

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF KUWAIT AND THE GOVERNMENT OF THE REPUBLIC OF ARMENIA FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS**

The Government of Kuwait and the Government of the Republic of Armenia (hereinafter referred to as the Contracting Parties)

To create favorable conditions for the development of economic cooperation between the parties and, in particular, a Contracting Party in the territory for investments by investors of the other Contracting Party;

Recognising that the encouragement and reciprocal protection of such investments will contribute to the stimulation of business initiative and will enhance the prosperity of the two countries,

Have agreed as follows:

## **Article 1. Definitions**

For purposes of this Agreement,

1. "Investment" term means all types of property in the territory of a Contracting Party, which are directly or indirectly owned or controlled by investors of the other Contracting Party and in particular, though not exclusively, include the following forms of property or right.

- a) shares, equity and other forms of capital involvement, bonds, corporate bonds and other forms of participation of the company, other liabilities, borrowings and securities issued by any investor of the Contracting Party,
- b) financial claims arising from the contract and the economic value of any other assets or liabilities of performance requirements,
- c) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and patterns and technical processes, know-how, trade secrets, trade names and goodwill;
- d) law, contract or any license or permit granted under any patent rights law, including the exploration of natural stocks, voaumnasirutyan, extraction and utilization rights and other rights to conduct economic or commercial activity or providing services,
- e) any right granted under any applicable law, by contract, or by law, including the rights of exploration, research, extraction and utilization of natural resources and other economic or commercial activities or services.

The term "investment" also refers to the amounts received from retained earnings and "dissolution" for the purpose of reimbursement in the following terms:

The change of the form of property and rights are invested or reinvested does not affect their character as investments observation.

2. The term "investor" means with regard to the term of each Contracting Party,

- a) for the State of Kuwait, the Government of that Contracting Party,
- b) The natural person who, in accordance with the applicable law of a Contracting Party, is a national,
- c) a legal entity that has been created or established by the laws and regulations of the Contracting Party, such as institutions, development funds, agencies, foundations and other regulations of enterprises, organizations and companies.

3. "Company" term means any legal entity or non-profit, private or owned or under the control of the public sector,

established in accordance with the legislation of the Contracting Party or is owned or effectively controlled by investors of either Contracting Party and includes corporations, trusts, partnerships, branches, joint ventures, associations or other organizations.

4. "returns" term means that the form of money, regardless of the payment of contributions, and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and management fees, technical assistance or other fees and remunerations and payments in kind, regardless of their type.

5. "Liquidation" means any action aimed at the full or partial termination of the investment.

6. "territory", the term means,

a) for the Republic of Armenia, the land territory, internal waters and airspace, over which the Republic of Armenia to exercise sovereign rights and jurisdiction in accordance with its existing national legislation and international law,

b) for the State of Kuwait, the Kuwaiti territory, including the maritime areas adjacent to any area in accordance with international law, the law of the Contracting Party is or may be considered as an area over which the Contracting Party may carry out sovereign rights or jurisdiction.

7. "freely convertible currency" term means any currency that the International Monetary Fund from time to time is defined as a freely convertible currency, according to the International Monetary Fund for the record of the articles and amendments thereto.

8. "without delay" term means such period as is normally required for the completion of necessary formalities for payment transfer. The period begins upon receipt of application for a transfer and in any case may not exceed one month.

## **Article 2. Investment Promotion and Protection**

1. Each Contracting Party shall encourage investments and create favorable conditions in its territory for investments by investors of the other Contracting Party and, subject to its rights under its law, accept those investments.

2. Investments of the investors of the Contracting Party in the territory of the other Contracting Party shall be guaranteed at any time fair and equitable treatment as well as full protection and security in accordance with the principles of international law and the provisions of this Agreement. No Contracting Party shall in any way be construed as preventing, managing, maintaining, exercising, or disposing of investments by investors of the other Contracting Party in the territory of investors of the other Contracting Party. Each Contracting Party shall execute all of its obligations and commitments to investors of the other Contracting Party.

3. The investments of investors of both Contracting Parties after approval shall not be subject to additional performance requirements that may cause damage to their viability or adverse effects on their use, management, operation, operation, expansion, sale or other disposal.

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall, subject to the use, management, maintenance, operation, expansion, sale or any other disposal of investments made by investors of the other Contracting Party in its territory, shall be a treatment that shall be no less favorable than that of the mode, which in such circumstances the Party grants to investors of its own or of a third country, choosing the most favorable treatment for such investments.

2. However, the provisions of this article shall not be so construed as to oblige one Contracting Party to investors of the other Contracting Party to extend to any such treatment, preference or privilege benefits as a result of:

a) customs union, economic union, free trade agreements, international and regional economic union or any other form of regulations or other similar international agreement, which is or may become a party to each of the Contracting Parties,

b) any international, regional or bilateral agreement or any such other agreement or any domestic law relating thereto, wholly or mainly, to taxation.

## **Article 4. Compensation for Losses**

1. Except as provided for in Article 6, where the investments of an investor of one Contracting Party suffer losses in the territory of the other Contracting Party due to war or other armed conflict, state emergency situations, revolution, civil strife, revolt or other similar events, the latter Contracting Party shall provide to the investor no less favorable treatment regarding

the refund of losses, compensation, damage compensation or any other settlement with respect to such investors, than to its own investors or investors of any third party, choosing the most favorable regime for the investor.

2. Without prejudice to the provisions of paragraph 1, a Contracting Party to investors who suffer losses in any of the events mentioned in this paragraph because of the other Contracting Party in the territory, which is a result of:

a) The confiscation of its investment or part thereof, by the armed forces or government,

b) destruction of investments or part thereof by the latter's armed forces or of the authorities which did not arise as a result of armed operations or not requiring the necessity of the situation,

The other Party shall provide for restoration or compensation of damages, which in any case must be done quickly, properly and effectively, for damages or losses.

## **Article 5. Expropriation or Alienation**

1.

a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, deprived of their property, nationalized, subject to occupation, or subject to nationalization, seizure, alienation or an equivalent direct or indirect action (hereinafter together: "expropriation and alienation ") by the other Contracting party, except when it is done for public purposes, depending on the internal needs of the Contracting party, for a prompt, adequate and effective compensation and on condition that those measures are carried out in non-discrimination on the basis of general application in accordance with relevant legal processes.

b) Such compensation shall be equivalent to that expropriated or the actual value of the expropriated investments and should be determined and the date of implementation of internationally accepted principles in accordance with the disposal calculated assessment immediately before or publicly known before becoming the basis of the fair market value of the expropriated or disposed of investments, depending on what happened earlier (the evaluation day). The compensation shall be based on the investor's choice, in freely convertible currency, valuation day based on the prevailing market rate of exchange of the currency, and shall include the disposal of the implementation date until the payment date of the period for the market of the commercial rate, which in any case shall not be less than: than the prevailing LIBOR rate or the equivalent.

2. For further determination, the deprivation and alienation shall include situations where a Contracting Party grants or grants the property of a company or enterprise established or founded in accordance with the laws of its territory, in which the other Contracting Party has made an investment, through the use of shares, stocks, shares or other rights or interests.

3. For the purposes of this Agreement, the terms "expropriation and alienation" shall also include the interventions or regulatory measures of the Contracting Party which have a consequence of the expropriation as the investor is actually deprived of its property, or such measures that may result in the loss or damage of the economic value of an investment, such as freezing or blocking investment, arbitrary or excessive taxation of investment, the sale of the whole or part of the sale or other similar measures

## **Article 6. Transfer Payments Related to Investments**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments and to its area and beyond.

2. The transfers referred to in paragraph 1 shall be made without any unreasonable delays or restrictions and, in exceptional cases, in freely convertible currency. In case of delay in making the required transfer, the injured investor has the right to receive interest for the delay period.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency ("compensating Party") makes a payment to the territory of the other Contracting Party ("Host Party") in exchange for compensation or guarantee obligations in respect of the investment, then the host party shall recognize

a) the transfer of all rights and claims resulting from such investment to the Compensating Party by law or other legal function,

b) the right of the Compensating Party to exercise all such rights and to satisfy such claims and to assume all obligations

with respect to investment under the subrogation right.

2. In all circumstances, the complainant shall be provided with the compensation considered,

a) in paragraph 1 above in respect of the rights and claims acquired and liabilities assumed of transfer listed,

b) any payment that was received, according to those rights and claims, which was originally investor get authorized under this Agreement to the introduction.

## **Article 8. Settlement of Disputes between an Investor and a Contracting Party**

1. Disputes between the Contracting Party and an investor of the other Contracting Party in connection with the introduction of the first of its territory, to the extent possible, be settled amicably.

2. If such disputes can not be settled by any party to a dispute to settle the dispute amicably within six months from the date of written notification to the other party during the election of the investor party to the dispute, the dispute may be settled in one of the following methods:

a) In accordance with the applicable, agreed-upon procedures for dispute settlement;

b) through international arbitration in accordance with the provisions of this Article.

3. The investor resorting to international arbitration for the settlement of the dispute, shall also provide his / her written consent to submit the dispute to any of the following bodies:

a)

1) International Centre for Settlement of Investment Disputes ("the Centre"), which was established in accordance with the Convention on Settlement of Investment Disputes between States and Nationals of other States which was open for signature in 18 March 1965 in Washington (Washington Convention), if both Contracting Parties are both party to the Washington Convention, and the Washington Convention is applicable to the settlement of the dispute,

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

b) international arbitration, UN-based Commission on International Trade Law (UNCITRAL) Arbitration Rules ("Rules"), the parties may modify these rules (Rules, the appointing authority referred to in Article 7 of the Secretary-General of the Centre)

c) an arbitral tribunal established on the basis of the arbitration rules of the arbitral tribunal selected by mutual agreement between the parties to the dispute.

4. Notwithstanding the provisions of paragraph 3, the investor may apply for arbitration to settle the dispute, he can before the commencement of the proceedings or at the time of the proceedings, request from the judicial or administrative tribunals of the other Contracting Party, a temporary injunction for the protection of his rights, except claims for compensation for negligence.

5. In the course of any proceedings relating to the dispute between an Contracting Party and an investor of the other Contracting Party, whether in a litigant, arbitral or other order, or in a judgment or decision, the Contracting Party shall not, in its sole discretion, exercise sovereign immunity as a defence. Any counter-claim or indemnity cannot be based on the fact that a given investor has received or should have received, in accordance with an insurance contractual agreement, partial or complete redress of damages or other types of compensation from any third party, whether it is private or the State Party including the other Party, and its sub-structures, agencies or intermediary organizations.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall settle disputes concerning the interpretation or application of this Agreement by negotiation or other diplomatic channels.

2. If the dispute has not been settled within six months from the date of the receipt of the request for such negotiations or other diplomatic channels, and unless otherwise agreed by the Contracting Parties, each Contracting Party, in writing, to the other Contracting Party, may submit a petition to the arbitral tribunal in accordance with the following paragraphs of this Article.

3. The Arbitral Tribunal will be established as follows: each Contracting Party shall appoint one member, and the need to agree upon a national of a third country, the two members designated by the two Contracting Parties shall serve as President. These members shall be appointed within two months and the president within four months from the date of notification of the arbitration court of the other Contracting Party, the Contracting Party intends to transfer the dispute.

4. If the above appointments have not been made in the periods specified in paragraph 3 any Contracting Party shall 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 one Contracting Party, or if for any other reason cannot fulfill this function, for any other reason, the Vice President of the International Court of Justice shall be invited for the appointment. If the Vice 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, for any reason, the next member in seniority of the International Court of Justice, who is not a citizen of a Contracting Party shall make the necessary appointments.

5. The decisions of the arbitral tribunal shall be adopted by a majority vote. These decisions shall be made in accordance with the rules of this Agreement and of the international law which are applicable, final and legally binding on both Contracting Parties. The Court's judgments are final and binding upon the Contracting Parties. Each Member Party shall bear the costs of its member designated by the arbitral tribunal as well as its representation in the arbitral tribunal. The other expenses of the President of the Court as well as the implementation of judicial proceedings are equally distributed between the Contracting Parties. Nevertheless, the arbitral tribunal may decide that the greater part of the costs shall be borne by one Contracting Party. For all other cases, the arbitration tribunal shall establish its own procedure.

## **Article 10. Relations between the Contracting Parties**

The provisions of this Agreement shall be applicable irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

## **Article 11. Application of other Rules**

If any current or future commitments of the Contracting Parties under international law, in addition to the provisions of this Agreement contain rules, whether general or particular, to investments of investors of the other Contracting Party to a treatment more favorable than that provided for by this Agreement, such rules shall prevail over the present Agreement to the extent that they are more favorable for the investor.

## **Article 12. Scope of the Agreement**

This Agreement shall apply to all investments, which has been or will exist at the time of entry into force of the Agreement or after the other Contracting Party by investors of either Contracting Party in the territory.

## **Article 13. Entry Into Force**

Each Contracting Party shall notify the other in writing on the constitutional requirements for the entry into force of the Agreement, and the Agreement shall enter into force on the thirtieth day following the date of receipt of the notification.

## **Article 14. Duration and Termination**

1. This Agreement shall remain in force for twenty-five (25) years and will remain in force for the same period or periods, unless at least one year prior to the expiration of the initial or ordinary term of the Agreement any of the Contracting Parties gives to the other Contracting Party written notice of its intention to terminate it.

2. The provisions of this Agreement shall apply to investments made prior to the date on which this Agreement has entered into force for the effectiveness of this Agreement during the next 15 (15) years following the date on which the Agreement is terminated.

In witness whereof the competent authorities of both Contracting Parties have signed this Agreement.

Done on June 25, 2010, in the city of Yerevan, on the .....day of ..... which corresponds to H..... 143..... on day two originals in the Arabic and English language, all texts being equally authentic. In case of disagreement, the English text shall prevail.

The Agreement shall enter into force on 4 September 2013