

Agreement between the Government of Republic of Tajikistan and the Government of the United Arab Emirates for the Promotion and Protection of Investments

The Government of the Republic of Tajikistan and the Government of the United Arab Emirates (both countries hereinafter collectively referred to as the Contracting Parties and each referred to as a Contracting Party).;

Desiring to create favourable conditions for greater economic cooperation between them and particularly for investments by investors of one Contracting Party in the territory of the other Contracting Party.

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

Have agreed as follows:-

Article 1. Definitions

For the purpose of this Agreement:-

(1) The term "investment" shall comprise every kind of asset invested by the Government or by a natural or legal person of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, regulations and administrative practices of that Contracting Party. Without restricting the generality of the foregoing the term "investment" shall include: (a) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans related to investments and bonds issued by a Contracting Party or any of its natural or legal persons and returns retained for the purpose of re-investments;

(c) Liquid assets, deposits and claims to money or to any performance under contract having economic and financial values associated with an investment;

(d) The copyrights, trademarks, patents, industrial designs and other industrial property rights, know-how, trade secrets, trade names and goodwill;

(e) Any right conferred by law, administrative decisions or contract, including license and permits issued pursuant to law, which have an economic value and are necessary for conducting economic activity such as rights to prospect, explore, extract, utilize natural resources, and rights to manufacture, use and sell products.

Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the admission, if any, granted in respect of the assets originally invested.

(2) The term "investor" shall mean the Government of a Contracting Party or any of its natural or legal persons who invest in the territory of the other Contracting Party.

(3) The "natural person" shall mean in either of the Contracting Party an individual possessing the nationality of that Contracting Party in accordance with its laws.

(4) The term "legal person" shall mean with respect to either Contracting Party, any entity established in accordance with, and recognized as legal person by the law of that Contracting Party, such as public and private companies, corporations, business associations, authorities, partnerships, foundations, firms, institutions, establishments, agencies, development funds, enterprises, cooperatives and organizations or other similar entities irrespective of whether their liabilities are limited or otherwise.

(5) The term "returns " shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, capital gains, share dividends, royalties, management, technical assistance or other fees irrespective of the form in which the return is paid.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and, in exercise of powers conferred by its laws, regulations and administrative practices shall admit such investments and their associated activities.

(2) Once established, investments shall at all times enjoy full protection and security, in a manner consistent with international law.

(3) Each Contracting Party shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment, acquisition or disposal of investments or rights related to investment and its associated activities in its territory of investors of the other Contracting Party shall not in any way be subjected to or impaired by arbitrary, unreasonable or discriminatory measures.

(4) i) Each Contracting Party shall endeavour to take the necessary measures in accordance with its legislation for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting Party.

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

(5) With respect to its tax policies, each Contracting Party should strive to accord fairness and equity in the other Contracting Party, in accordance with the laws of the host Contracting Party regulating foreign investments.

(6) The Contracting Parties 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 Party into the other may be most beneficial in the interest of both Contracting Parties.

(7) To attain the objectives of this Agreement, the Contracting Parties shall encourage and facilitate the formation and establishment of the appropriate joint ventures between the investors of the Contracting Parties to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host Contracting Party.

(8) Investors of either Contracting Party shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host Contracting Party within the framework of their internal legislation, the Contracting Parties shall favourably examine requests for entry and authorization to reside, work

And travel made by such managerial personnel, or their families, of one Contracting Party in relation to an investment made on the territory of the other Contracting Party.

(9) Contracting Party shall seek as far as practicable to avoid performance requirements as a condition of establishment, expansion or maintenance of investments, 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 similar requirements.

(10) Each Contracting Party shall undertake to provide effective means of asserting claims and enforcing rights with respect to investment agreement, investment authorizations and properties. Each Contracting Party shall not impair the right of the investors of the other Contracting Party to have access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority.

(11) Each Contracting Party shall make as far as possible, public all laws, regulations, administrative practices and procedures that pertain to or affect investments.

Article 3. National and Most-favoured-nation Treatment

(1) Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any Third State if the latter is more favourable.

(2) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other associated activities therewith, treatment not less favourable than that which it accords to its own investors or to investors of any Third State if the latter is more favourable.

Article 4. Exceptions

The provisions of this Agreement relating to the granting of treatment not less favourable than that accorded to its own investors or the investors of any Third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:-

- i) Any existing or future customs union, an economic union or free trade area or a common external tariff area or a monetary union or similar international agreement or other forms of regional or sub-regional cooperation arrangements to which either of the Contracting Parties is or may become a party; or
- ii) Any international or regional or sub-regional agreement or other arrangement relating wholly or mainly to taxation or movement of capital or any domestic legislation relating wholly or mainly to taxation.

Article 5. Compensation for Damage or Loss

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any Third State if the latter is more favourable. Such payment shall be freely transferable.

(2) Without prejudice to Paragraph (1) of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damages or losses in the territory of the other Contracting Party resulting from:

- (a) Requisition of their investment or property by its forces or authorities,
- (b) Destruction of their investment or property 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 and adequate compensation for the damages or losses sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be made in freely usable currency and freely transferable without delay.

Article 6. Nationalization or Expropriation

(1)

i) Investments of either Contracting Party or its natural or legal persons shall not be subject to sequestration confiscation or any similar measures and shall enjoy full and complete protection and safety in the territory of the other Contracting Party,

ii) Neither Contracting Parties shall take any measures of expropriation or nationalization or freezing or any other measures having effect of this position or to subject the investment to any measures direct or indirect tantamount to expropriation including the levying of taxes, the compulsory sale of all or part of an investment or the impairment deprivation or its management or control. All such actions refer to as expropriation except when the expropriation:

- (a) Is done for public purpose,
- (b) Is accomplished under due procedures of law,
- (c) Is not discriminatory,
- (d) Does not violate any specific provision or contractual stability or expropriation contains in an investment agreement between the natural and legal persons concerned and the party making the expropriation,
- (e) It is in accordance with a decision of a competent legal body,
- (f) The investor shall have the right to refer to the judicial body to make sure that expropriation has been made in

accordance with the principles of the international law,

(g) The investor shall have the right to contest against the expropriation or any such measures to the competent court of the Contracting Party which have taken these measures,

(h) Is accompanied by prompt, adequate and effective compensation.

(2) Such compensation shall be computed on the basis of the market value of the investment immediately prior to the moment of time when the decision for nationalization or expropriation was announced or become publicly known and shall be determined in accordance with recognized principles of valuation such as market value; where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favourable than the position in which he would have been had the compensation been paid immediately after the date of expropriation or nationalization. To achieve this goal the compensation shall include an interest calculated on LIBOR basis denominated from the date of nationalization or expropriation until the date of payment.

(3) When a Contracting Party nationalizes or expropriates the investment of a legal person which is established or licensed under the law in force in its territory and in which the other Contracting Party or any of its investors owns shares, stocks, debentures or other rights of interest, it shall ensure that prompt, adequate and effective compensation is received and allowed to be repatriated. Such compensation shall be determined and paid in accordance with the provisions of Paragraph (2) of this Article.

Article 7. Repatriation of Capital and Returns

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee those investors a free transfer of the payments relating to these investments, particularly but not exclusively:

(a) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other returns, accruing from any investment made by an investor of the other Contracting Party;

(b) The proceeds accruing from the total or partial sale or liquidation of any investment made by an investor of the other Contracting Party;

(c) Funds in repayment of borrowings;

(d) Sums appropriated for coverage of expenses connected with the maintenance of investment.

(e) The net earnings of the nationals who are allowed to work in the investment made in the territory of the other Contracting Party;

(f) Capital and additional funds for the maintenance and the development of the investment.

(2) Without restricting the generality of Article 3 of this Agreement the Contracting Parties undertake to accord to transfers referred to in Paragraph (1) of this Article a treatment as favourable as that accorded to

Transfers originating from investments made by investors of a Third State if its more favourable to the investor.

(3) The exchange rates applicable to such transfers in paragraph (1) of this Article shall be the rate of exchange prevailing at the date of transfer.

(4) The term "without delay" means the transfers made within a period normally required to prepare the formalities of transfer. The time runs from the date when the application together with necessary documents were submitted, to the competent authorities and should not exceed, in any circumstances, a period of two months.

Article 8. Subrogation

(1) If a Contracting Party (or its designated Agency) makes payment to any of its investors under an indemnity or a guarantee it has granted in respect of an investment or any part thereof in the territory of the host Contracting Party, or has otherwise become subrogated to any of the rights of such investors with respect to such investment, the host Contracting Party, shall recognize:-

(a) The right of the other Contracting Party (or its designated Agency) arising from the assignment, indemnity or other subrogation, whether under law or pursuant to a legal transaction, and

(b) That the other Contracting party (or its designated Agency) is entitled by virtue of subrogation to enforce such right as its predecessor in title.

(2) The other Contracting Party shall however recognize the right of the host Contracting Party to deduct any unpaid taxes and other charges due from the investor.

(3) If such other Contracting Party acquires any amounts in such manner as above, it shall be accorded in respect thereof a treatment not less favourable than that accorded to the funds of investors of the host Contracting Party or of a Third State deriving from investments or associated activities similar to those in which the party indemnified was engaged.

Article 9. Settlement of Investment Disputes

(1) Any dispute concerning an investment between a Contracting Party and an investor of the other Contracting Party shall, by written request as far as possible, be settled amicably between the parties to the dispute.

(2) If these disputes cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, the conflict shall be submitted, at the choice of the investors to:

- The local court of the Contracting Party on whose territory the investment is made.
- The ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL);
- The International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington D.C. on 18 March 1965, in case both Contracting Parties have become signatories of this Convention.

(3) The arbitration award shall be based on:

- The provisions of this Agreement;
- The national law of the Contracting Party in whose territory the investment was made,
- The rules and the universally accepted principles of international law.

(4) The arbitration decisions shall be final and binding for the parties in conflict. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

(5) Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have been terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

Article 10. Settlement of Disputes between Contracting Parties

(1) Should any disputes arise concerning the interpretation or application of this Agreement the Governments of the Contracting Parties shall try to settle them through diplomatic channels.

(2) If the disputes cannot be so settled within six months after the beginning of the dispute they shall, upon the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

(6) The term "territory" means the territory of the Republic of Tajikistan or the territory of the United Arab Emirates respectively, as well as those maritime areas, including the islands, seabed and the subsoil adjacent to the outer limit of the territorial sea of either of the above territories over which the Contracting Party concerned exercises in accordance with the international law, sovereign rights and jurisdiction for the purpose of exploration of natural resources and other potentialities.

(7) "Associated activities" include the organization, control, operation, maintenance and disposal of legal persons, branches, agencies, offices, factories or other facilities for the conduct of business; making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares and the purchase of foreign exchange for imports.

(8) The term "freely convertible currency" means currency that is used to make payments for international transactions and for which there are ready buyers in the principal exchange markets such as United States Dollars, Pound Sterling's,

Deutsche Marks, Swiss Francs, French Francs.

Article 11. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation or regulations by investors of the other Contracting Party after the 2nd of December 1971.

Article 12. Relation between Governments

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

Article 13. Application of other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement and by other agreements to which both the Contracting Parties are parties or general principles of law commonly recognized by both Contracting Parties or domestic law of the host Contracting Party, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favourable to their cases.

(2) Investments subject to special contracts or commitments undertaken by one Contracting Party with respect to the investors of the other Contracting Party shall be governed, notwithstanding the provisions of this Agreement, by the terms of these contracts and commitments insofar as their provisions are more favourable than those provided by this Agreement.

Article 14. Entry Into Force

This Agreement shall enter into force thirty (30) days after the latter date on which either Contracting Party notifies through diplomatic channels the other that its domestic legal requirements for the entry into force of this Agreement have been fulfilled.

Article 15. Duration and Denunciation

(1) This Agreement shall remain in force for a period of twenty (20) years. Thereafter, it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party through diplomatic channels of its intention to denounce this Agreement.

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

Done at Abu Dhabi on Sunday 17 December 1995 corresponding to 25 Rajeb 1416 H in two originals in English language.

For the Government of the Republic of Tajikistan

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