

# **AGREEMENT BETWEEN THE REPUBLIC OF LITHUANIA AND THE STATE OF KUWAIT FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Republic of Lithuania and the State of Kuwait (hereinafter referred to as the "Contracting States");

Desiring to create favourable conditions for the development of the economic cooperation between them and in particular for investments by investors of one Contracting State in the territory of the other Contracting State;

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of business initiative and to the increase of the prosperity in both Contracting States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement and unless the context otherwise requires:

(1) The term "investment" shall mean every kind of assets owned or controlled directly or indirectly by an investor of one Contracting State and invested in the territory of the other Contracting State in accordance with the laws and regulations of that Contracting State. This term shall include in particular, though not exclusively:

- (a) Movable and immovable property and any property rights such as mortgages, liens, pledges and similar rights;
- (b) Shares, stocks and other forms of equity participation, and bonds, debentures, and other forms of debt interests in a company or business enterprise, and loans and securities issued by any investor of a Contracting State, and returns retained for the purpose of re-investment;
- (c) Claims to money and claims to any other assets or performance pursuant to contract having an economic value and associated with an investment;
- (d) Intellectual and industrial property rights, including, but not limited to copyrights, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill;
- (e) Any right conferred by law, contract or by virtue of any licenses and permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to manufacture, use and sell products, and rights to undertake other economic and commercial activities.

Change in the form in which assets are invested or reinvested does not affect their character as investment, provided that such change is in accordance with the laws and regulations of the host Contracting State and does not result in a violation of any of the terms of this Agreement.

(2) The term "investor" shall mean:

- (a) Any natural person holding the nationality of a Contracting State in accordance with its laws; and
- (b) With respect to either Contracting State, the Government of that Contracting State and any entity legally constituted under the laws and regulations of that Contracting State, in particular, though not exclusively, development funds, enterprises, agencies, cooperatives, corporations, foundations, companies, firms, establishments, organizations, and business associations or similar entities irrespective of whether their liabilities are limited or otherwise; and any entity established outside the jurisdiction of a Contracting State as a juridical person and in which such Contracting State or any of its nationals or any entity established within its jurisdiction has a. predominating interest;

(3) The term "own" or "control" shall mean to include ownership or control exercised through subsidiaries or affiliates

wherever located.

(4) The term "returns" shall mean amounts derived from or associated with an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, include profits, interests, capital gains, dividends, royalty payments, management, technical assistance, or other fees, or returns in kind.

(5) The term "territory" shall mean all the territory of a Contracting State recognized by international law including any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of a Contracting State as an area over which a Contracting State may exercise sovereign rights or jurisdiction.

(6) The term "associated activities" shall include, but is not limited to, the following activities, which shall be admitted and established in accordance with the laws and regulations of the Contracting State:

- a) The establishment, control and maintenance of branches, agencies, offices or other facilities for the conduct of business;
- b) The organization of companies; the acquisition of companies or interests in companies or in their property; and the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposal of companies organized or acquired;
- c) The making, performance and enforcement of contracts related to investments;
- d) The acquisition and disposal by any legal means of personal property of all kinds, both movable and immovable;
- e) The borrowing of funds at market terms and conditions from local financial institutions, as well as the purchase and issue of equity shares in the local financial markets, and the purchase of foreign exchange for the operation of the investments.

## **Article 2. Encouragement of Investments**

(1) Each Contracting State shall in its territory encourage investments by investors of the other Contracting State and admit such investments and associated activities in accordance with its legislation. It shall ensure investors of the other Contracting State and their investments fair and equitable treatment.

(2) Each Contracting State shall endeavour to take and enforce the necessary measures for granting of appropriate incentives and other forms of encouragement for investments and associated activities made by investors of the other Contracting State.

(3) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host Contracting State for the appropriate incentives and other forms of encouragement and the host Contracting State shall grant them all assistance, consents, approvals, licenses and authorizations to such an extent and on such terms and conditions as shall, from time to time, be determined by the laws and regulations of the host Contracting State.

(4) With respect to its tax policies, each Contracting State should strive to accord fairness and equity in the treatment of investments of investors of the other Contracting State. The provisions of this Article do not oblige a Contracting State to extend to the investors of the other Contracting State any tax privileges, tax exemptions or tax reductions which are granted only to its own nationals or to investors resident in its territory.

(5) The Contracting States shall periodically consult between themselves concerning investment opportunities within the territory of each other in various sectors of the economy to determine where investments from one Contracting State into the other may be most beneficial in the interest of both Contracting States.

(6) To attain the objectives of this Agreement, the Contracting States shall encourage and permit the formation and establishment of appropriate entities to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host Contracting State.

(7) Investors of either Contracting State shall be permitted to engage top managerial and technical personnel of their choice regardless of nationality to the extent permitted by the laws of the host Contracting State. Each Contracting States shall, subject to its laws and regulations relating to the entry, stay and work of a natural person, examine in good faith and give sympathetic consideration to requests by investors of the other Contracting State and key personnel who are employed by such investors to enter and remain temporarily in its territory to engage in activities connected with the making or the management, maintenance, use, enjoyment or disposal of relevant investments.

(8) Whenever goods or persons connected with an investment are to be transported, each Contracting State shall, subject to its applicable laws and regulations, neither exclude nor hinder transport enterprises of the other Contracting State from operating such transport.

### **Article 3. Protection of Investments**

- (1) Investments of either Contracting State or any of its investors shall enjoy full legal protection and security in the territory of the other Contracting State in a manner consistent with international law and the provisions of this Agreement. Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or any other associated activities in connection with investments in its territory of investors of the other Contracting State.
- (2) Each Contracting State shall make public all laws, regulations, administrative directives and procedures that pertain or affect investments in its territory of investors of the other Contracting State.
- (3) Once established, investments shall not be subject in the host State to additional performance requirements which hinder their expansion or maintenance, which require or enforce commitments to export goods produced or which specify that goods or services must be purchased locally, or which impose any other additional requirements or restrictions which may be considered as detrimental to the viability of the investment.
- (4) Each Contracting State recognizes that in order to maintain a favorable environment for investments in its territory by investors of the other Contracting State, it shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Contracting State shall grant to investors of the other Contracting State the right to access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations for the purpose of assertion of claims and enforcement of rights with respect to their respective investments.
- (5) Investments by investors of either Contracting State shall not be subjected to sequestration, confiscation or any other similar measures save in conformity with applicable laws.

### **Article 4. Treatment of Investments**

- (1) Each Contracting State shall at all times ensure investments and associated activities made in its territory by investors of the other Contracting State, fair and equitable treatment. Such treatment shall not be less favourable than that which it accords in like situations to investments and associated activities of its own investors or investors of any third state, whichever is most favourable.
- (2) Each Contracting State shall accord investors of the other Contracting State, as regards compensation, transfers, returns, management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other associated activity, treatment not less favourable than that which it accords to its own investors or to investors of any third state, whichever is the most favourable.
- (3) However, the provisions of this Article relating to the granting of treatment not less favourable than that accorded by one Contracting State to its own investors or the investors of any third state shall not be construed so as to oblige that Contracting State to extend to the investors of the other Contracting State the benefit of any treatment, preference or privilege resulting from:
- a) Any existing or future customs union, economic union, free trade area, monetary union, or any other form of regional economic cooperation or similar international agreement to which either of the Contracting States is or may become a party, or
  - b) Any international, or regional agreement or other arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.
- (4) The following shall, in particular, be deemed "treatment less favourable" within the meaning of this Article: restricting the purchase of intermediate as well as raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of this Article.

### **Article 5. Compensation for Damage or Loss**

- (1) When investments made by investors of either Contracting State suffer damage or loss owing to war or other armed conflict, state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting

State, they shall be accorded by the latter Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, which is the most favourable of that which the latter Contracting State accords to its own investors or to investors of any third state.

(2) Without prejudice to paragraph (1), investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting State resulting from:

(a) Requisitioning of their property or part thereof by its forces or authorities; or

(b) Destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt, adequate and effective compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of their property. Resulting payments shall be transferable without delay in a freely convertible currency.

(3) The condition "without delay" within the meaning of this Article and Articles 6 and 7 is deemed to be fulfilled if a repatriation or transfer is made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the request has been submitted and may on no account exceed three months.

## **Article 6. Expropriatio**

(1)

(a) Investments of either Contracting State or any of its investors shall not be nationalized, expropriated or subjected to direct or indirect measures having effect equivalent to nationalization or expropriation (hereinafter collectively referred to as "expropriation") by the other Contracting State except for a public benefit of that Contracting State and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application, and are not contrary to any undertaking which that Contracting State may have given to the investor.

(b) Such compensation shall amount to the actual value of the investment and shall be determined in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the decision of expropriation was announced or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date"). Such market value shall be calculated in a freely convertible currency on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at a commercial rate established on a market basis, however, in no event less than the prevailing LIBOR rate of interest from the date of expropriation until the date of payment.

Where the fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, replacement value, appreciation, current returns, goodwill and other relevant factors. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currency and allowed to be freely transferable without delay.

(2) The investor affected shall, without prejudice to his rights under Article 9 of this Agreement, have a right to prompt review, under the law of the Contracting State making the expropriation, by a judicial or other competent and independent authority of that Contracting State, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

(3) Where a Contracting State expropriates the investment of a juridical person which is established or licensed under the law in force in its territory and in which the investor of the other Contracting State owns shares, stocks, debentures or other rights or interest, it shall ensure that prompt, adequate and effective compensation is received and allowed to be transferred. Such compensation shall be determined and paid in accordance with the preceding provisions.

(4) Without prejudice to Article 7, the provisions of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(5) The provisions of this Article shall also apply to interventions or regulatory measures by a Contracting State such as the freezing or blocking of investment assets, levying of arbitrary or excessive tax on the investment, compulsory sale of all or part of the investment, or other comparable measures, that have a de facto confiscatory or expropriatory effect.

(6) A claim to compensation in accordance with the principles and provisions of this Agreement shall also exist when, as a

result of an intervention by a Contracting State in any entity in which investment is made by investors of the other Contracting State, the investment is impaired in substance.

(7) Investors affected by the expropriation may not raise claims under the provisions of this Article if compensation has been paid pursuant to similar provisions in another investment protection agreement concluded by the expropriating Contracting State.

## **Article 7. Transfers of Payments Related to Investments**

(1) Each Contracting State shall guarantee to the investors of the other Contracting State the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

- (a) The initial capital and any additional capital for the maintenance, management and development of the investment;
  - (b) Returns;
  - (c) Payments under contract, including amortization of principal and accrued interest payment pursuant to a loan agreement
  - (d) Royalties and fees for the rights referred to in Article 1 (1) (d);
  - (e) Proceeds from the sale or liquidation of all or any part of the investment;
  - (f) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;
  - (g) Payments of compensation pursuant to Articles 5 and 6;
  - (h) Payments referred to in Article 8; and
- (1) Payments arising out of settlement of disputes.

(2) Transfers of payments under paragraph (1) shall be effected without delay in a freely convertible currency at the applicable rate of exchange.

(3) Transfers shall be made at the prevailing rate of exchange for the currency to be transferred, on the date of transfer. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is more favourable to the investor.

## **Article 8. Assignment of Rights**

(1) If a Contracting State, its designated agency or a company or enterprise incorporated in a Contracting State (the "Indemnifying Party") makes payment to any of its investors under an indemnity or a guarantee it has assumed in respect of an investment or returns in the territory of the other Contracting State (the "Host State"), or otherwise become subrogated to any of the rights and claims of such investment as a result of the complete or partial default of the investor, the Host State shall recognize:

- (a) The assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an investment; and
- (b) That the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as its predecessor in title or the original investor.

(2) The Indemnifying Party shall be entitled in all circumstances to:

- a) The same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1) above, and
- b) Any payments received in pursuance of those rights and claims,

As the original investor was entitled to receive by virtue of this Agreement in respect of the investments concerned and its related returns.

(3) Without prejudice to Article 7, any payments received in non-convertible currency by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Party for the purpose of meeting any

expenditure incurred in the territory of the Host State.

## **Article 9. Settlement of Disputes between a Contracting State and an Investor**

(1) Disputes between a Contracting State and an investor of the other Contracting State relating to an investment of the latter in the territory of the former shall, if possible, be settled amicably.

(2) If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date at which either party to the dispute requested amicable settlement, the dispute shall, subject to paragraph (3) below, at the written request of the investor concerned be submitted to international arbitration in accordance with paragraph (4).

(3) An investor may choose to submit the dispute for resolution:

(a) The courts or administrative tribunals of the Contracting State that is a party to the dispute; or

(b) In accordance with any applicable, previously agreed dispute-settlement procedures; or

(c) In accordance with paragraph (4), provided that the investor has consented in writing to the settlement by arbitration in accordance with the appropriate rules, thereunder.

(4) Unless within the periods of 3 months provided in paragraph (2) above, the parties to the dispute have agreed an alternative dispute settlement procedure, the dispute may, at the election in writing of the investor concerned, be submitted for settlement by arbitration to:

(a) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 18 March 1965 ("the Washington Convention"), provided that the Washington Convention is applicable to the dispute; or

(b) An arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as those Rules may be modified by the parties to the dispute (the Appointing Authority referred to in Article 7 of the Rules shall be Secretary General of the Centre); or

(c) An arbitral tribunal constituted pursuant to the arbitration rules of any arbitral institution mutually agreed between the parties to the dispute.

(5) Each Contracting State hereby gives its unconditional consent to the submission of an investment dispute for settlement by binding arbitration in accordance with the provisions of this Article.

(6)

(a) The consent given in paragraph (5), together with the consent given under paragraph (3), shall satisfy the requirement for written agreement of the parties to a dispute for purposes of each of Chapter II of the Washington Convention, Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 ("New York Convention"), and Article I of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article shall, as may be mutually agreed by the parties, be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(c) Neither Contracting State shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

However, diplomatic protection for the purposes of this sub-paragraph (c) shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

(7) An arbitral tribunal established under this Article shall decide the issues in dispute in accordance with this Agreement, relevant provisions of the domestic laws of the Contracting State the host to the investment and applicable rules of international law.

(8) An investor other than a natural person which has the nationality of a Contracting State and which before the dispute between it and that Contracting State arises is controlled by investors of another Contracting State shall for the purpose of Article 25 (2)(b) of the Washington Convention be treated as an investor of that other Contracting State.

(9) The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the

dispute. Each Contracting State shall carry out without delay any such award and shall make provision for the effective enforcement in its territory of such awards.

(10) In any proceedings, judicial, arbitral or otherwise, concerning an investment dispute between it and an investor of the other Contracting State, a Contracting State shall not assert, as a defense, its sovereign immunity. Any counter-claim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whatsoever, whether public or private, including such other Contracting State and its subdivisions, agencies and instrumentalities.

## **Article 10. Settlement of Disputes between Contracting States**

(1) The Contracting States shall endeavour to settle any dispute concerning the interpretation or application of this Agreement through consultations or other diplomatic channels.

(2) If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by either Contracting State and unless the Contracting States otherwise agree in writing, either Contracting State may, by the written notice to the other Contracting State, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

(3) The arbitral tribunal shall be constituted as follows: each Contracting State shall appoint one member and these two members shall agree upon a national of a third State as their Chairman to be appointed by the two Contracting States. Such members shall be appointed within two months, and such Chairman within three months, from the date on which either Contracting State has informed the other Contracting State that it intends to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been complied with, either Contracting State may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting State or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting State shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with applicable rules of international law and shall be final and binding on both Contracting States. Each Contracting State shall bear the costs of the member of the arbitral tribunal appointed by that Contracting State, as well as the costs for its representation in the arbitral proceedings. The expenses of the Chairman as well as any other costs of the proceedings shall be borne in equal parts by the two Contracting States. The arbitral tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Contracting States. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 11. Relations between Contracting States**

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

## **Article 12. Preservation of Rights**

(1) If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to this Agreement contains a regulation, whether general or specific, entitling investments or associated activities by investors of the other Contracting State to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

(2) Each Contracting State shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting State.

## **Article 13. Application**

This Agreement shall apply to all investments, whether existing at or made after the date of its entry into force by investors of either Contracting State in the territory of the other Contracting State and accepted in accordance with the respective legislations of either Contracting State, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

## **Article 14. Consultations and Amendments**

(1) Either Contracting State may request consultations with the other Contracting State on any matter affecting the application of this Agreement. Such consultations shall be held at a place and a time as may be agreed upon through diplomatic channels.

(2) Any amendments to the provisions of this Agreement shall be mutually agreed upon, in writing, by the Contracting States, and shall come into force in accordance with the provisions of the entry into force of this Agreement.

## **Article 15. Entry Into Force**

(1) Each of the Contracting State shall notify the other that its constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall enter into force on the thirtieth day after the date of receipt "of the latter notification.

## **Article 16. Duration and Termination**

(1) This Agreement shall remain in force for a period of (30) thirty years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting State notifies the other Contracting State o f its intention to terminate the Agreement.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of (20) twenty years from the date of termination of this Agreement.

In witness whereof, the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done in duplicate at on this day of ..... corresponding to ..... day of ..... in the Arabic, Lithuanian and English languages, all texts being equally authentic. In case of divergent interpretation, the English text shall prevail.

For the Republic of Lithuania

For the State of Kuwait