

# **Agreement between the Government of the Republic of Poland and the Republic of Tunisia concerning the reciprocal promotion and protection of investments**

The Government of the Republic of Poland and the Government of the Republic of Tunisia ci-après referred to as the contracting parties.

Desiring to intensify economic cooperation in the mutual interest of both States;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other contracting party.

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both contracting parties.

Have agreed as follows:

## **Article 1er. Definitions**

For the purposes of the present Agreement

(1) The term means investor in respect of either Contracting Party.

a) Natural persons having the nationality of that Contracting Party and making an investment in the territory of the other contracting party.

b) Any legal entity including companies, associations of companies or any other legally constituted under the laws and regulations of that Contracting Party, having their seat in the territory of that same Contracting Party, in which the interests of investors of the said party dominate and making an investment in the territory of the other contracting party.

(2) The term "investment" means all categories of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular though not exclusively:

a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges;

b) The actions, and other forms of participation shares in companies.

c) Monetary claims and rights to any performance having an economic value

d) Copyrights, industrial property rights, such as patents, utility models, industrial designs, trademarks, trade names, indication of origin), know-how and goodwill.

e) The rights conferred by a public authority to perform an economic activity, including concessions, including extract concessions to search for or exploit natural resources.

Any change in the form of an investment made in accordance with the laws and regulations in force in the host country does not affect its character of investment.

(3) The term means all amounts yielded returns by an investment and in particular, though not exclusively, interests, capital gains, profits, dividends, royalties or any other income.

(4) The term territory means the territory of a Contracting Party as well as the maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of one or both of the territories referred to above, over which the State concerned exercises sovereign rights, in accordance with international law, for the purpose of the exploration and

exploitation of natural resources of such areas.

## **Article 2. Promotion and Protection of Investments**

(1) Each Contracting Party shall encourage investors of the other contracting party to invest capital in its territory including by creating favourable conditions for the achievement of investments, at the entry of such investments in accordance with its laws and regulations.

(2) Investors of either contracting party made in accordance with the laws and regulations of the host State shall enjoy fair and equitable treatment

(3) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale and, where appropriate, the liquidation of such investments.

## **Article 3. Treatment of Investments**

(1) Each Contracting Party shall in its territory fair and equitable treatment to investments of investors of the other contracting party. this treatment shall not be less favourable than that granted by each contracting party to investments made within its territory or by its own investors than that granted by each contracting party to investments made in its territory by investors of the most favoured nation treatment, if the latter is more favourable.

(2) The most-favoured-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union, common market, any regional economic organization or to an existing or future convention on tax matters.

## **Article 4. Expropriation and Compensation**

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments belonging to investors of the other contracting party except for reasons of public interest and provided that such measures are not discriminatory, that they comply with the legal requirements and provide for payment of adequate and effective compensation. the amount of compensation shall be settled in a freely convertible currency and shall be paid without undue delay.

(2) Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, riot, revolt événements, state of emergency or other similar events in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with Article 3, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or any other consideration pertinente. alinéa (2) of this Agreement as regards restitution, indemnification, compensation or other relevant counterpart.

## **Article 5. Transfer of Funds**

Each Contracting Party shall, in particular to an investor of the other contracting party, the prompt transfer:

- a) Income accruing from any investment;
- b) The proceeds of the total or partial liquidation of any investment;
- c) Of monies in repayment of loans related to an investment.
- d) A proportion of wages and other remuneration accruing to citizens of that Contracting Party who have been authorised to work in the territory of the first Contracting Party in respect of an investment;
- e) Any compensation owed to an investor by virtue of article 4 of this agreement; article 4 of this Agreement;

In any convertible currency determined by mutual agreement between the investor and the Contracting Party concerned and at the rate of exchange prevailing on the date of transfer.

## **Article 6. Subrogation**

If one of the contracting parties or institution authorised by the party by virtue of a guarantee given in respect of an investment made in the territory of the other contracting party, makes payment to one of its investors and the other

Contracting Party shall recognize, without prejudice to the rights of the investor of the first Contracting Party under Article 7 and the rights of the first contracting party under article 8, the Contracting Party to transfer the first of all the rights of the investor by law or under contract, subject to the availability of claims. in addition to the other Contracting Party shall recognize the subrogation of the first contracting party in all these rights, subject to the availability of claims and that the first contracting party is entitled to exercise to the same extent as its predecessor in title.

For the transfer of payments due to the respective Contracting Party where other rights under articles 4 and 5 of this Agreement shall apply mutatis mutandis.

## **Article 7. Disputes between a Contracting Party and an Investor of the other Contracting Party**

(1) Any investment dispute between an investor of one Contracting Party and the other Contracting Party with respect to matters governed by this Agreement shall, as far as possible, be settled by amicable consultations between the parties to the dispute;

(2) If these consultations do not resolve the dispute may be submitted to the competent court or administrative tribunal of the Contracting Party in whose territory the investment is located;

(3) If a dispute exists at the end of a period of 18 months from the notification of the document instituting the proceedings before the Court, the dispute may be submitted to international arbitration;

To this end, each Contracting Party shall, under the terms of this Agreement anticipated and irrevocable consent to the submission of a dispute to arbitration;

(4) Since the introduction of one of the arbitration procedures, each Party to the dispute shall take all necessary measures with a view to its removal of the proceedings;

(5) In the event of recourse to international arbitration, the dispute may be submitted to one of the arbitral tribunals referred to below, at the choice of the investor:

- The International Centre for the Settlement of Investment Disputes (c.i.r.d.i.), 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 State Party to this Agreement has acceded to it. as long as this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the Additional Facility Rules of c.i.r.d.i;

- to an ad-hoc arbitrage tribunal established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (c.n.u.d.c.i);

## **Article 8. Disputes between the Contracting Parties**

(1) Disputes between the contracting parties concerning the interpretation and application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within 12 months from the date on which the dispute has arisen, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State having diplomatic relations with both contracting parties.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other contracting party to make such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party, by the Secretary-General of the United Nations;

(4) If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the Secretary-General of the United Nations;

(5) If in the cases specified under paragraphs (3) and (4) of this article, the Secretary-General of the United Nations is prevented from exercising his mandate or if he is a national of either Contracting Party, the appointment shall be made by the Under-Secretary-General, and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the organization who is not a national of either of the contracting parties; subparagraphs (3) and (4) of this article, the Secretary-General of the United Nations is prevented from exercising his mandate or if he is a national of either Contracting Party, the appointment shall be made by the Under-Secretary-General, and if the latter is

prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the organization who is not a national of either of the contracting parties;

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure. the tribunal shall reach its decisions by a majority of votes.

(7) The decisions of the Tribunal are final and binding on the contracting parties.

(8) Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. the Tribunal may, however, decide that one of the two Contracting Parties shall bear a higher proportion of costs and this decision shall be binding on both contracting parties.

## **Article 9. Other International Agreements**

Where a matter is governed by this Agreement and simultaneously by another international agreement between the two contracting parties, nothing in this Agreement shall prevent an investor of one Contracting Party whose investments in the territory of the other Contracting Party to which it is the more favourable.

## **Article 10. Consultation and Exchange of Information**

At the request of either Contracting Party, the other contracting party consents promptly to the consultations on the interpretation or application of this Agreement.

## **Article 11. Entry Into Force**

(1) This Agreement shall enter into force on the date on which the two Contracting Parties shall notify each other in writing of the completion of the constitutional procedures required for that purpose;

(2) This Agreement shall apply to any investment of an investor of one Contracting Party in the territory of the other contracting party effected on 25 May 1976 or after that date.

## **Article 12. Duration and Termination**

This Agreement shall remain in force for a period of ten years and thereafter indefinitely unless one of the Contracting Parties has not notified in writing to the other contracting party of its intention to terminate the agreement. the notice of denunciation shall take effect one year after the date of receipt by the other contracting party. in respect of investments made prior to the date when the notice of termination becomes effective, the provisions of this Agreement shall remain in force for a period of ten years.

In WITNESS WHEREOF, the representatives of the two Governments, duly authorized thereto, have signed the present Agreement.

For the Government of the Republic of Poland

For the Government of the Republic of Tunisia