

# **AGREEMENT on Reciprocal Promotion and Protection of Investments between the Government of the Republic of Austria and the Government of the Islamic Republic of Iran**

Preamble

The Government of the Republic of Austria and the Government of the Islamic Republic of Iran, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States;

Intending to utilize their economic resources and potential facilities in the area of investments as well as to create and maintain favourable conditions for investments of the nationals of the Contracting Parties in each others' territory and;

Recognizing the need to promote and protect investments of the nationals of the Contracting Parties in each others' territory;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement, the meaning of the terms used therein is as follows:

1 . The term „investment" refers to every kind of property or asset, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party, including the following:

(a) Movable and immovable property as well as rights related thereto such as leases, mortgages, liens, pledges and usufructs;

(b) Shares or any kind of participation in companies such as securities, debentures, equity holdings and credits;

(c) Money and/or receivables and any performance connected with an investment, having an economic value as well as reinvested returns and any increase in the value of the original investment;

(d) Intellectual and industrial property rights, including trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;

(e) Any rights having an economic value, including rights to search for, extract or exploit natural resources.

2 . The term „investor" refers to the following persons of either Contracting Party who invest in the territory of the other Contracting Party within the framework of this Agreement:

(a) Natural persons who, according to the laws of a Contracting Party, are considered to be its nationals;

(b) Legal entities constituted or incorporated under the laws of a Contracting Party having its real economic activities in the territory of that Contracting Party.

3 . investment including profit derived from investments, interests, dividends, royalties and license fees and other fees.

4 . The term „territory":

(a) Territory, internal waters and airspace, where the in case of the Republic of Austria refers to the land Republic of Austria exercises, in conformity with international law, sovereign rights and jurisdiction;

(b) In case of the Islamic Republic of Iran means areas under the sovereignty of jurisdiction of the Islamic Republic of Iran, and includes its maritime areas.

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

- 1 . Either Contracting Party shall encourage its investors to invest in the territory of the other Contracting Party.
- 2 . Either Contracting Party shall, within the framework of its laws and regulations, create favourable conditions for the attraction of investments of investors of the other Contracting Party in its territory.
- 3 . Either Contracting Party shall, in accordance with its laws and regulations, admit investments of investors of the other Contracting Party in its territory and grant all necessary permits for the realization of such an investment.
- 4 . The alteration or transformation of an investment is to be considered a new investment.
- 5 . Both Contracting Parties shall at all times ensure just and fair treatment and full protection to the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, operation, maintenance, use, transformation, enjoyment, sale or assignment of the investments effected in their territory, by investors of the other Contracting Party shall in no way be subject to unjustified or discriminatory measures.

## **Article 3. National Treatment and Most Favoured Nation Treatment**

1 . Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords to its own investors and their investments or to investors of any third country and their investments with respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, whichever is more favourable to the investor.

1 . If a Contracting Party has accorded or shall accord in the future advantages, privileges or rights to investors of any third state by virtue of its membership to existing or future agreements establishing a free trade area, a customs union, a common market, and/or by virtue of its signature of a similar regional or subregional agreement, a multilateral economic agreement or under agreements signed in order to prevent double taxation, it shall not be obliged to accord such advantages, privileges or rights to investors of the other Contracting Party.

## **Article 4. Publication of Laws and Regulations**

Each Contracting Party shall publish its laws and regulations as well as international agreements which may affect foreign investments in its territory.

## **Article 5. Expropriation and Compensation**

1 . Investments of investors of either Contracting Party shall not be nationalized, confiscated, expropriated or subjected to measures having an equivalent effect by the other Contracting Party, hereinafter referred to as 'expropriation', except such measures are taken in public interest, in accordance with due process of law, in a non-discriminatory manner, and against compensation.

2 . Compensation shall be prompt, effective and adequate. The amount of compensation shall be equivalent to the fair market value of the investment immediately before the expropriation has occurred or become publicly known.

3 . Compensation shall be calculated in a freely convertible currency at the prevailing exchange rate applicable immediately before the expropriation has occurred or become publicly known.

4 . The expropriating Contracting Party will be under a commitment to pay compensation without undue delay. In case of undue delay the financial costs related to the delayed payment shall be borne by the expropriating Contracting Party from the day on which the payment becomes due till the date of actual payment in accordance with international banking practice.

5 . The investor whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of that Contracting Party of its case and of the valuation of its investments in accordance with the principles set out in this Article.

## **Article 6. Treatment for Damages or Losses**

1 . Investors of either Contracting Party whose investments suffer damages or losses due to any armed conflict, revolution, state of emergency or similar events in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment for damages or losses no less favourable than that accorded to its own investors or to investors of any third state.

2 . Without prejudice to paragraph (1), an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:

(a) Requisitioning of its investment or a part thereof by the latter's armed forces or authorities, or

(b) Destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation,

Shall be accorded prompt, adequate and effective restitution or compensation.

## **Article 7. Repatriation and Transfer**

1 . Each Contracting Party shall permit in good faith transfers related to investments referred to in this Agreement, to be made freely and without delay. Such transfers include:

(a) Returns;

(b) Proceeds from the sale and/or liquidation of all or part of an investment;

(c) Royalties and fees related to agreements on the transfer of technology;

(d) Sums paid pursuant to Articles 5, 6 and 7 of this Agreement;Articles 5, 6 and 7 of this Agreement;

(e) Loan installments related to an investment provided that they are paid out of such investment activities;

(f) Monthly salaries and wages and other remuneration received by the employees who have obtained the corresponding work permits related to an investment;

(g) Payments arising out of the settlement of disputes under Article 11.Article 11.

2 . The above transfers shall be effected in a freely convertible currency and at the current rate of exchange in accordance with the exchange regulations prevailing on the date of transfer.

3 . The investor and the host Contracting Party may agree otherwise on the manner of repatriation or transfers referred to in this Article.

4 . Notwithstanding paragraphs (1) to (4), a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of measures to protect the rights of creditors, or relating to or ensuring compliance with laws and regulations on the requirements for transfers or in connection with criminal offences, orders or judgements in administrative and adjudicatory proceedings, provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

## **Article 8. Subrogation**

If a Contracting Party or its designated agency, within the framework of a legal system, subrogates an investor pursuant to a payment made under an indemnity, insurance or guarantee agreement against non-commercial risks:

(a) Such subrogation shall be recognized by the other Contracting Party;

(b) The subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise;

(c) Disputes between the subrogee and the host Contracting Party shall be settled in accordance with Article 11 of this Agreement. The subrogee may nevertheless entitle the investor to assert the subrogated rights vis-à-vis the other Contracting Party.

## **Article 9. Observance of Commitments**

Either Contracting Party shall guarantee the observance of the commitments it has entered into with respect to investments

of investors of the other Contracting Party.

## **Article 10. Scope of the Agreement**

This Agreement shall apply to investments approved by the competent authority of the host Contracting Party prior to or after the entry into force of this Agreement. The competent authority in the Islamic Republic of Iran is the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI). However, this Agreement shall not apply to claims which have been raised or settled prior to its entry into force.

## **Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1 . If any dispute arises between a Contracting Party and an investor of the other Contracting Party with respect to an investment, the host Contracting Party and the investor shall primarily endeavour to settle the dispute amicably through negotiation and consultation.

2 . In the event that such a dispute cannot be settled as provided in paragraph 1 of this Article the investor in question may, at his choice, submit the dispute for settlement to: paragraph 1 of this Article the investor in question may, at his choice, submit the dispute for settlement to:

(a) The competent court of the Contracting Party which is a party to the dispute;

(b) An ad hoc Arbitral Tribunal, in compliance with the arbitration rules of the UN Commission on the International Trade Law (UNCITRAL); arbitration rules of the UN Commission on the International Trade Law (UNCITRAL);

(c) The International Chamber of Commerce under its rules of arbitration;

(d) The International Center for Settlement of Investment Disputes, for the implementation of the arbitration procedure under the Washington Convention of 18 March, 1965, on the Settlement of Investment Disputes between States and Nationals of other States, if or as soon as both Contracting Parties have acceded to it;

(e) Any other dispute settlement procedure agreed upon by the parties to the dispute.

3 . A dispute may be submitted for resolution pursuant to paragraph 2 of this Article after four months from the date of the written notice of the investor to the Contracting Party of its intention to submit the dispute for resolution but not later than five years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

4 . Each Contracting Party hereby consents to the submission of investment disputes to the court and international Arbitrations mentioned above.

5 . A Contracting Party shall not assert as a defense or counter-claim that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or insurance agreement.

6 . The award shall be final and binding on both parties to the dispute.

7 . National courts shall not have jurisdiction over any dispute referred to arbitration. However, the provisions of this paragraph do not bar the winning party to seek for the enforcement of the arbitral award before national courts.

8 . A Contracting Party may not initiate proceedings under Article 12 for a dispute which an investor has already submitted to arbitration under this Article, unless the other Contracting Party has failed to comply with the award rendered in that dispute or those proceedings have terminated without resolution of the investor's claim.

## **Article 12. Settlement of Disputes between the Contracting Parties**

1 . All disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall, in the first place, be settled amicably through negotiation or consultation.

2 . If the dispute cannot be settled within four months, either Contracting Party may while sending a notification to the other Contracting Party, refer the case to an Arbitral Tribunal.

3 . Such an Arbitral Tribunal shall be constituted for each individual case in the following way: Within two months of the

receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third state who on approval by the two Contracting Parties shall be appointed within four months from the date of appointment of the other two members. However, the Chairman shall be a national of a state having diplomatic relations with both Contracting Parties at the time of the appointment.

4 . If within the periods specified in paragraph 3 the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5 . The Arbitral Tribunal shall reach its decision by a majority of votes. The decision of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure and the place of arbitration.

### **Article 13. Consultations**

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

### **Article 14. Validity of the Agreement**

1 . This Agreement shall be approved/ratified by the competent authorities of each Contracting Party in accordance with their laws and regulations.

2 . This Agreement shall enter into force for a period of ten years after 60 days from the date of the last notification of either Contracting Party to the other Contracting Party that it has fulfilled the necessary measures in accordance with its laws and regulations for the entry into force of this Agreement. After the said period, this Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party in writing of its unwillingness to continue with it, twelve months prior to the expiration or termination thereof.

3 . After the expiration of the validity or termination of this Agreement its provisions shall apply to investments made under this Agreement for a further period of ten years.

### **Article 15. Language and Number of the Texts**

This Agreement is done in duplicate in the German, Persian and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Republic of Austria:

Benita Ferrero-Waldner m.p.

For the Government of the Islamic Republic of Iran:

Hussein Namazi m.p.