

# **AGREEMENT between the Government of the Republic of Austria and the Government of the People's Democratic Republic of Algeria on the reciprocal promotion and protection of investments**

## PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE DEMOCRATIC VOLKSREPUBLIC OF ALGERIA, hereinafter referred to as "Contracting Parties"

WISHING to create favorable conditions for greater economic cooperation in many sectors,

RECOGNIZING that the promotion and protection of investment can strengthen the readiness to undertake such investments and thereby make an important contribution to the development of economic relations,

IN CONVICTION; The promotion and protection of investments will help to stimulate the liberalization of capital movements as well as the flow of investment and transfer of technology between the contracting parties in the interests of their development and economic prosperity as well as the standards and rules of international law to which both Contracting Parties attach,

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement

(1) The term "investor"

a) Any natural person who is a national of one of the Contracting Parties in accordance with its applicable legislation;

b) Any company established or organized under the applicable legislation of a Contracting Party,

And has made or made an investment in the territory of the other Contracting Party.

(2) The term "investment" means all assets in the territory of a Contracting Party which are directly or indirectly owned or controlled by an investor of the other Contracting Parties including:

a) All movable and immovable assets as well as all other rights in rem in the form of leases, mortgages, pre-emptive rights or other safeguards;

b) Shares, share rights and obligations of a company as well as all other types of participations in a company;

c) Claims on money and claims on a contractually agreed service having an economic value;

d) Intellectual property rights as defined in the international agreements to which both Contracting Parties have joined, in particular copyrights, inventor's patents, industrial design patents, trademarks, trade names, trade and commercial secrets, technical procedures and know-how;

e) By means of concessions for the search, preparation, extraction or exploitation of natural resources or permits of an economic activity.

(3) The term "company" means any legal person established under the applicable laws of a contracting party and subject to private or state ownership or under private or governmental control, including corporations and trusts, partnerships, individuals, branches, joint ventures or associations.

(4) The term "income" means the amounts that an investment provides, in particular profits, interest, capital gains,

dividends, royalties, royalties or other charges.

(5) The term "territory" means, in addition to the mainland and territorial waters, the various marine zones through which the Contracting Parties exercise jurisdiction and sovereign rights to search, exploit, conserve, research and exploit natural resources, in accordance with national and international law, The subsoil and the surrounding waters.

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

(1) Each Contracting Party shall, and in accordance with its laws and regulations, encourage investment from investors of the other Contracting Parties.

(2) Any change in the manner in which assets are invested or reinvested does not affect their property as an investment as defined in Article 1 (2) of this Agreement, provided that the amendment is in accordance with the laws and regulations of the Contracting Parties, The territory of which the investment has been made is defined in paragraph 2 of this Agreement, provided that the change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made.

## **Article 3. Treatment and Protection of Investment**

(1) Each Contracting Party grants investment by investors of the other Contracting Parties fair and equitable treatment as well as full and comprehensive protection and security.

(2) No Contracting Party shall adversely affect the administration, operation, maintenance, use, enjoyment, sale and liquidation of an investment by investors of the other Contracting Parties by inappropriate or discriminatory measures.

(3) Each Contracting Party shall, on its territory, grant to investors of the other Contracting Parties and their investments no less favorable treatment than their own investors and their investments or investors of third States and their investments.

(4) Nothing in this Agreement shall be construed to imply that a Contracting Party is obliged to grant to the investors of the other Contracting Parties and their investments the present or future advantage of any treatment, preference or privilege arising out of

a) Membership in a free trade area, a customs union, a common market, an economic community or a multilateral investment agreement,

b) An international agreement, an international agreement or any other agreement on tax issues.

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

(1) Investments made by an investor of a Contracting Party may not be nationalized or expropriated in the territory of the other Contracting Party or subject to measures having equivalent effect to nationalisations or expropriations (hereinafter referred to as "expropriation"), except for a purpose of public interest, on the basis of a lawful procedure, On the basis of non-discrimination and against payment of a prompt, reasonable and effective compensation in accordance with paragraphs 2 and 3 of this Article. Paragraphs 2 and 3 of this Article.

(2) Such compensation shall at least have the market value of the expropriated investment immediately before the decision on the execution of the expropriation or before it becomes publicly known, whichever is the earlier, and shall be made without delay. Compensation includes interest from the date of expropriation up to the date of actual payment, calculated at normal commercial rate.

(3) The investor affected by the expropriation has the right to investigate the case, including the valuation of its investment, in accordance with the laws and regulations of the Contracting Party which caused the expropriation, and in accordance with the provisions of paragraph 1 of this Article by a judicial or other person Competent and independent body of that Contracting Party. Paragraph 1 of this Article shall be reviewed by a judicial or other competent and independent body of such Contracting Party.

## **Article 5. Compensation for Losses**

(1) An investor in a Contracting Party whose investment in the territory of the other Contracting Party suffers a loss due to war or other armed conflict, revolution, revolt, insurrection, civil unrest, emergency or other similar event shall be subject to reimbursement, compensation and damages Or other arrangement by the latter Contracting Party is no less favorable

treatment than that granted to its own investors or investors of a third country.

(2) Without prejudice to paragraph 1, investors in a Contracting Party which, in the event of an event referred to in this paragraph, suffer losses in the territory of the other Contracting Party through seizure or damage caused by State institutions shall promptly and adequately compensate for losses sustained during confiscation or damage (1) Investors in a Contracting Party who suffer losses in the territory of the other Contracting Parties in the event of losses resulting from confiscation or damage caused by public authorities shall be promptly and adequately compensated for losses sustained during the confiscation or destruction Losses.

## **Article 6. Transfers**

(1) Each Contracting Party shall ensure that all payments made in connection with an investment by an investor of the other Contracting Parties may be transferred freely and without delay to and from its territory. These transfers shall include in particular:

- a) The initial capital and additional amounts for the maintenance or expansion of an investment;
- b) Income;
- c) Payments on the basis of contracts, including loan agreements;
- d) Proceeds from the complete or partial sale or liquidation of an investment;
- e) Compensation payments pursuant to Articles 5 and 6, Articles 5 and 6;
- f) Payments due to dispute resolution.

(2) Each Contracting Party shall ensure that such transfers may be effected in a freely convertible currency at the exchange rate in force on the date of the transfer in the territory of the Contracting Party from which the transfer is made.

(3) In the absence of a foreign exchange market, the rate to be applied is that of the last exchange rate for the conversion of foreign exchange into special drawing rights.

## **Article 7. Subrogation**

Where a Contracting Party or an institution authorized by the Contracting Party for payment of a guarantee, guarantee or insurance contract for a investment by an investor in the territory of the other Contracting Party receives a payment, the latter Contracting Party shall recognize the rights of the investor of the former Contracting Parties mentioned in Article 10 The transfer of all rights and claims of the investor to the former Contracting Party or the institution authorized by it, as well as the right of the former Contracting Party or the institution authorized by it to exercise all such rights and claims on the basis of the right of entry to the same extent as their predecessor.

The transfer of payments to the Contracting Party concerned on the basis of such a transfer shall be subject to Articles 4, 5 and 6 of this Agreement.

## **Article 8. Other Obligations**

(1) Where, by virtue of the legislation of a Contracting Party, or by virtue of obligations imposed on it by international agreements, a more favorable treatment than that provided for under this Agreement is granted to nationals or undertakings of the other Contracting Parties, the more favorable treatment shall be granted.

(2) Each Contracting Party shall comply with any obligation it has received in respect of investments made by investors of the other Contracting Parties in its territory.

## **Article 9. Not Granting Benefits**

In so far as the measure is notified in advance and consultations are held, a Contracting Party may refuse an investor of the other Contracting Party and its investment the advantages arising from this Agreement if investors of a State which is not a Contracting Party exercise ownership or control over the former investor; That investor is not engaged in any decisive business activity in the territory of the Contracting Party under whose legislation it was established or organized.

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

(1) Any dispute arising out of an investment under this Agreement between a Contracting Party and an investor of the other Contracting Parties shall, as far as possible, be amicably settled by negotiations between the parties.

(2) If such a dispute can not be settled within four (04) months after notification of the existence of a disagreement, it shall be submitted at the request of the investor:

a) The competent court of the parties to the dispute;

b) Of international arbitration:

i) The International Center for Dispute Resolution ("the Center") established by the United States Convention on the Settlement of Investment Disputes between States and Nationals of Other Countries ("ICSID Convention"), opened for signature in Washington on March 18, 1965,

ii) An ad hoc arbitration tribunal established under the rules of the United Nations Commission on International Trade Law ("UNCITRAL"),

iii) Of the International Chamber of Commerce (IHK) or

iv) Any other form of dispute settlement to which the parties agree.

(3) Each Contracting Party hereby declares its full consent to submit a dispute to the Settlement or International Arbitration Proceedings.

By agreement, the contracting parties waive the requirement that the judicial remedies be exhausted in national administrative or judicial proceedings.

(4) The Contracting Party, which is the Party, shall not assert its immunity at any stage of the settlement or arbitration proceedings or declare that the investor has received compensation on the basis of an insurance contract for all or part of his losses.

(5) The arbitral tribunal shall decide on the dispute in accordance with the national / internal legislation of the Contracting Party in whose territory the investment has been made, including its rules of private international law, in accordance with the other commonly recognized principles of international law, under this Agreement and all agreements between the investor and The Contracting Party concerning the investment concerned.

(6) Any disputes which may be referred to in this Article shall concern the two Parties and shall be enforceable in the territory of the two Contracting Parties. Each Contracting Party shall ensure the effective enforcement of arbitration under this Article and shall without delay delay any arbitration which may be entered into in a proceeding in which it was a party to the dispute.

(7) No contracting party pursues a case which is subject to international arbitration by diplomatic means, unless the other Contracting Party does not recognize or does not accept the decision of the arbitral tribunal.

## **Article 11. Settlement of Disputes between the Contracting Parties**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by friendly negotiations.

(2) If a dispute can not be settled within six (06) months from the date on which a Contracting Party has requested negotiations under paragraph 1 of this Article, it may be submitted to an arbitration tribunal at the request of a Contracting Party. , It may be submitted to an arbitration court at the request of a Contracting Party.

(3) An arbitration court pursuant to paragraph 2 shall be constituted for each dispute in the following manner: Paragraph 2 shall be constituted for each dispute in the following manner:

Each contracting party shall appoint one member, and these two members shall agree on a third-country national as chairman, who shall be appointed chairman, after approval by the two contracting parties. The members of the arbitral tribunal shall be appointed within two months after a party to the other Contracting Party has notified that it wishes to submit the dispute to an arbitration tribunal.

(4) If the deadlines referred to in paragraph 3 are not complied with, any Contracting Party may request the President of the International Court of Justice to make the necessary appointments, in the absence of any other such agreement. If the President of the International Court of Justice is a national of either Contracting Party or if he is prevented from exercising

this function for any other reason, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is a national of one of the Contracting Parties or if he is also prevented from exercising this function for any other reason, the next member of the International Court of Justice who is not a national of either Contracting Party shall request the necessary appointments. In the absence of any other agreement to this effect, each Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is prevented from exercising this function for any other reason, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also prevented from exercising this function for any other reason, the next member of the International Court of Justice who is not a national of either Contracting Party shall be required to make the necessary appointments.

(5) Unless the controversy makes any other decision, the arbitral tribunal shall decide its own rules of procedure and decide the dispute under this Agreement, as well as the rules of international law recognized by both Contracting Parties.

(6) The arbitral tribunal shall make its decision by a majority of votes. The decision is final and binding on both parties.

(7) If the court does not make a different decision on the basis of special circumstances, the costs of the arbitration procedure, including the fees of the judges, shall be shared equally among the parties.

## **Article 12. Application of the Agreement**

(1) This Agreement shall apply to investments made or made by investors of a Contracting Party in the territory of the other Contracting Parties in accordance with their respective legislation, both before and after the entry into force of this Agreement.

(2) This Agreement shall not apply to disputes arising before its entry into force.

## **Article 13. Consultations**

(1) Each Contracting Party may propose to the other Contracting Party consultations on any question relating to the implementation of this Agreement. These consultations shall be held in a place and at a time agreed by diplomatic means.

(2) Each Contracting Party shall publish its laws, regulations, procedures, generally applicable decisions of the courts and administrative authorities as well as international agreements which may affect the effectiveness of this Agreement.

## **Article 14. Final Provisions**

(1) The Contracting Parties shall notify each other through diplomatic channels as soon as the constitutional requirements for the entry into force of this Agreement have been met. The Agreement shall enter into force on the first day of the third month following the date of the subsequent notification.

(2) This Agreement shall remain in force for a period of ten (10) years; Thereafter, it remains in force, unless a Contracting Party seeks termination and informs the other Contracting Party in writing of this in writing diplomatically.

(3) The two Contracting Parties may make amendments to this Agreement by consensus. Any amendment shall enter into force under the same conditions as are foreseen for the entry into force of this Agreement.

(4) For investments made prior to the date of the expiry of this Agreement, the provisions of the Agreement shall continue to apply for a further fifteen years from the date of expiry of the Agreement.

DONE at Vienna, on 17 June 2003, in duplicate in the German, French and Arabic languages, both texts being equally authentic. In the case of divergent interpretations, the French text shall prevail.

For the Government of the Republic of Austria:

Martin Bartenstein m.p.

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

Abellatif Benachenhou m.p.