

# **Agreement Between the Government of the Republic of Iraq and the Government of Kuwait on promotion and reciprocal protection of investments**

The Government of the Republic of Iraq and the Government of the State of Kuwait (hereinafter referred to as the Contracting Parties).

Desiring to create conditions for the development of economic cooperation between them, in particular for investments by investors of a Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection of such investments will serve as a catalyst for the revitalization of the trade initiative;

And to increase prosperity in the country of the Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investments" means all types of assets or financial rights invested in the territory of a Contracting Party in accordance with its laws to the benefit of the national economy, and include assets or rights that are made up of or take shape of :

(a) Shares of a company or shares and other forms of contribution to ownership, bonds, bonds and other forms of debt rights of the company and other debt and loans and securities issued by any investor of a Contracting Party;

(b) Claims for money or performance in accordance with a contract of economic value;

(c) Intellectual property rights; include; without limitation copyright, trademarks and patents, designs, industrial models, technical processes, expertise, trade secrets, trade names and goodwill;

(d) Any right established by law or contract or under any licenses and permits granted in accordance with the law, including rights to prospecting, exploration, extraction or exploitation of natural resources;

(e) Any movable and immovable property and any related property rights such as transactions and mortgages

Any change in the form in which the assets or rights are invested or reinvested will not affect their nature as an investment.

2. "Investor" means for a Contracting Party:

(a) The Government of that Contracting Party;

(b) A natural person who has the nationality of that Contracting Party in accordance with its laws in force;

(c) Any juridical person duly established under the laws and regulations of that Contracting Party, organized or not organized for the purpose of financial gain, whether owned or controlled, by a private person or by the government, which has been established in accordance with the laws of a Contracting Party or are actually owned or managed by an investor of a Contracting Party, having the actual management center located in the host country.

3. "Proceeds" means amounts earned by an investment, irrespective of the form in which it is made, including but not limited to profits, interest, capital gains, dividends and royalties, management fees, technical assistance, other payments or fees, and payments in kind, of any kind.

4. The term "territory" means the territory of the Contracting Party, including any area outside the territorial sea, to be

determined under the laws of the Contracting Party to which the State is entitled to exercise sovereign rights or jurisdiction, in accordance with general international law.

5. The term "without delay" means that period normally required to complete the necessary formalities for conversion payments. The said period starts on the day on which the transfer request is submitted until the interest is calculated, considering delay one month after the date of application.

## **Article 2. Scope of the Agreement**

This Agreement shall apply to all investments, whether on the date of entry into force of this Agreement or which were subsequently made by the investors of either Contracting Party in the territory of the other Contracting Party.

## **Article 3. Promotion, Acceptance and Protection of Investments**

1. Each Contracting Party shall accept, encourage and create more favorable conditions for investments of investors of the other Contracting Party in its territory and in accordance with its rights conferred upon it by force of its laws.

2. Investments made by investors from a Contracting Party in the territory of the other Contracting Party shall be treated fair and equitable and enjoy full protection and security in a manner consistent with its laws, regulations and provisions of this Agreement.

3. Neither Contracting Party shall, in any form, undertake arbitrary and discriminatory measures which would cause damage to manage, maintain, use, enjoy or dispose of investments in the territory of investors of the other Contracting Party.

4. Investment by the investors of either Contracting Party at the time of incorporation shall not be subject to additional performance requirements, on their use, management, disposal, operation, expansion and sale or any other action.

## **Article 4. National Treatment**

1. Each Party shall accord to the investors of the other Party a treatment no less favorable than that accorded under similar conditions to its investors with regard to the establishment, acquisition, expansion, management, disposal, operation and sale, or act in a different manner for investments in its territory in accordance with its laws and regulations.

2. Each Party shall grant covered investments a treatment no less favorable than the treatment it accords in similar circumstances for investments of the other party's investors in its territory in respect of the establishment, acquisition, expansion and management, disposition, operation, sale or other disposition of investments in accordance with its laws and regulations.

3. The treatment granted by a Contracting Party in accordance with paragraphs 1 and 2 shall apply with respect to the regional level of the Government to resident natural persons and projects established in accordance with its laws and regulations and the territorial levels of the Contracting Party.

## **Article 5. Mfn Treatment**

1. Each Contracting Party shall accord to the investors of the other Party a treatment no less favorable than that accorded by it under similar circumstances, to non-affiliated investors relating to the establishment, acquisition, expansion and management, selling, or otherwise disposing of investments in its territory.

2. Each Contracting Party shall grant the covered investments a treatment no less favorable than the treatment it confers in similar circumstances to investments not belonging to any Contracting Party in its territory with respect to the establishment, acquisition and expansion, management, disposal, operation, sale or other disposition of investments.

3. Notwithstanding, the provisions of this Article relating to the granting of a treatment shall not be less favorable than that conferred by one the Contracting Parties to its investors or investors of a third State shall not be construed as obliging that Contracting Party to provide to the investors of the other Contracting Party the advantages of any transaction, preference or concession resulting from:

(a) Any customs union, economic union, free trade area, monetary union or similar international agreement that may arise in future and either Contracting Party is a party to or may become a party to it.

(b) Any international, regional or any other similar regulation relating wholly or mainly to taxation or any other domestic legislation relating wholly or mainly to taxes.

## **Article 6. Compensation for Losses**

1. Notwithstanding the application of Article (8), investors of one Contracting Party shall be granted in case of exposure of their investments in the territory of the other Contracting Party for damage or loss due to the war or any other armed conflict, national emergency, revolution, disturbances, riots or other similar events, with respect to the restoration of the situation to the former status, or the refund of the losses indemnity or other settlement, shall be treated no less favourably than those accorded by the other Contracting Party investors or affiliates of any third party, whichever is the most favourable.

2. Without prejudice to paragraph 1, investors belonging to one of the Contracting Parties to which loss are produced as a result of any of the events referred to in that paragraph in the territory of the other Contracting Party, and result of:

(a) Temporary seizure of their investments or part thereof by their forces or authorities;

(b) The destruction of their investments or part thereof by their forces or authorities, not due to combat operations or not required according to the necessity of the situation;

Shall be entitled to immediate, adequate and effective compensation for damage or loss sustained.

## **Article 7. Expropriation**

1.

(a) Investments made by investors of both Contracting Parties in the territory of the other Contracting Party shall not be nationalized, expropriated or directly subject to any effective procedures equivalent to nationalization or expropriation (hereinafter collectively referred to as expropriation by the other Contracting Party), except for a general purpose relating to the national interest of that Contracting Party and in return for immediate, adequate and effective compensation, provided that such measures have been taken on the basis of non-discrimination using general legal proceedings.

(b) Such compensation shall amount to the market value of the expropriated investments and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investments at the time immediately before the expropriatory action was taken or the impending expropriatory became publicly known, whichever is earlier (hereinafter referred to as the "valuation date"). Such compensation shall be calculated in a freely convertible currency to be chosen by the investor, 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 or equivalent, from the date of expropriation until the date of payment.

2. For certainly, expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise that is incorporated or established under the laws in force in its own territory in which an investor from the other Contracting Party has an investment, including through the ownership of shares, stocks, debentures or other rights or interests.

3. For the purposes of this Convention, the term "expropriation" also includes any interference or regular action by a Contracting Party having the same effect of expropriation which effectively deprives the investor of its ownership and control over or its core interests from its investment or which may result in loss or damage Of the economic value of investment such as freezing or blocking of the investment and the imposition of arbitrary or excessive tax on Investment and compulsory sale of all or part of the investment or other similar measures.

## **Article 8. Free Transfers**

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of investments and related revenues within and outside its territory in accordance with its laws and regulations.

2. The transfer of payments under paragraph (1) shall be effected without delay or restrictions and, except in the case of payments in kind, in freely convertible currency. In case of delay in making the required transfers, the affected investor shall be entitled to receive interest for the period of such.

3. When necessary and to protect the balance of payments, the host Contracting Party shall have the right to impose precautionary measures on the exchange process for (180) one hundred and eighty days and can be extended for a period not exceeding (90) ninety days in accordance with the rules of the International Monetary Fund.

## Article 9. Subrogation

1. If a Contracting Party or its designated agency (the "Indemnifying Party"), makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting Party (the "Host State"), 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;

(b) The right of the Indemnifying Party to exercise all such rights and enforce such claims and to assume all obligations related to the investment by virtue of subrogation.

2. The Indemnifying Party shall be entitled in all circumstances to the same treatment in respect of:

(a) The rights and claims acquired and the obligation assumed by it by virtue of the assignment referred to in paragraph 1 of this Article;

(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 investment concerned.

## Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes arising between a Contracting Party and an investor from the other Contracting Party in respect of an investment of the latter in the territory of the former shall, as far as possible, be settled amicably.

2. If such disputes cannot be settled within a period of 180 days from the date on which either party to the dispute requested for amicable settlement by the delivery of a notice, in writing, to the other party, the dispute shall be submitted for resolution, at the election of the investor party to the dispute, through one of the following means:

(a) In accordance with any appropriate procedures for the settlement of the dispute agreed upon in advance;

(b) Local courts;

(c) International arbitration in accordance with the following paragraphs of this article.

3. In the event that an investor elects to submit the dispute for resolution by international arbitration, the investor shall further provide its consent in writing for the dispute to be submitted to one of the following bodies:

(a)

(i) 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, 18th March, 1965 the "Washington Convention", in the event that both Contracting Parties are parties to the Washington Convention -and the Washington Convention is applicable to the dispute;

(ii) The Centre, under the rules governing the Additional Facilities for the Administration of Proceedings by the Secretariat of the Centre (the "Additional Facility Rules", if both Contracting Party of the investor or the Contracting Party to the dispute, but not both, is a party to the Washington Convention;

(b) An arbitral tribunal established under the Arbitration Rules (the "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 under Article 7 of the Rules shall be the Secretary General of the Centre);

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

4. Notwithstanding the fact that the investor may have submitted a dispute to a binding arbitration under paragraph 3, it may, prior to the institution of the arbitral proceeding or during the proceeding, seek before the judicial or administrative tribunals of the Contracting Party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interest, provided it does not include request for payment of any damages.

5. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment dispute between a Contracting Party and an investor of the other Contracting Party, a Contracting Party shall not

assert, as a defense, its sovereign immunity. Any counterclaim 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 whomsoever, whether public or private, including such other Contracting Party and its subdivisions, agencies or instrumentalities.

6. A foreign investor who is also a national of the host State shall be considered a national of that State for the purpose of applying provisions in this matter.

7. The investor shall not have the right to institute arbitration proceedings against the host State in the event of a judgment on the subject of the dispute in arbitration.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. Each Contracting Party shall, to the extent possible, resolve any dispute concerning the interpretation or application of this Agreement through consultations, conciliation or other diplomatic channels.

2. If the dispute is not settled within 180 days from the date on which such consultations or other diplomatic channels were requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, 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 Party shall appoint one member, and these two members shall agree upon a national of a third state as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within 60 days, and such Chairman within 120 days, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 have not been complied with, either Contracting Party 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 of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice next in seniority who is not a national of either Contracting Party 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 this Agreement and such recognized rules of international law as may be applicable and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 12. Relations between the Contracting Parties**

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

## **Article 13. Exceptions**

Any Contracting Party may take any necessary measures to protect its security interests, including:

1. Measures to prevent and combat crime.
2. Measures to prevent the smuggling and trade of arms and ammunition, processing of war equipment.
3. Transactions, resources and services for the purposes of an official or semi-official military establishment.
4. Military or security actions, directly or indirectly related to the implementation of national policies or international agreements on the non-proliferation of nuclear weapon, nuclear or non-nuclear explosive devices.
5. To implement its obligations under the Charter of the United Nations to maintain international peace and security.
6. Measures that a Contracting Party shall take in time of war or emergency in accordance with national legislation.

7. Measures to protect the environment against pollution.

## **Article 14. Anti-corruption and Money Laundering**

The application of the provisions of this Agreement shall not preclude the entry into force of the host country's national legislation to combat corruption, money laundering and breach of obligations arising from the investment contract.

## **Article 15. Application of other Provisions**

If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain rules, whether general or specific, entitling investments by investors from the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable to the investor prevail over this Agreement.

## **Article 16. Entry Into Force of the Agreement**

Each Contracting Party shall notify the other in writing when its constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the later notification.

## **Article 17. Duration and Termination**

1. This Agreement shall remain in effect for a period of ten (10) years and may be extended for a term of five (5) years unless one of the Contracting Parties decides to terminate it within a period of not less than (1) year from the end of the duration.
2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the existing investments shall remain governed by the provisions of this Agreement until the end of the life of the project agreed upon in the contract.

In witness whereof, the relevant commissioners of both Contracting Parties have signed this Convention.

Done in Kuwait on this thirteenth day of Safar 1435 AH corresponding to the sixth day of the month of December 2013, in two original copies in Arabic.

Government of the Republic of Iraq

Dr . Sami Raouf Al - Araji

Chairman of the National Investment Agency

Government of the State of Kuwait

Khaled Suleiman Al - Jarallah

Under Secretary of State