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Switzerland
and
Tunisia

Agreement between the Swiss Federal Council and the Government of the Republic of Tunisia on reciprocal promotion and protection of investments. Tunis, 16 October 2012

Entry into force: *8 July 2014 by notification, in accordance with article 13*

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Suisse
et
Tunisie

Accord entre le Conseil fédéral suisse et le Gouvernement de la République tunisienne concernant la promotion et la protection réciproque des investissements. Tunis, 16 octobre 2012

Entrée en vigueur : *8 juillet 2014 par notification, conformément à l'article 13*

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[TRANSLATION – TRADUCTION]

AGREEMENT BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF THE REPUBLIC OF TUNISIA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Preamble

The Swiss Federal Council and the Government of the Republic of Tunisia,

Desiring to strengthen economic cooperation in the interest of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to encourage and protect foreign investments in order to promote the economic prosperity and the sustainable development of the two States,

Convinced that these goals can be attained in compliance with the legislation on health, security and the environment,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" encompasses all categories of assets which have the characteristics of an investment, such as commitment of capital or other resources, duration of the investment, expectation of a gain or profit, and risk-taking, and which may in particular take the following forms:

(a) Movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges and usufructs;

(b) Shares, stock or any other kind of participation in companies;

(c) Claims to money and rights to any benefits having economic value, except claims to money which arise exclusively from commercial contracts for the sale of goods or services;

(d) Copyrights, industrial property rights (such as patents, utility models, trade marks, service marks, trade names and indications of origin), know-how and goodwill;

(e) Concessions, including concessions to search for, extract or exploit natural resources, and any other similar right conferred by law, by contract or by decision of the relevant authority in accordance with the law;

(f) Rights arising from turnkey, production, revenue-sharing and other similar contracts.

2. The term "investor" means:

(a) With regard to the:

i. Swiss Confederation: Individuals who, according to Swiss legislation, are regarded as nationals or have the status of permanent residents of that country, provided that, in the second case, they do not simultaneously possess the nationality of the other Contracting Party;

ii. Republic of Tunisia: Individuals who, according to Tunisian legislation, are regarded as nationals of that country.

If an individual possesses the nationality of both Contracting Parties, he or she shall be considered to be a national of the Contracting Party in respect of which his or her nationality is dominant and effective.

(b) With regard to both Contracting Parties:

i. Legal entities constituted or organized in any other manner in accordance with the legislation of the Contracting Party concerned, and having their registered office and engaged in actual economic activities in the territory of that Contracting Party;

ii. Legal entities actually controlled by individuals or legal entities referred to respectively in subparagraphs (a) and (b) (i) above.

(3) The term "incomes" means the amounts yielded by an investment and includes, in particular, profits, interest, capital gains, dividends, royalties and remunerations.

(4) The term "territory" means the territory of each Contracting Party as defined by the law of the Contracting Party concerned, in accordance with international law.

Article 2. Scope

This Agreement applies to investments carried out in the territory of a Contracting Party, in accordance with its law and regulations, by investors of the other Contracting Party, after 1 January 1957. However, it shall not apply to rights to receive payment or to disputes which arise from acts or events prior to the date of entry into force of this Agreement, or from situations having ceased to exist at that date.

Article 3. Encouragement and admission

1. Each Contracting Party shall, as far as possible, encourage investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its law and regulations.

2. After admitting an investment in its territory, each Contracting Party shall endeavour to issue, in accordance with its law and regulations, the permits or authorizations needed in relation to that investment, including for the implementation of license contracts, and the authorizations required for the activities of the executives and experts chosen by the investor.

Article 4. Protection and treatment

1. The investments and incomes of the investors of each Contracting Party shall be accorded fair and equitable treatment on a continuous basis and shall enjoy full and comprehensive protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any manner hinder, through unjustified or discriminatory measures, the management, maintenance, use, enjoyment, increase or sale of such investments.

2. Each Contracting Party shall accord in its territory to the investments and incomes of the investors of the other Contracting Party a treatment not less favourable than that which it accords, in similar situations, to the investments and incomes of its own investors or to the investments and

incomes of the investors of any third State, whichever is more favourable to the investor concerned.

3. Each Contracting Party shall accord in its territory to the investors of the other Contracting Party, in respect of the management, maintenance, use, enjoyment, increase or sale of their investments, a treatment not less favourable than that which it accords, in similar situations, to the investments and incomes of its own investors or to the investments and incomes of the investors of any third State, whichever is more favourable to the investor concerned.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement for regional economic cooperation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

(5) It shall be understood that the most favoured nation treatment referred to in paragraphs 2 and 3 shall not include such mechanisms for the settlement of disputes regarding investments as may be provided for in any other international agreements on investment concluded by the Contracting Party concerned.

Article 5. Free transfer

1. Each Contracting Party in whose territory investments have been carried out by the other Contracting Party shall grant to such investors unrestricted transfer, subject to no time limit, in a freely convertible currency, of any amounts related to such investments, and in particular of:

(a) Incomes;

(b) Payments related to loans or other obligations which as a rule are agreed upon by contract for the purpose of investment;

(c) Royalties and other payments deriving from the rights referred to in article 1 (1) (c)-(f) of this Agreement;

(d) Salaries and other remunerations of personnel regularly employed abroad in connection with the investment;

(e) The initial capital and any additional capital contributions required for the maintenance or development of the investment;

(f) Proceeds from the sale or liquidation, in whole or in part, of the investment, including any capital appreciation.

(2) Unless otherwise agreed with the investor, transfers shall take place at the foreign exchange rate applicable on the date of the transfer in accordance with the currency exchange rules in force of the Contracting Party in whose territory the investment was carried out.

Article 6. Expropriation and compensation

1. Neither Contracting Party shall take, either directly or indirectly, measures of expropriation or nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless such measures are taken in the public interest, on a non-discriminatory basis and under due process of law, and ensure prompt, effective and adequate compensation. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriatory action was taken or

became public knowledge, whichever is earlier. Valuation criteria shall include the going concern value, asset value, including declared tax value, and any other criteria, as appropriate, which help to determine the fair market value. The amount of compensation shall include interest at the commercial rate in force from the date of dispossession until the date of payment, and be settled in a freely convertible currency, paid without delay and freely transferable. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of his investment in accordance with the principles set out in this paragraph.

2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall, to the extent necessary and subject to its laws, ensure that compensation according to paragraph (1) of this article is made available to such investors.

Article 7. Compensation for losses

Investors of one of the Contracting Parties whose investments suffer losses as a result of war or any other armed conflict, revolution, state of emergency, rebellion, civil disturbance, or any other similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment in accordance with article 4 (2) and (3) of this Agreement.

Article 8. Other commitments

Each Contracting Party shall comply with any commitments that it has specifically entered into in writing with respect to an investment of an investor of the other Contracting Party in its territory.

Article 9. More favourable provisions

If provisions in the legislation of either Contracting Party or obligations under international law entitle investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions or obligations shall to the extent that they are more favourable prevail over this Agreement.

Article 10. Principle of subrogation

Where one Contracting Party receives a payment under the terms of an insurance or of a guarantee against non-commercial risks in regard to an investment in the territory of the other Contracting Party, the latter shall recognize the subrogation of the payer to the rights of the investor.

Article 11. Disputes between a Contracting Party and an investor of the other Contracting Party

1. A dispute between a Contracting Party and an investor of the other Contracting Party regarding an investment of that investor in the territory of the said Party and concerning an alleged breach of this Agreement shall, if possible, be settled by negotiation or consultation.

2. The request for consultation shall be presented in writing and shall state the facts on which it is based, the alleged breach and the relevant pleadings. If such consultation does not result in a solution within six months from the date of the written request for consultation, the investor may submit the dispute either to the courts or the administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter event, the investor shall have the choice between either of the following:

(a) The International Centre for Settlement of Investment Disputes (ICSID) provided for 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 (hereinafter referred to as the "Convention of Washington");

(b) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration in accordance with paragraphs (1) and (2) above.

4. The choice of the dispute settlement procedure undertaken by the investor pursuant to this Agreement shall be definitive and shall allow the investor no other option for settling the dispute concerned.

5. A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which, at the date of submission of the dispute to international arbitration, was under the control of investors of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention of Washington, be treated as a company of the other Contracting Party.

6. No investor may submit a dispute for settlement in accordance with this article if more than five years have elapsed from the date on which the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

7. A Contracting Party which is party to the dispute shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received, by virtue of an insurance contract or a guarantee, a compensation covering the whole or part of the incurred damage.

8. Neither Contracting Party may pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.

9. The arbitral award shall be definitive and binding on the parties to the dispute and shall be carried out without delay according to the law of the Contracting Party concerned.

Article 12. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall, if possible, be settled through the diplomatic channel.

2. If the two Contracting Parties do not reach a settlement within six months following the date on which the dispute arose, the dispute shall upon request of either Contracting Party be submitted to an arbitral tribunal consisting of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint their chairperson, who shall be a national of a third State.

3. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months following an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

4. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the chairperson, either Party may request the President of the International Court of Justice to make that appointment.

5. If, in the cases specified under paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointments shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.

6. Unless the Contracting Parties otherwise stipulate, the tribunal shall determine its own rules of procedure. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation to the arbitral proceedings. The costs of the Chairperson and the other costs shall be borne in equal parts by the Contracting Parties, unless the arbitral tribunal otherwise decides.

7. The decisions of the tribunal shall be definitive and binding on each Contracting Party.

Article 13. Final provisions

1. The two Contracting Parties shall notify each other through the diplomatic channel that the legal requirements for entry into force of international agreements have been fulfilled. This Agreement shall enter into force on the day of receipt of the second notification and shall remain in force for an initial period of 10 years. Thereafter, it shall remain in force indefinitely unless it is terminated in accordance with paragraph 2 of this article.

2. Either Contracting Party may terminate this Agreement at the end of the initial 10-year period, or at any time thereafter, subject to a 12-month notice to the other Contracting Party.

3. In case of termination, the provisions of articles 1-12 of this Agreement shall continue to apply during an additional 10-year period to the investments carried out before expiration of the Agreement.

4. This Agreement shall repeal and replace the Treaty between the two Contracting Parties for the protection and encouragement of capital investments, signed at Bern on 2 December 1961.

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

DONE at Tunis, on 16 October 2012, in duplicate, in French and Arabic, both texts being equally authentic. In case of divergence, the French text shall prevail.

For the Swiss Federal Council:

For the Government of the Republic of Tunisia: