

AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN AND THE GOVERNMENT OF THE REPUBLIC OF YEMEN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Islamic Republic of Iran and the Government of the Republic of Yemen, hereinafter referred to as the "Contracting Parties",

Desiring to establish and intensify economic cooperation to the mutual benefit of both States,

Intending to utilize their economic resources and potential facilities as well as to create and maintain favorable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, and

Recognizing the need for the mutual promotion and protection of investments of investors of both Contracting Parties in the territory of the other Contracting Party in accordance with their national laws and regulations for the purpose of fostering the prosperity of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1 The term "investment" refers to every kind of property or asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the national laws and regulations of the other Contracting Party (hereafter referred to as the host Contracting Party):

a Movable and immovable property as well as rights related thereto, such as mortgages, liens, pledges or usufruct;

b Shares or any kind of participation in companies;

c Claim to money or to any performance having an economic value;

d Retail trademarks, patents, utility models, industrial designs or models and any other intellectual and industrial property rights, trade names, trade secrets, know-how and goodwill;

d Any increase in the value of the initial investment;

e Rights to search for, extract or exploit natural resources in accordance with laws and regulations of the Contracting Parties.

2 The term "investor/investors" refers to the following persons who invest in the territory of the other Contracting Party, within the framework of this Agreement:

a Natural persons possessing the nationality of one of the Contracting Parties in accordance with its laws, and who do not possess the nationality of the host Contracting Party.

b Legal persons of either Contracting Party which are established under the national laws of that Contracting Party, and their headquarters and their real economic activities are located in the territory of that Contracting Party.

3 The term "returns" means sums of money (or alternatively in the form of goods or services) that are obtained legally in particular but not exclusively, profits from investments, interests from financing, capital gains, dividends, fees and royalties.

4 The term "certificate of investment" means special license provided by the competent authorities of a Contracting Party to

investors of the other Contracting Party demonstrating that their investments have been approved by the host Contracting Party in accordance with its national laws and regulations. The certificate of acceptance may determine the conditions under which the investment shall be admitted. The competent authorities below in each Contracting Party shall issue a certificate of investment:

1 In the Islamic Republic of Iran:

The Organization for Investment, Economic and Technical Assistance

Iran, Tehran, 15 Khordad Roundabout.

2 In the Republic of Yemen:

The Government official of Investments

Republic of Yemen, Sanaa, Quds Street, number 260.

5 The term "territory" of a Contracting Party:

In case of Islamic Republic of Iran refers to the areas under the sovereignty or jurisdiction of the Islamic Republic of Iran, as the case may be, and includes its maritime areas.

In case of Republic of Yemen means the territory of Yemen, including its territorial sea and the contiguous zone, continental shelf and exclusive economic zone over which Serbia and Montenegro exercises jurisdiction, respectively sovereign rights, in accordance with its legislation and international law.

Article 2. Promotion of Investment

1 Each Contracting Party shall encourage its nationals to invest in the territory of the other Contracting Party.

2 Each Contracting Party shall create favorable conditions for nationals of the other Contracting Party to attract investment by natural and legal persons of the other Contracting Party in its territory, in accordance with its laws and regulations.

Article 3. Protection of Investment

Each Contracting Party grants the investors of the other Contracting fair and equitable treatment. Neither Contracting Party shall impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of the investments of the investors of the other Contracting Party.

Article 4. Certificate of Investment

1 Each Contracting Party issues certificate of investment to the investors of the other Contracting Party in its territory in accordance with its laws and regulations.

2 When a Contracting Party issues a certificate of investment to an investment in its territory, that Contracting Party shall grant the necessary permits for the realization of such an investment.

Article 5. National Treatment and Most-favoured-nation Treatment

1 Investments of investors of either Contracting Party effected within the territory of the other Contracting Party shall receive the host Contracting Party's full legal protection and fair treatment not less favourable than accorded to its own investors or to investors of any third State.

2 If a Contracting Party has accorded or shall accord in future special advantages to investors of any third State by virtue of an existing or future agreement establishing a free trade area, a customs union, a common market or a similar regional organization and/or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

Article 6. Nationalization and Confiscation

1 Investments of natural and legal persons of either Contracting Party shall not be nationalized, confiscated, expropriated or subjected to similar measures, directly or indirectly, by the other Contracting Party, except such measures are taken for

public purposes, in accordance with due process of law, in a non-discriminatory manner, and upon compensation without undue delay.

2 The amount of compensation shall be equivalent to the value of investment immediately before the action of nationalization, confiscation or expropriation was taken (whichever is sooner).

Article 7. Losses

Investors of either Contracting Party whose investments suffer losses due to any armed conflict, war or similar state of emergency in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment no less favorable than that accorded to its own investors or to investors of any third State (whichever is more favourable).

Article 8. Repatriation and Transfer of Capital

1 Each Contracting Party shall, in accordance with its laws and regulations, permit the following transfers related to investments referred to in this Agreement, to be made freely and without delay out of its territory:

a Investments that are reinvested such as returns for maintenance and increase of the investment;

b Gross returns;

c Proceeds from the sale and/or liquidation of all or part of an investment;

d Loan installments which are related to an investment and paid out of such investment activities;

e Sums paid pursuant to Article 6 and/or 7 of this Agreement;

f Monthly salaries and wages received by employees of an investor of one Contracting Party who have obtained in the territory of the host Contracting Party, the corresponding work permits related to that investment;

2 Without any limitation to the scope of Article 5 of this Agreement, the Contracting Parties shall with regard to the transfers referred to in paragraph 1 of this Article, grant the same treatment to the investments of the other Contracting that is not less favourable than treatment granted to investors of any third State.

Article 9. Phases of Transfer

Transfers abroad referred to in Article 6 and Article 8 (paragraphs a,b and d) shall be without delay and in any event, within six months after compliance with the financial obligations of the investment, in accordance with laws and regulation of the host Contracting Party or to provide sufficient guarantees that meet the obligation.

Article 10. Subrogation

1 If a Contracting Party or its designated agency, within the framework of a legal system, subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non-commercial risks. Such subrogation shall be recognized by the other Contracting Party.

2 The subrogate shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3 Disputes between the subrogee and the host Contracting Party shall be settled in accordance with Article 11 of this Agreement.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1 Any dispute between the host Contracting Party and an investor or investors of the other Contracting Party shall as far as possible be settled in an amicable manner through negotiation and consultation.

2 In the event that the dispute with regard to an investment between the investor or investors of a Contracting Party and the other Contracting Party cannot be settled within six months from the date of the written application for settlement, the dispute may be submitted for settlement to:

- a The competent courts of the host Contracting Party, if the investor agrees; or
 - b To an ad hoc Arbitral Tribunal in accordance with host Contracting Party's laws, if the investor agrees; or
 - c An ad hoc Arbitral Tribunal in accordance with arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);
 - d The International Centre for Settlement of Investment Disputes (ICSID) for the implementation of the arbitration procedure under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of the other States, if or as soon as both Contracting Parties have acceded to it.
- 3 The Arbitration Tribunal referred to in paragraph 2 (c) shall be established as follows:
- a Each disputing party shall appoint one arbitrator and the two arbitrators shall appoint a Chairperson.
 - b Either disputing party who desires to refer to arbitration shall appoint an arbitrator through a written notice sent to the other party. The other party shall appoint an arbitrator within sixty days from the date of receipt of the said notice. In the event that either party fails to appoint its arbitrator within the mentioned period, the other party may request the President of the Permanent Court of Arbitration to appoint an arbitrator.
 - c In the event that the appointed arbitrators fail to agree on the Chairperson, either party may request the President of the Permanent Court of Arbitration to appoint a party's arbitrator or a Chairperson.
 - d If in cases referred to in paragraph (b) and (c) of this section, the President of the Permanent Court of Arbitration shall be a national of one of the Contracting Parties, the senior member of the said court who is not a national of either Contracting Party will be appointed.
 - e The Chairperson of the Tribunal shall be a national of a State having diplomatic relations with both Contracting Parties at the time of the appointment.
 - f The decisions of the Arbitral Tribunal shall be final and binding on both parties.

Article 12. Settlement of Disputes between the Contracting Parties

- 1 All disputes arising between the Contracting Parties relating to the interpretation and application of this Agreement shall, in the first place, be settled amicably through consultations and negotiations.
- 2 In case of disagreement, within twelve days from the date of the written notice, either Contracting Party may, subject to its laws and regulations, refer the case to an Arbitral Tribunal of three members consisting of two arbitrators appointed by the Contracting Parties. The arbitrators appointed by the Contracting Parties shall appoint a Chairman. The Chairman must be a national of a third State having diplomatic relations with both Contracting Parties at the time of the appointment.
- 3 The Contracting Party that requests for arbitration, appoints its arbitrator in its application for arbitration. If the other Contracting Party is not able to appoint an arbitrator within three months from the date on which the request for arbitration is received, this arbitrator at request of the Contracting Party who requested for arbitration shall be appointed by the President of the International Court of Justice.
- 4 If the two arbitrators have not appointed a Chairman within sixty days from the date of the appointment of the second arbitrator, either party may invite the President of the International Court of Justice to appoint the Chairman.
- 5 If in events referred to in paragraph 3 and 4 the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President of the International Court of Justice, and if the Vice-President is also prevented from carrying out the said function or he is a national of either Contracting Party, the appointment shall be made by the senior member of the said court who is not a national of either Contracting Party.
- 6 The Arbitration Tribunal shall, taking all other matters that parties have agreed to, lay down its own procedures and determine the place of arbitration.
- 7 The decisions of the Arbitration Tribunal shall be final and binding on both Contracting Parties.

Article 13. Entry Into Force

This Agreement shall enter into force from the date of receipt of the last of the two notifications by which the Contracting

Parties shall communicate officially to each other that their respective ratification procedure have been completed.

Article 14. Term and Termination

1 This Agreement shall enter into force for a period of ten years. This Agreement shall remain in force thereafter for periods of five years, unless one of the Contracting Parties at any time in accordance with paragraph 2 terminates it.

2 Either Contracting Party may terminate this Agreement at the end of the first period of ten years or any moment after that, by giving one year notice the other Contracting Party in writing of its intention.

3 After the expiration of the validity or termination of this Agreement its provisions shall apply to investments under this Agreement for a further period of ten years.

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

This Agreement is done in duplicate at Tehran on February 29, 1996 corresponding to 10th Esfand 1374 in Persian, Arabic and English languages and all texts are equally authentic. In case of divergence of interpretation, the English text shall prevail.

Signature of the Government of the Islamic Republic of Iran

Signature of the Government of the Republic of Yemen