the principles of free competition and likely to eliminate or impede the participation of the sea or air navigation of the other Contracting Party in the transport of goods intended for capital investments within the meaning of this Treaty, or of persons whose transport takes place in connection with such investments. This provision shall also apply to goods acquired in the territory of a Contracting Party or of a third State with funds from an enterprise in which capital has been invested within the meaning of this Treaty, and to persons whose transportation is carried out on behalf of such an enterprise".

I should like to point out that the above provisions apply only within the framework of the Treaty signed today, subject, however, to compliance with the commitments entered into by the Tunisian Government with regard to the French Government in the matter of maritime navigation.

I would be grateful if you could give me your agreement on the above.

Please accept, Mr. President, the assurance of my highest consideration.

Ahmed ben Salah

To the President of the German Delegation

Mr. Oskar Schlitter

Tunis

The President of the German Delegation

Tunis, December 20, 1963

Dear Mr. President

I have the honor to acknowledge receipt of your letter of today's date which reads as follows

"I have the honour to refer to paragraph 7 of the Protocol annexed to the Treaty on the mutual encouragement and protection of capital investments signed today between the Federal Republic of Germany and the Republic of Tunisia which reads as follows:

"Each Contracting Party shall refrain from taking any measures contrary to the principles of free competition and likely to eliminate or impede the participation of the sea or air navigation of the other Contracting Party in the transport of goods intended for capital investments within the meaning of this Treaty, or of persons whose transport takes place in connection with such investments. This provision shall also apply to goods acquired in the territory of a Contracting Party or of a third State with funds from an enterprise in which capital has been invested within the meaning of this Treaty, and to persons whose transportation is carried out on behalf of such an enterprise".

I should like to point out that the above provisions apply only within the framework of the Treaty signed today, subject, however, to compliance with the commitments entered into by the Tunisian Government with regard to the French Government in the matter of maritime navigation.

I should be grateful if you would give me your agreement to the foregoing."

I have the honor to confirm my agreement to the foregoing.

I take this opportunity, however, to inform you that, in the opinion of the Government of the Federal Republic of Germany, this reservation can only remain valid as long as such special regulations are granted to France by the O.C.E.D.

Please accept, Mr. President, the assurance of my highest consideration.

Oskar Schlitter

To the President of the Tunisian Delegation

Mr. Ahmed ben Salah

Tunis

3.

The President of the Tunisian Delegation

Tunis, December 20, 1963

Dear Mr. President

Referring to the treaty signed today between the Tunisian Republic and the Federal Republic of Germany concerning the encouragement and mutual protection of capital investments, I have the honor to confirm that in the course of our negotiations, a supplementary agreement has been reached on the following point

"In order to facilitate the operations and encourage the development of capital investments made by German nationals or companies, the Tunisian State will grant to German nationals, who, in connection with capital investments made by German nationals or companies, the right to apply to the Tunisian State for a visa. These provisions may not, however, be applied to German nationals or companies who wish to enter, reside in, or work as employees in the Tunisian Republic, unless reasons of public order, safety, health, or morality prevent them from doing so. These provisions may not, however, be applied to workers without professional qualifications in accordance with the Tunisian legislation in force relating to the protection of the national workforce".

I would be grateful if you could confirm your agreement to the above.

Please accept, Mr. President, the assurance of my highest consideration.

Ahmed ben Salah

To the President of the German Delegation

Mr. Oskar Schlitter

Tunis

The President of the German Delegation

Mr. Chairman,

Tunis, December 20, 1963

I have the honor to acknowledge receipt of the following letter dated today:

"Referring to the treaty signed today between the Tunisian Republic and the Federal Republic of Germany concerning the encouragement and mutual protection of capital investments, I have the honor to confirm that in the course of our negotiations a supplementary agreement has been reached on the following point:

In order to facilitate the operations and encourage the development of capital investments made by German nationals or companies, the Tunisian State will grant to German nationals, who, in connection with capital investments made by German nationals or companies, the right to apply to the Tunisian State for a visa. These provisions may not, however, be applied to German nationals or companies who wish to enter, reside in, or work as employees in the Tunisian Republic, unless reasons of public order, safety, health, or morality prevent them from doing so. These provisions may not, however, be applied to workers without professional qualifications in accordance with the Tunisian legislation in force relating to the protection of the national workforce.

I would be grateful if you could confirm your agreement to the above".

I have the honor to confirm my agreement with the above.

Please accept, Mr. President, the assurance of my highest consideration.

Oskar Schlitter

To the President of the Tunisian Delegation

Mr. Ahmed ben Salah

Tunis

Please accept, Mr. President, the assurance of my highest consideration.

Oskar Schlitter

To the President of the Tunisian Delegation

Mr. Ahmed ben Salah

Tunis

3.