

No. 7558

**NETHERLANDS
and
TUNISIA**

Convention concerning the encouragement of capital investment and the protection of property (with exchange of letters). Signed at Tunis, on 23 May 1963

Official text: French.

Registered by the Netherlands on 29 January 1965.

**PAYS-BAS
et
TUNISIE**

Convention relative à l'encouragement des investissements de capitaux et à la protection des biens (avec échange de lettres). Signée à Tunis, le 23 mai 1963

Texte officiel français.

Enregistrée par les Pays-Bas le 29 janvier 1965.

[TRANSLATION — TRADUCTION]

No. 7558. CONVENTION¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC CONCERNING THE ENCOURAGEMENT OF CAPITAL INVESTMENT AND THE PROTECTION OF PROPERTY. SIGNED AT TUNIS, ON 23 MAY 1963

The Government of the Kingdom of the Netherlands and the Government of the Republic of Tunisia,

Desiring to create favourable conditions for capital investment by nationals and corporations of either State in the territory of the other State, and

Recognizing that the contractual protection of investments is likely to stimulate private economic initiative and increase the prosperity of the two nations,

Have agreed as follows :

Article 1

Investments, property, rights and interests belonging to nationals or corporations of one of the Contracting Parties in the territory of the other shall receive fair and non-discriminatory treatment, at least equal to that accorded by each Party to its own nationals.

Article 2

Each Contracting Party undertakes to authorize, in exercise of its powers under the regulations promulgated in pursuance of its present legislation or of any more favourable legislation that may be enacted in the future,

—The transfer of net profits, interest, dividends and royalties due to nationals or corporations of the other Party ;

—The transfer of the proceeds of the complete or partial liquidation of investments approved by the country in which they are made ;

—The transfer of an adequate part of the earned income of nationals of the other Party who are authorized to work in its territory.

¹ Came into force on 19 December 1964, one month after the exchange of the instruments of ratification which took place at Tunis on 19 November 1964, in accordance with article 7.

Article 3

Where one Party expropriates or nationalizes property, rights or interests belonging to nationals or corporations of the other Party or takes any measure which results directly or indirectly in the dispossession of such nationals or corporations, it shall make provision for the payment of effective and adequate compensation, in accordance with international law. The amount of such compensation, which shall be fixed at the time of expropriation, nationalization or dispossession, shall be paid to the due recipient without unjustified delay. The amount of such compensation shall be transferred without delay. Nevertheless, measures of expropriation, nationalization or dispossession shall be neither discriminatory nor inconsistent with a specific undertaking.

Article 4

Where a dispute arises between the Contracting Parties as to the interpretation or application of the provisions of this Convention and such dispute cannot be settled satisfactorily through the diplomatic channel within a period of six months, it shall be submitted at the request of either Party to an arbitral tribunal consisting of three members. Each Party shall appoint one arbitrator. The two arbitrators so appointed shall select a referee who shall be a national of a third State.

If either Party fails to appoint its arbitrator and fails to comply with the other Party's request to make such appointment within two months, the arbitrator shall be appointed, at the request of the latter Party, by the President of the International Court of Justice.

If the two arbitrators cannot agree within a period of two months following their appointment on the choice of a referee, the latter shall be appointed at the request of either Party by the President of the International Court of Justice.

If, in the cases provided for in paragraphs 2 and 3 of this article, the President of the International Court of Justice is unable to act, or if he is a national of either Party, the Vice-President shall make the appointment. If the Vice-President is unable to act, or if he is a national of either Party, the appointment shall be made by the senior member of the Court who is not a national of either Party.

The tribunal shall base its decision on respect for the law. Before giving its decision it may at any stage of the proceedings propose to the Parties an amicable settlement of the dispute.

If the Parties agree, the tribunal shall settle the case *ex aequo et bono*.

Unless the Parties otherwise decide, the tribunal shall determine its own rules of procedure.

Decisions of the tribunal taken by a majority of the arbitrators shall be binding upon the Parties.

Article 5

Where a matter is governed both by this Convention and by another international agreement, nothing in this Convention shall prevent a national of one Party who owns property in the territory of the other Party from taking advantage of whichever regulations are the more favourable to his case.

Article 6

In respect of property acquired and investments made before its date of expiry, this Convention shall continue to be applicable for ten years after its date of expiry.

Article 7

(1) This Convention shall be ratified ; the exchange of the instruments of ratification shall take place as soon as possible at Tunis.

(2) This Convention shall enter into force one month after the date of the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for an indeterminate period unless notice of termination is given in writing by either Contracting Party one year before its expiry. After the expiry of the period of ten years, the Convention may be terminated at any time, but it shall continue in force for one year after notice of its termination is given.

Article 8

From the date of signature of this Convention the two Contracting Parties shall apply provisionally, pending the ratification of the Convention, the provisions of articles 1 to 6 inclusive.

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

DONE at Tunis on 23 May 1963, in two originals in the French language.

For the Government
of the Kingdom of the Netherlands :

(Signed) Th. P. BERGSMAN

For the Government
of the Republic of Tunisia :

(Signed) Ahmed BEN SALAH

EXCHANGE OF LETTERS

I

Tunis, 23 May 1963

Sir,

On signing the Convention between the Government of the Republic of Tunisia and the Government of the Kingdom of the Netherlands concerning the encouragement of capital investment and the protection of property, I have the honour to confirm to you that this Convention fulfils the conditions laid down by article 4, paragraph 1, of Legislative Decree No. 61-14 of 30 August 1961 of the Republic of Tunisia in respect of the exercise of certain commercial activities. I wish to point out, however, that under Tunisian law the prior consent of the Tunisian Government is still obligatory for the exercise in Tunisia of commercial or similar activities other than activities connected with investments approved by my Government.

Accept, Sir, the assurances of my highest consideration.

(Signed) Ahmed BEN SALAH
Secretary of State for Planning and Finance

The Ambassador of the Kingdom of the Netherlands
in Tunis

II

Tunis, 23 May 1963

Sir,

I have the honour to acknowledge receipt of your letter of today's date, reading as follows :

[See letter I]

I thank you for this information, which I have duly noted.

Accept, Sir, the assurances of my highest consideration.

(Signed) Th. P. BERGSMA
Ambassador of the Kingdom of the Netherlands

The Secretary of State for Planning and Finance
Tunis

III

Tunis, 23 May 1963

Sir,

On signing today the Convention between our two Governments concerning the encouragement of capital investment and the protection of property, I have the honour to inform you that in accordance with the constitutional law of the Kingdom of the Netherlands, my Government usually reserves for the approval of the Government of Surinam and the Netherlands West Indies the question of the application to those countries of treaties or other conventions which it concludes.

Consequently, should those Governments be interested in availing themselves of the provisions of the above-mentioned Convention, it will be submitted for their approval before ratification by Her Majesty the Queen.

In any event, the instrument of ratification will specify, for the information of your Government, the scope of application of the Convention in the Kingdom.

Accept, Sir, the assurances of my highest consideration.

(Signed) Th. P. BERGSMA

Ambassador of the Kingdom of the Netherlands

The Secretary of State for Planning and Finance
Tunis

IV

Tunis, 23 May 1963

Sir,

I have the honour to acknowledge receipt of your letter of today's date reading as follows :

[See letter III]

I thank you for this letter, the contents of which I have noted.

Accept, Sir, the assurances of my highest consideration.

(Signed) Ahmed BEN SALAH

Secretary of State for Planning and Finance

The Ambassador of the Kingdom of the Netherlands
Tunis