

# AGREEMENT BETWEEN THE REPUBLIC OF POLAND AND THE STATE OF KUWAIT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Poland and the State of Kuwait, hereinafter collectively referred to as the Contracting States, and each referred to as a Contracting State;

Desiring to create favourable conditions for greater economic co-operation 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 under international agreements of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting States;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" shall mean every kind of asset owned or controlled directly or indirectly by an investor of a Contracting State and invested in the territory of the other Contracting State in accordance with the laws and regulations of that State. 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 and securities issued by a Contracting State or any of its investors and returns retained for the purpose of re-investment;

(c) Debt, service and claims to money or to any performance having economic value associated with an investment;

(d) Intellectual and industrial property rights, including, but not limited to, rights with respect to copyrights, trademarks, patents, industrial designs, know-how, trade secrets, trade names and goodwill;

(e) Any right conferred by law, administrative decisions or contract, including licences 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, win or utilize natural resources, and rights to manufacture, use and sell products.

(2) Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

(3) The term "investor" shall mean any natural or juridical person including the Government of a Contracting State who invests in the territory of the other Contracting State.

(4) The term "natural person" shall mean with respect to either Contracting State a natural person holding the nationality of that State in accordance with its laws.

(5) The term "juridical person" shall mean with respect to either Contracting State, any entity established in accordance with, and recognized as a juridical person by the law of the Contracting State, such as institutions, development funds, enterprises, agencies, cooperatives, partnerships, corporations, authorities, 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 State or any of its nationals or any juridical person established within its jurisdiction has a predominating interest.

(6) The term "own" or "control" shall mean ownership or other means of control exercised through subsidiaries or affiliates wherever located.

(7) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, management, technical assistance or other fee; and payment in kind.

(8) The term "territory" means 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.

(9) The term "associated activities" includes, but is not limited to:

(a) The establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

(b) The organization of companies under applicable laws and regulations; 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 disposition, of companies organized or acquired;

(c) The making, performance and enforcement of contracts related to investment;

(d) The acquisition (whether by purchase, lease or any other legal means), ownership and disposition (whether by sale, testament or any other legal means) of personal property of all kinds, both tangible and intangible;

(e) The leasing of real property appropriate for the conduct of business;

(f) The acquisition, maintenance and protection of copyrights, patents, trademarks, trade secrets, trade names, licences, and other approvals of products and manufacturing processes, and other industrial property rights; and

(g) The borrowing of funds at marked terms and conditions from local financial institutions, as well as the purchase and issuance of equity shares in the local financial markets, and, in accordance with national regulations and practices, the purchase of foreign exchange for the operation of the enterprise.

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

(1) Each Contracting State undertakes to provide and maintain a favourable environment for existing or new investments and reinvested returns of investors of the other Contracting State and shall, in applying its laws, regulations, administrative practices and procedures, permit such investments to be established and acquired in its territory on terms and conditions that accord treatment not less favourable than the treatment it accords to investments of its own investors or to investors of any third State, whichever is the most favourable.

(2) Investments made by investors of each Contracting State shall enjoy full protection and security in the territory of the other Contracting State. Neither Contracting State shall in any way impair by unreasonable or discriminatory measures the rights of investors of the other Contracting State to manage, maintain, use, profit from or dispose of investments in its territory.

(3) Each Contracting State shall endeavour to take the necessary measures and legislations for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State.

(4) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State shall grant them all assistance, consents, approvals, licences 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 State.

(5) 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.

(6) 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.

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

(8) 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 State. The Contracting States shall make available all

necessary facilities including the issuance of visas and permits of stay to such managerial and technical personnel and to their families in accordance with the laws and regulations of the Contracting States.

(9) Each Contracting State shall seek 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 State recognizes that in order to maintain a favourable 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, on terms and conditions not less favourable than those which it grants in like situations to its own investors or to investors of any third State, whichever is the most favourable treatment, the right of 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 of the forum for the purpose of asserting claims, and enforcing rights, with respect to their investments.

(11) The Contracting States recognize that, consistent with this Article, conditions of competitive equality should be maintained where investments owned or controlled by a Contracting State or its agencies and instrumentalities are in competition within the territory of such State, with privately owned or controlled investments of investors of the other Contracting State.

(12) Each Contracting State shall make public all laws, regulations, administrative practices and procedures that pertain to or affect investments in its territory of investors of the other Contracting State.

### **Article 3. Standard of Treatment**

(1) Each Contracting State shall accord investments and associated activities in connection with these investments, made in its territory by investors of the other Contracting State, treatment not 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 the most favourable.

(2) Each Contracting State shall accord investors of the other Contracting State, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other activity associated therewith fair and equitable treatment. This treatment shall be not less favourable than that which it accords to its own investors or to investors of any third State, whichever is the most favourable.

### **Article 4. Exceptions**

The provisions of this Agreement 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, an economic union, an organization for mutual economic assistance, free trade area, a common external tariff area, a monetary union, a similar international agreement, other forms of regional or sub-regional cooperation arrangement to which either of the Contracting States is or may become a party; or

(b) The adoption of an agreement designed to lead to the formation or extension of such a union, an organization or area within a reasonable length of time; or

(c) 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) When investments made by investors of either Contracting State suffer loss owing to war, other armed conflict, a 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, not less favourable than that which the latter Contracting State accords to its own investors or to investors of any third State, whichever is the most favourable.

(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: 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 by its forces or authorities,

(b) Destruction of their 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 just and adequate compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable without undue delay.

## **Article 6. Sequestration and Confiscation**

Investments of either Contracting State or any of its investors shall not be subjected to sequestration, confiscation or any similar measures save with due process of law.

## **Article 7. Nationalisation or Expropriation**

(1)

(a) Investments of either Contracting State or any of its investors shall not be directly or indirectly subjected to or be impaired by arbitrary, unreasonable or discriminatory measure or be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation by the other Contracting State except for a public purpose in the national interest of that State, for prompt, adequate and just 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 State may have given.

(b) Such compensation shall be computed and determined in accordance with recognized principles of valuation such as the fair market value of the investment immediately prior to or at the time when the decision for nationalisation or expropriation was announced or became publicly known, whichever is the most favourable. 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, appreciation, current returns, goodwill and other relevant factors. In the event that the payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position not less favourable than the position in which he would have been had the compensation been paid immediately on the date of expropriation or nationalisation. To achieve this goal the compensation shall include interest at the current LIBOR rate of interest from the date of nationalisation or expropriation until the date of payment. The determination of the amount of compensation, in the absence of agreement being reached between the investor and the host State, shall be referred to arbitration in accordance with Article 10. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currencies and allowed to be freely transferred without undue delay. Article 10. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currencies and allowed to be freely transferred without undue delay.

(c) Where a Contracting State nationalises or expropriates the investment of a juridical person which is established or licenced under the law in force in its territory and in which the other Contracting State or any of its investors owns shares, stocks, debentures or other rights or interest, it shall ensure that prompt, adequate and just compensation is received and allowed to be transferred without undue delay. Such compensation shall be determined and paid in accordance with the provisions of sub-paragraph (b) of paragraph (1). sub-paragraph (b) of paragraph (1).

(2) The provisions of this Article shall also apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

## **Article 8. Transfers**

(1) Each Contracting State shall guarantee without undue delay the transfer out of its territory in any freely convertible currency of:

(a) The returns accruing from any investment by an investor of the other Contracting State;

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

(c) Funds in repayment of borrowings;

(d) The earnings of nationals of the other Contracting State deriving from their work and service in connection with an investment in its territory;

(e) Amounts spent for the management of the investment in the territory of the Contracting State or a third State; and

(f) Additional funds necessary for the maintenance of the investment.

(2) Without restricting the generality of Article 3, the Contracting States undertake to accord to transfers referred to in paragraph (1) a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State. Article 3, the Contracting States undertake to accord to transfers referred to in paragraph (1) a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

(3) For the purpose of this Agreement, exchange rates shall be determined in accordance with the official rates of exchange quoted by the International Monetary Fund or, in the absence of such quotation, any other rates agreed upon by the Contracting States.

Provided always, that in the event of the introduction of a two-tier exchange rate system the favourable rate shall be applied.

(4) Such transfers as above shall, however, be subject to such reasonable regulatory procedures as shall, from time to time, be in force in the host State and shall likewise be subject to the right of the government of the host State to impose reasonable restrictions for temporary periods not exceeding three months to meet situations of fundamental economic disequilibrium provided that at least 50% of such transfers are allowed to be transferred during such periods.

## **Article 9. Subrogation**

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

(a) The right of the other Contracting State 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 State or its designated Agency is entitled by virtue of subrogation to enforce such right to the same extent as its predecessor in title.

(2) The other Contracting State shall, however, recognize the right of the host State to deduct any unpaid taxes or public obligations due from the investor.

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

## **Article 10. Settlement of Investment Disputes**

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

(2) If the dispute can not be settled according to the provisions of paragraph (1) within six months from the date of request for settlement, the parties to the dispute may proceed as follows: paragraph (1) within six months from the date of request for settlement, the parties to the dispute may proceed as follows:

(a) The dispute shall be settled in accordance with applicable dispute — settlement procedures upon which the parties to the dispute have previously agreed.

(b) A dispute concerning expropriation, nationalisation and compensation under Article 7 and transfers under Article 8 shall, upon the request of the investor, be submitted for settlement to an ad hoc International Arbitral Tribunal. Article 7 and transfers under Article 8 shall, upon the request of the investor, be submitted for settlement to an ad hoc International Arbitral Tribunal.

(c) In the event of a dispute not referred to in sub-paragraph (b) of paragraph (2), the dispute shall be submitted, after exhausting all local remedies, to an ad hoc International Arbitral Tribunal. sub-paragraph (b) of paragraph (2), the dispute

shall be submitted, after exhausting all local remedies, to an ad hoc International Arbitral Tribunal.

(3) The ad hoc International Arbitral Tribunal shall be established for each case in the following way:

(a) The Arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with both Contracting States.

The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informed the other of its intention to submit the dispute to arbitration.

If the appointments are not made within the period mentioned above, either party may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the required appointment within two months.

(b) The Arbitral Tribunal which shall normally sit and render its award in Sweden may also hear evidence and hold meetings in such other places as it may deem appropriate. The proceedings shall be conducted in the English language provided that, where it deems necessary or conducive to reaching a just decision, the Tribunal may hear any evidence or admit any document in another language. Provided further that in such case the Tribunal shall cause to be made available a reliable translation in the English language.

(c) The Arbitral Tribunal shall reach its decision by a majority of votes. Its award shall be final and binding on both parties to the dispute, and shall be enforced by both parties to the dispute.

(d) The Arbitral Award shall be made in accordance with the domestic laws, including the rules of conflict of the Contracting State which accepts the investments and in accordance with the provisions of this Agreement as well as the principles of international law generally recognized and adopted by both Contracting States.

(e) Each party to the dispute shall bear the cost of its own arbitrator and of its counsel in the arbitration proceedings. The cost of the Chairman and the remaining costs of the Arbitral Tribunal shall be borne in equal parts by both parties to the dispute, unless the Tribunal decides otherwise.

(4) In case both Contracting States have become parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other states, opened for signature at Washington DC on 18 March 1965, disputes under this Article shall be submitted for settlement by conciliation or arbitration to the International Centre for the Settlement of Investment Disputes. Convention on the Settlement of Investment Disputes between States and Nationals of other states, opened for signature at Washington DC on 18 March 1965, disputes under this Article shall be submitted for settlement by conciliation or arbitration to the International Centre for the Settlement of Investment Disputes.

(5) 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 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, its subdivisions, agencies and instrumentalities. Notwithstanding the foregoing, an investor of the other Contracting State shall not be entitled to compensation for more than the value of its affected assets, taking into account all sources of compensation within the territory of the State liable for the compensation.

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

## **Article 11. Settlement of Disputes between Contracting States**

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall be settled, as far as possible, through friendly consultation by both States through diplomatic channels.

(2) If the dispute cannot be so settled within (6) six months it shall, upon the request of either Contracting State, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted in the following way. Within two months of the receipt of the request for arbitration, each Contracting State shall appoint one member of the Tribunal. The two members shall then select a national of a third State which has diplomatic relations with the two Contracting States who shall act as Chairman (hereinafter referred to as the Chairman). The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3), either party to the dispute shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be 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 appointment. If the Vice-President also happens to be a national of either Contracting State or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting State shall be invited to make the appointment.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting State shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States unless the Arbitral Tribunal decides otherwise. The Arbitral Tribunal shall determine its own procedure.

## **Article 12. Relations between Governments**

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

## **Article 13. Preservation of Rights**

(1) If the domestic law of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to this Agreement contain a regulation, whether general or specific, entitling investments 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 has assumed with regard to investments in its territory by investors of the other Contracting State.

## **Article 14. Application**

This Agreement shall also apply to investments made by investors of either Contracting State in the territory of the other Contracting State after July 1, 1986 and accepted in accordance with the respective legislations of either Contracting State.

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

This Agreement shall enter into force on the latter date on which either Contracting State notifies the other that its internal requirements for the entry into force of this Agreement have been fulfilled.

## **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 of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting State.

(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 twenty years from the date of termination of this Agreement.

In witness whereof the undersigned duly authorized thereto their respective Governments, have signed this Agreement.

Done in duplicate at Kuwait on this 5th day of March 1990 corresponding to Monday 8th day of Shaban 1410H in the Polish, Arabic, and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the Republic of Poland

For the State of Kuwait

## PROTOCOL

On signing the Agreement between the Republic of Poland and the State of Kuwait concerning the Promotion and Protection of Investments, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement.

### 1. With respect to Article 1

(a) The notions of "control" over an asset and of "pro-dominating interest" in any entity established as a juridical person outside the jurisdiction of a Contracting State referred to in paragraphs 1, 5 and 6, relate to the exertion by an investor of a Contracting State of a controlling influence over the activities of that other juridical person, which influence results from the equity participation of the investor or from powers conferred upon him in the founding documents of such a juridical person.

Contractual arrangements alone, such as for example loans, existing between the investor of a Contracting State and a third-State juridical person, do not constitute "control" or "predominating interest" in the absence of other means of control under company law. In the event the investment is made indirectly through a third-State juridical person the amount of compensation or damages due and payable to an investor of a Contracting State is prorated as to reflect his share of beneficial ownership in the capital of such a third-State juridical person.

(b) Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection and facilities as the original investment.

### 2. With respect to Article 2

(a) Investment made in accordance with legislation of either Contracting State, within the area of application of the law of that Contracting State by investors of the other Contracting State shall enjoy full protection of this Agreement.

(b) Nationals authorized to work in the territory of one of the Contracting States shall be accorded the appropriate support for the exercise of their professional activities.

(c) The Contracting States shall facilitate in the light of their domestic laws, regulations and administrative practices issuance of entry visas and authorizations pertaining to sojourn, work and travel of the nationals of one Contracting State pursuant to an investment in the territory of the other Contracting State.

### 3. With respect to Article 3

(a) The requirement to accord investments and associated activities of investors of the other Contracting State treatment not less favourable than that which a Contracting State accords in like situations to investments and associated activities of its own investors is without prejudice to the application of laws, regulations, administrative practices and procedures of each Contracting State under which the investors of the other Contracting State are allowed to invest in the territory of the first Contracting State.

(b) All activities involving the purchase, sale and transport of raw and secondary materials, energy, fuels, and means of production and operations of all types shall be accorded treatment not less favourable than that accorded to the investment related activities carried out by investors of the host State or any investors of a third State, whichever is the most favourable. There shall be no impediments to the normal exercise of such activities, provided they are carried out in accordance with laws, regulations and administrative practices of the host State and in observance of the provisions of the Agreement.

(c) The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 3: restricting the purchase of raw or auxiliary materials, of energy or fuel or of means of production or of operation of any kind, impeding the marketing of products inside or outside the host State, 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 Article 3.

(d) The provisions of Article 3 shall not oblige a Contracting State to extend to investors resident in the territory of the other



Contracting State tax privileges, tax exemptions and tax reduction which are granted only to its investors who are resident in its territory.

(e) Whenever goods or persons connected with an investment are to be transported, each Contracting State shall neither exclude nor hinder transport enterprises of the other Contracting State or its investors, and shall issue permits as required to carry such transport. This shall include the transport of:

(i) Goods intended for the investment within the meaning of this Agreement acquired in the territory of either Contracting State or of any third State by or on behalf of an enterprise in which assets within the meaning of this Agreement are invested;

(ii) Persons travelling in connection with an investment.

#### 4. With respect to Article 4

The phrase "movement of capital" mentioned in paragraph (c) of Article 4 should be understood to refer to specific arrangements within the following organizations:

The Cooperation Council of the Arab States of the Gulf (GCC), The League of the Arab States, and The Organization of The Islamic Conference.

#### 5. With respect to Article 7

The provisions of Article 7 shall apply to any direct or indirect measure of expropriation, nationalization, or other similar measures such as freezing or blocking of assets, levy of unreasonable and excessive taxation, the compulsory sale of all or part of the investment or a compulsory measure or State intervention resulting in loss of or damage to the economic value of such an investment, if the effect of such measure or a series of such other measures, would be tantamount to expropriation or nationalisation, and including for further examples any impairment or deprivation of management, transfer, use, withdrawal, payment, or control of any sort with respect to such an investment.

#### 6. With respect to Article 5, 7 and 8

(a) The term "without undue delay" within the meaning of Articles 5, 7 and 8 is deemed to be fulfilled if a repatriation or transfer is made within such period as is normally required according to the international financial custom. The said period shall commence on the day on which relevant request has been submitted and shall on no account exceed three months.

(b) In the case of the obligation to pay interest at LIBOR rate for delayed compensation, the interest shall be computed starting from the first day after the expiry of the period of undue delay as defined in sub-paragraph (a) above.

#### 7. With respect to Article 8

(a) The transfers referred to in Article 8 shall mean with respect to the Republic of Poland the transfers which shall be made from the foreign currency account in the Republic of Poland of investor of the State of Kuwait.

(b) When an investor of the State of Kuwait does not have sufficient foreign currencies for the transfer, the Government of the Republic of Poland shall provide foreign convertible currencies in exchange for the Polish currency for the transfer of:

(i) The proceeds accruing from the sale, total or partial liquidation of any investment made by an investor of the State of Kuwait;

(ii) Compensation referred to in Articles 5 and 7;

(iii) Returns accruing from an investment made wholly or partially by an investor of the State of Kuwait, where the competent authorities of the Republic of Poland had specifically granted permission to the Kuwait investor to convert Polish currency into convertible currency or when the investment concerned due to an administrative decision or unforeseen event in the Republic of Poland not caused by the investor or the investment nor constituting a commercial risk, was deprived of the possibility to earn income in foreign convertible currencies which income would otherwise have been earned.

(c) In addition to the cases enumerated in sub-paragraph (b) above, when the Government of the Republic of Poland grants permission for the investor of the State of Kuwait to purchase a minority equity stake an existing Polish juridical person then such person shall be allowed to participate on a competitive bidding basis in foreign currency auctions held for Polish business entities, and the foreign currencies acquired at the auctions may be used to meet such a person's obligations for running and operation, including payment of salaries to foreign employees who are allowed to work in connection with such an investment made by a Kuwaiti investor in a Polish juridical person.

Done in duplicate at Kuwait on this Monday 5th day of March 1990 corresponding to 8th day of Shaban 1410H in the Polish, Arabic and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the Republic of Poland

For the State of Kuwait