

# **Agreement on the encouragement and protection of investments between the Government of the Republic of Tunisia and the Government of the Republic of Sudan**

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

Desiring to strengthen economic relations and intensify cooperation between the two countries and to create and maintain favorable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that encouraging and protecting such investments would initiate and stimulate private investment initiatives,

They have agreed as follows:

## **Article 1. Definitions**

For the purposes of this agreement:

1. The term "investment" applies to all classes of assets formed or acquired by an investor of one Contracting Party in the territory of the other Contracting Party (the host party) in accordance with the laws and regulations (arrangements) of this host party, and includes, in particular, but not limited to:

- a. Movable property, real estate, and other rights in rem, such as guarantees, mortgages, other mortgages, liens and usufructs.
- b. Shares, bonds and any other types of shares in companies.
- c. Debts or any right arising from services that have an economic value.
- d. Intellectual and industrial property rights such as copyrights, patents, industrial designs, trademarks and skills.
- e. Any right granted by law or contract, including concessions, relating to the search, development, extraction and exploitation of natural resources.

Any change in the form in which the assets are invested or reinvested shall not affect its form as an investment under this Agreement provided that such change is in accordance with the laws and regulations of the Contracting Party hosting the investment.

2. The term "investor" refers to:

- a. Any natural person who holds the nationality of one Contracting Party in accordance with its laws and regulations and who invests in the territory of the other Contracting Party.
- B. Any legal person established or created in accordance with the laws and regulations of one Contracting Party and makes an investment in the territory of the other Contracting Party.

3. The term "returns" refers to the amounts generated from an investment and includes in particular, but is not limited to profits, dividends, excess value, royalties and other rewards.

The proceeds that have been reinvested in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, shall benefit from the same treatment as the original investor.

4. The term "territory" for each Contracting Party refers to the territory under its sovereignty, including the territorial sea, the special economic zones, the continental shelf, and other marine areas over which this Contracting Party exercises sovereign

rights or jurisdiction in accordance with international law.

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

1. Each Contracting Party shall encourage investments made in its territory by investors of the other Contracting Party and shall accept such investments in accordance with its laws and regulations.

2. Each Contracting Party shall accord investments made in its territory by investors of the other Contracting Party with a fair and equitable treatment and shall not be to prejudice by unreasonable or discriminatory measures the activities of such investors or the management, maintenance, use, or enjoyment of such investments by investors. Each Contracting Party shall grant such investments with full protection and security.

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

1. Each Contracting Party shall accord investments made in its territory by investors of the other Contracting Party and the proceeds of such investments a fair and equitable treatment, and this treatment may not in any case be less favorable than the treatment accorded to investors or investors of the most favored country, provided that the treatment is most favorable to the investor.

2. The provisions of this Agreement shall not be construed to obligate one Contracting Party to grant to the investors of the other Contracting Party the advantage of any preferential or concessional transaction arising under:

- a. On the existing or future free trade zone, customs union, common market, or any regional economic agreement to which one of the Contracting Parties may be a part of:
- b. Or any agreement or arrangement that relates wholly or mostly to taxes.
- c. Or any multilateral agreement or treaty that relates wholly or mostly to investments.

## **Article 4. Compensation for Losses**

Investors of a Contracting Party whose investments made in the territory of the other Contracting Party have suffered losses resulting from war, armed conflict, revolution, emergency, insurrection, rebellion or riot shall benefit from treatment by the host party no less favorable treatment than the treatment accorded to investors of this host party, or to investors of the parties that has the most-favored nation treatment, provided that it gives the most favorable treatment to the investor, with regard to compensation, reparation, or any other settlement.

## **Article 5. Expropriation**

1. The Contracting Parties shall not expropriate or nationalize investments made by investors of the other Contracting Party in its territory, or to subject them to any other procedures, directly or indirectly, that have a result similar to expropriation or nationalization (hereinafter referred to as expropriation) except for the purpose of public interest and on a non-discriminatory basis. In accordance with the procedures stipulated by law and in return for prompt, adequate and effective compensation.

2. The compensation shall be equivalent to the fair market value of the investment that was expropriated immediately before the expropriation took place or was announced to the public, whichever comes first.

3. Compensation shall be paid without delay and transferable to the territory of the other Contracting Party to which the investor belongs or any other country agreed upon between the investor and the Contracting Party that expropriated the property, and shall include equitable compensation for any delay in payment caused by the Contracting Party.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the freedom to transfer investment-related payments, such payments shall include, but are not limited to:

- a. The original amounts and those added to maintain, develop or increase the investment.
- b. returns
- c. The returns to the sale or the partial or complete liquidation of the investment, including the excess of the value of the

invested capital.

d. Completed payments to repay legally concluded loans.

e. Royalties and other bonuses.

f. Compensation paid in accordance with Articles (4 and 5)

g. Earnings and wages of employees who are seconded from abroad and working in the framework of investment, in accordance with the laws and legislations in force in the host party.

2 The transfers referred to in the first paragraph of this Article shall be effected without any restriction or delay in a convertible currency and at the prevailing market exchange rate applicable on the date of the transfer for current transactions in the transfer currency.

## **Article 7. Subrogation**

If a Contracting Party or an agency which it has designated makes payments to its investors under a risk against non-commercial risks in connection with an investment that was made in the territory of the other Contracting Party, the other Contracting Party shall recognize, either by law or under a legal contract, an assignment in favor of the first Contracting Party or the agency which has designated it. Exercising those rights and executing those claims in accordance with the subrogation and to the same extent as the original investor is entitled.

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

1. Any legal dispute arising between a Contracting Party and an investor of the other Contracting Party regarding an investment shall be settled amicably between the two parties to the dispute, if possible.

2. If it is not possible to settle the dispute within six months starting from the date of its submission in writing, it can be submitted by the investor's choice to:

a. The competent courts of the Contracting Party who made the investment in its territory, or

B. Arbitration with the International Center for the Settlement of Related Disputes, which was established under the Convention on the Settlement of Disputes Relating to Investments between States and Nationals of Other States and opened for signature in Washington on March 18, 1965, or

c. A special arbitral tribunal, to be constituted in accordance with the arbitration rules of the United Nations Commission on International Trade Law, unless the parties to the dispute agree otherwise, or

d. In accordance with the provisions of Chapter VI of the Unified Agreement for the Investment of Arab Capital in the Arab Countries for the year 1980

3. The parties to the dispute finally agree that all disputes related to investments shall be submitted to the courts or to arbitration at the International Center or the arbitral tribunal stipulated in paragraph (2) at the option of the investor, provided that this choice is final.

4. Neither Contracting Party that is a party to the dispute may bring an opposing action at any stage of the arbitral proceedings or of the enforcement of arbitral awards on the grounds that the investor of the other party to the dispute may receive compensation for all or part of the losses under a guarantee.

5. The arbitral awards shall be final and binding on the parties to the dispute.

## **Article 9. Dispute Settlement between the Contracting Parties**

1. Any dispute arising between the Contracting Parties relating to the application or interpretation of this Agreement shall be settled by diplomatic means.

2. If the dispute cannot be settled within six months starting from the date of the request for negotiations by either of the Contracting Parties, any Contracting Party may submit the matter to arbitration in accordance with this article by means of a written notification to the other Contracting Party.

3. An arbitral tribunal shall be formed for each special case, and each Contracting Party appoints a member, and the two members choose one of the nationals of a third country to be appointed by the two Contracting Parties as president of the

commission.

4. If the necessary appointments have not been made within the period stipulated in paragraph (3) of this Article and in the absence of another agreement, any Contracting Party may invite the President of the International Court of Justice to make the necessary appointments, and if the President is a national of a Contracting Party or is unable to perform the aforementioned tasks, a deputy shall be called The president who is immediately next in rank and who is not a national of any Contracting Party and has not been able to perform the aforementioned tasks to make the necessary appointments.

5. The arbitral tribunal takes its decisions by a majority of votes and determines its own procedures. The arbitral tribunal shall take its decisions in accordance with this Agreement, the provisions in force and the principles of international law. The decisions of the tribunal shall be final and binding on the two Contracting Parties.

6. Both Contracting Parties shall equally bear the expenses of the authority, including the remunerations of its members, provided that the authority may decide to incur a larger share of the expenses for one of the Contracting Parties.

## **Article 10. Application of other Provisions**

When the provisions of the law of any Contracting Party or obligations under international law currently existing between the Contracting Parties or to be established in the future in addition to this Agreement contain general or special provisions granting treatment more preferential than the treatment accorded in accordance with this Agreement to an investment made by investors of the other Contracting Party, such provisions prevail over the content of this Agreement.

## **Article 11. Scope of Application**

This Agreement applies to investments created or acquired starting from the entry into force of the Agreement.

This Agreement also applies to investments formed or acquired starting from January 1957 that exist when the Agreement enters into force, provided that it does not apply to any existing dispute relating to an investment or any investment related claims that have been settled prior to its entry into force.

## **Article 12. Final Provisions**

1. This Agreement shall enter into force as of the date of the exchange of ratification documents related to the completion of constitutional procedures in both countries.

2. This Agreement shall remain in force for a period of 15 years. After the expiry of this period, each Contracting Party may at any time notify the other Contracting Party of its decision to terminate the operation of this agreement by a Notice to the other party.

3. With regard to investments made prior to the date on which the written notice of termination of this Agreement is effective, the provisions of Articles 1 to 11 shall remain in force for another 15 years starting from the date of the notice stipulated in Paragraph (2) of this Article.

In witness to the foregoing, the two Plenipotentiaries whose names will be recorded hereafter have signed this Agreement on behalf of their respective Governments.

Done and signed in Tunis on October 8, 2003 in two original copies in the Arabic language, each with the same argument.

For the Government of the Republic of Tunisia

Hatem bin Salem

Secretary of State to the Minister of Foreign Affairs

In charge of Moroccan and African Affairs For the Government of the Republic of Sudan

Dr.Tijani Saleh Fadhil

Minister of State at the Ministry of Foreign Affairs