

Agreement between the Government of the People's Democratic Republic of Algeria and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investments

Preamble:

The Government of the People's Democratic Republic of Algeria and the Government of the Kingdom of Sweden, hereinafter referred to collectively as "Contracting Parties" and "Contracting Party";

Desiring to intensify economic cooperation in the mutual interest of both countries and fair and equitable create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal promotion and protection of such investments will encourage the expansion of economic relations between the contracting parties and promotes investment initiatives;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment is made in accordance with the laws and regulations of the other Contracting Party and includes in particular but not exclusively :

- a) Movable and immovable property and any other property rights such as mortgages, liens, pledges, usufruct and similar rights;
- b) Companies or firms or shares or any other forms of company profits;
- c) Obligations or any other performance having an economic value;
- d) Intellectual property rights, technical processes, trade names, trademarks, know-how and good will;
- e) The business concessions granted by law or by virtue of an administrative decision or a contract for research and development or extract or exploit natural resources.

The goods placed at the disposal of a lessee under a contract of hire, in the territory of one of the Contracting Parties on the part of the legislator regarded as an investor of the other Contracting Party, shall be accorded treatment no less favourable than that accorded to investments.

Any alteration of the form in which assets are invested shall not affect their character as investments.

2. The term investor of a Contracting Party means:

- a) Any natural person having the nationality of that Contracting Party in accordance with the laws, and
- b) Any legal person or any other entity established or organized in accordance with the laws of that Contracting Party; and
- c) Any legal person not organized under the laws of that Contracting Party but controlled by an investor as provided for in paragraphs (a) and (b).

3. The term "returns" means the amounts yielded by an investment and in particular though not exclusively, include profit, capital gains, interest, dividends, royalties or fees.

4. The term "territory" means the territory of either Contracting Party, including the territorial waters as well as the maritime zones beyond the outer limit of the territorial sea over which the contracting party exercises its laws or its sovereign rights in accordance with its national laws that are consistent with international law.

Article 2. Promotion and Protection of Investments

1. Having regard to their general policy in the field of foreign investment, each Contracting Party shall and promote and admit investments in its territory by investors of the other Contracting Party in accordance with its legislation.
2. In accordance with the laws and regulations relating to the entry and residence of foreigners, it shall be permitted to persons working for an investor of one Contracting Party, as well as Members of their families, to enter, to establish and leave the territory of the other Contracting Party, to carry out activities in connection with investments in the territory of the latter Contracting Party.
3. Each Contracting Party shall at all times fair and equitable treatment to the investments of investors of the other Contracting Party and shall not hinder unreasonable or discriminatory measures by the management, maintenance, use, enjoyment or disposal as well as the acquisition of goods and services and the proceeds from sale.
4. Each Contracting Party shall provide the means for asserting claims and enforcing rights relating to the protection of investments under this Agreement.
5. Each Contracting Party shall promptly publish or make available to the public in whatever manner, laws, regulations, administrative practices and procedures of general application or concerning investments under this Agreement.
6. Investments made in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made, shall benefit from the full protection of this Agreement. In no case shall any Contracting Party grant less favourable treatment than that provided for by international law binding on the Parties. Each Contracting Party shall respect its obligations to investors of the other Contracting Party with respect to their investments.
7. Investment returns enjoy the same treatment and protection to the investments.

Article 3. Concept of the Most-favoured-nation Clause In the Treatment of Investments

1. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of a third State and account shall be taken of the most favourable treatment.
2. Without prejudice to the provisions of paragraph 1 of this Article, each Contracting Party which has concluded or may conclude an agreement on a customs union, a common market or a free-trade area shall be free to grant, in accordance with the agreements, more favourable treatment to investments of investors of the State or States which are also Parties to the agreements listed above or by investors of some of these States.
3. The provisions of paragraph 1 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the treatment of any benefit or privilege, resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation

1. Neither Contracting Party shall take any action against investors of the other Contracting Party which directly or indirectly deprives them of their investments unless the following conditions are met :
 - a) the measures are taken in the public interest in accordance with legal procedures ;
 - b) The measures that are not discriminatory; and
 - c) The measures taken shall be accompanied by a prompt, effective and adequate compensation, which shall be transferable without delay in a freely convertible currency.
2. The amount of compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation or before the time when the proceeding is available to the public in a manner that would be prejudicial to the value of the Investment, whichever is sooner (the cases referred to hereinafter referred to as the valuation date).

The fair market value of such transfer shall be made freely at the request of the investor in a freely convertible currency on the basis of a banking market rate for that currency on the date of its assessment. such compensation shall include at a commercial interest rate fixed in accordance with market prices since the date of expropriation until the date of payment (depending on the market price applicable).

3. The provisions of paragraphs 1 and 2 of this Article shall also apply when the contracting parties will carry out the expropriation of assets of the company organised or constituted in accordance with its laws and regulations and which are associated with investors of the other Contracting Party from taking action or any other form of participation.

Article 5. Compensation

1. Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party suffer losses as a result of war, armed conflict, national emergency, revolution, revolt, rebellion, an act of vandalism, restitution, and compensation or any other settlement shall be accorded treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of a third State. The transfer of compensation resulting from the foregoing shall be effected without delay and in a convertible currency.

2. Without prejudice to the provisions of paragraph 1 of this article and in the case referred to in this paragraph, investors of one Contracting Party who suffer losses in the territory of the other Contracting Party resulting from:

- a) The requisitioning of its investment or part thereof by its authorities;
 - b) The destruction of its investment or part thereof by its authorities without the necessity to the event not justifying it,
- shall be entitled in all circumstances to restitution or prompt, effective and adequate compensation.

Article 6. Transfers

1. Each Contracting Party shall without delay allow the free transfer of payments relating to an investment in a convertible currency and include such transfers in particular though not exclusively:

- a) Returns;
- b) The proceeds of the total or partial sale or liquidation of any investment of an investor of a Contracting Party;
- c) The capital in repayment of loans and other amounts intended to cover expenses relating to the management of the investment;
- d) The compensation paid pursuant to articles 4 and 5;
- e) The earnings of persons, other than its nationals, who are allowed to work in connection with an investment in its territory.

2. Each transfer under this Agreement shall be made at the commercial rate of exchange prevailing on the day of transfer in a convertible currency, taking into account current transactions. In the absence of a foreign exchange market, the most recent rate of exchange applied to domestic investments or the most recent rate for the conversion of currencies into Special Drawing Rights shall be used, whichever is more favourable to the investor.

Article 7. Subrogation

If one Contracting Party or its agency makes a payment to one of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter agrees, without prejudice to the rights of the first Contracting Party in accordance with article 9, the transfer of any right or title to an investor of the first Contracting Party or its designated agency as well as the right of the former Contracting Party or its designated agency to exercise one of the rights or securities by virtue of subrogation, to the same extent as the original owner.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party relating to an investment shall, as far as possible, be settled amicably.

2. If the dispute has not been settled within six (6) months, from the date at which it was raised by an investor by written

notification to the Contracting Party, each Contracting Party agrees to submit the dispute, in accordance with the choice of the investor, to international arbitration in its rules of procedure, to one of the following bodies:

- a) The International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided that the Contracting Parties shall have become a party to this Convention; or
- b) The Additional Facility of the Centre, if the Agreement does not provide for such a Centre or;
- c) An ad hoc tribunal constituted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law.

The appointing authority, in accordance with these Regulations, lies with the Secretary-General of the International Centre for Settlement of Investment Disputes.

If the positions of the parties to the dispute differ as to the appropriate way to settle the dispute, either amicably or through arbitration, the choice lies with the investor.

3. By virtue of the provisions of this Article and of Article (25) (2) (b) of the abovementioned Washington Convention, any legal person established under the law of one of the Contracting Parties and which is under the control of an investor of the other Contracting Party, before the dispute arises, shall be accorded the same treatment as that accorded to nationals of the other Contracting Party.

4. Any arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes or the Arbitration Rules of the United Nations Commission of International Trade Law and at the request of either party to the dispute, shall be held in a State that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 (the New York Convention).

5. The consent given by each of the Contracting Parties pursuant to paragraph 2, as well as the submission of the dispute by the investor pursuant to that paragraph, shall be deemed to be a written approval or agreement by the parties to the dispute to submit it for settlement under Chapter II of the Washington Convention (Tribunal at the Centre) and the Additional Facility Rules and Article 1 relating to the Arbitration Rules of the United Nations Commission on International Trade Law and Article 2 of the New York Convention.

6. In any proceedings relating to an investment dispute, neither Contracting Party may invoke, as a defence, a counterclaim, the right of legal proceedings or, for any other reason, have received compensation for losses, or part thereof, which it claims to have suffered, under a contract of insurance or guarantee; however, the Contracting Party may require proof that the party responsible for compensation consents to the investor's exercise of the right to demand compensation.

7. The arbitral award rendered in accordance with this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the enforcement of the provisions of such award without delay and shall endeavour to apply it in its territory.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled by negotiations between the Governments of the Contracting Parties.

2. If the dispute has not been settled within a period of six (6) months from the date of the request for such negotiations by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The arbitral tribunal shall be constituted for each individual case, and each Contracting Party shall appoint one member. The two members shall select a national of a third State as Chairman who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months (2) and the Chairman within four (4) months after the date on which either Contracting Party notifies the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 of this article are not respected and in the absence of any other agreement, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments.

5. If the President of the International Court of Justice is prevented from carrying out the tasks referred to in paragraph (4) of this article or is a national of either Contracting Party, the Vice-President will make the necessary appointments. If the Vice-President is prevented from discharging this mission or if he is a national of either Contracting Party, it shall request the

senior member of the Court and that is not prevented from discharging this mission who is not a national of either Contracting Party, to make the appointments.

6. The arbitral tribunal shall make its decisions by a majority of votes. The decisions shall be final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs of representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. However, the arbitral tribunal may order in its decision that additional costs shall be borne by one of the Contracting Parties. As regards the other aspects, the arbitral tribunal shall determine its own rules of procedure.

Article 10. Implementation of the Agreement

1. This Agreement shall apply to investments made before or after its entry into force. However, it shall not apply to any dispute concerning an investment which occurred or any claim concerning an investment which was settled before its entry into force.

2. This Agreement shall in no way restrict the rights and benefits granted to an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its national law and international law requiring the parties.

Article 11. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify the fulfilment of constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of twenty (20) years. Thereafter it shall remain in force until the end of twelve (12) months from the date on which either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement.

3. Notwithstanding, the investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of articles 1 to 10 shall continue to apply for a further period of twenty years from that date.

In WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Algiers on 15 February 2003 in two originals in the Arabic, English and Swedish languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the People's Democratic Republic of Algeria

Minister of Finance

Mohamed TERBECHE

For the Government of the Kingdom of Sweden

Minister of Finance

Bossè RINGHOLM

Protocol to the Agreement between the Government of the People's Democratic Republic of Algeria and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investments

This Protocol shall constitute an integral part of the Agreement.

In accordance with Article 8 on the settlement of disputes between an investor and a Contracting Party, the Contracting Parties consider that recourse to national jurisdiction is not excluded.

For the Government of the People's Democratic Republic of Algeria

Minister of Finance

Mohamed TERBECHE

For the Government of the Kingdom of Sweden

Minister of Finance

Bossè RINGHOLM