

BILATERAL INVESTMENT TREATY Between THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN And THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

The Government of the Hashemite Kingdom of Jordan and the Government of the Republic of Singapore (hereafter "the Parties");

Pursuant to Article 8.7 of the Agreement between the Government of the Hashemite Kingdom of Jordan and the Government of the Republic of Singapore on the Establishment of a Free Trade Area (hereafter, "the Agreement") which provides that, subject to Chapter 4 of the Agreement, the rights and obligations of the Parties in respect of investments shall be governed by this Treaty;

Desiring to promote greater economic cooperation between them, with respect to investments made by investors of a Party in the territory of the other Party;

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of private capital and economic development of the Parties;

Agreeing that a stable framework for investments will maximize the effective utilization of economic resources and improve living standards;

Aware of the growing importance of trade and investment for their economies;

Reaffirming their commitments to achieving the goals of the Agreement;

Having resolved to conclude a Bilateral Investment Treaty;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Treaty, the term:

1. "investment" means every kind of assets invested by investors of a Party in the territory of the other Party and shall include in particular, though not exclusively:

a. Movable and immovable property as well as any other rights, such as mortgages, liens, pledges, usufructs and similar rights;

b. Stock, shares, debentures and other forms of participation in companies;

c. Claims to money and claims to performance;

d. Intellectual property rights;

e. Rights to engage in economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such change is not contrary to the approvals granted, if any, to the assets originally invested;

2. "investor" means in respect of either Party:

a. A natural person, who is under the law of that Party, a national of that Party; or

b. A legal person incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of a Party, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture(1) or other association, having substantive business operations in the territory of the same Party,

Making or having made an investment in the territory of the other Party;

3. "returns" means income deriving from an investment and includes, in particular though not exclusively, profits, dividends, interests, capital gains, royalties, patent and license fees, and any other fees;

4. "freely convertible currency" means any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto;

5. "territory" means the territory of each Party as well as the exclusive economic zone, the seabed and subsoil, over which the Party exercises, in accordance with international law, sovereign rights or jurisdiction;

6. "measure" means any law, regulation, rule, procedure, decision, and administrative action, and includes measures taken in the exercise of powers delegated by the central government or authorities;

7. "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965;

8. "Center" means the International Center for Settlement of Investment Disputes established by the ICSID Convention.

Article 2. Scope and Coverage

1. This Treaty shall apply to investments made prior to or after the entry into force of this Treaty, but shall not apply to any investment dispute that may have arisen before its entry into force.

2. This Treaty shall not apply to:

(a) Subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments;

(b) Any taxation measure, unless otherwise provided for in this Treaty; and

(c) Government procurement for the purposes of establishing an investment.

3. Notwithstanding paragraph 2(c), an investment made pursuant to a government procurement contract is covered by this Treaty.

4. Nothing in this Treaty shall be construed to impose an obligation on a Party to privatise.

5. In the event of an inconsistency between this Treaty and the Agreement, the Agreement shall prevail to the extent of the inconsistency(2).

Article 3. Promotion and Admission of Investments

1. Each Party shall encourage and create favorable conditions for investors of the other Party to make investments in its territory and shall admit such investments in accordance with this Treaty.

2. This Treaty shall not preclude the Parties from adopting or maintaining a measure that prescribes special formalities in connection with investments, including, but not limited to, that investments be legally constituted under its laws and regulations, provided that such formalities do not substantially impair any of the rights set forth under this Treaty.

3. In order to encourage mutual investment flows, each Party shall endeavor to inform the other Party, at the request of the other Party, on the investment opportunities in its territory.

Article 4. Protection of Investments

Investments and returns of investors of a Party in the territory of the other Party shall be accorded at all times fair and equitable treatment. Such investments shall also enjoy full protection and security.

Article 5. National Treatment

1. Each Party shall accord to investors of the other Party and their investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of investments, treatment no less favourable than it accords in like circumstances to its own investors and their investments.
2. A Party may in accordance with the letter exchange on Article 5, adopt or maintain limitations to paragraph 1 in relation to any sectors or matters that shall be set out in the exchange of Annexes pursuant to the said letter exchange.

Article 6. Prohibition of Performance Requirements

The Parties reaffirm their commitments under the WTO Agreement on Trade-Related Investment Measures.

Article 7. Expropriation

1. A Party shall not expropriate or nationalize directly or indirectly, an investment in its territory of an investor of the other Party or take any measure or measures having equivalent effect (hereafter, "expropriation") except:
 - (a) For a purpose which is in the public interest,
 - (b) On a non-discriminatory basis,
 - (c) In accordance with due process of law, and
 - (d) Accompanied by payment of prompt, adequate and effective compensation.
2. Compensation shall be paid without delay.
3. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.
4. Compensation shall be fully realizable and freely transferable.
5. An investor of a Party affected by the expropriation carried out by the other Party shall have the right to prompt review of its case, including the valuation of its investments and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Party.

Article 8. Compensation for Damage or Loss

When investments made by investors of a Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Party, they shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than the treatment that it accords in like circumstances to its own investors or to investors of any non-Party, whichever is more favorable to the investors concerned.

Article 9. Transfers

1. Each Party shall ensure that all payments relating to an investment in its territory of an investor of the other Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:
 - (a) The initial capital and additional amounts to maintain or increase an investment;
 - (b) Returns;
 - (c) Payments made under a contract including a loan agreement;
 - (d) Proceeds from the sale or liquidation of all or any part of an investment;
 - (e) Payments of compensation under Articles 7 and 8 of this Treaty;
 - (f) Payments arising out of the settlement of an investment dispute;

(g) Earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. Each Party shall ensure that the transfers under paragraph 1 of this Article may be made in a freely convertible currency, at the market rate of exchange prevailing on the date of transfers and may be made without delay.

3. Each Party shall ensure that interest at a commercially reasonable rate together with compensation for the period starting from the occurrence of events under Articles 7 or 8 until the date of transfer of payment and payment will be effected in accordance with the provisions of paragraphs 1 and 2 of this Article.

4. Notwithstanding paragraph 1 of this Article, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) Bankruptcy, insolvency or the protection of the rights of creditors;

(b) Issuing, trading or dealing in securities, futures, options, or derivatives;

(c) Criminal or penal offences and the recovery of proceeds of crime;

(d) Ensuring the satisfaction of judgements, orders or awards in adjudicatory proceedings; or

(e) Obligations of investors arising from social security and public retirement plans.

5. Nothing in this Treaty shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the said Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions in a manner inconsistent with its obligations under this Treaty regarding such transactions, except as otherwise provided under Article 10 or at the request of the International Monetary Fund.

Article 10. Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments or transfers related to investments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in Article 10.1 shall:

(a) Be consistent with the Articles of Agreement of the International Monetary Fund;

(b) Avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(c) Not exceed those necessary to deal with the circumstances described in Article 10.1;

(d) Be temporary and be phased out progressively as the situation specified in Article 10.1 improves; and

(e) Be applied on a basis such that the other Party is treated no less favourably than any non-Party.

3. Any restrictions adopted or maintained under Article 10.1, or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under Article 10.1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

Article 11. Subrogation

1. If a Party or its designated agency (for the purpose of this Article: the "First Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Party (for the purpose of this Article: the "Second Party"), the Second Party shall recognise:

(a) The assignment to the First Party by law or by legal transaction of all the rights and claims of the party indemnified; and

(b) That the First Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The First Party shall be entitled in all circumstances to:

- (a) The same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and
- (b) Any payments received in pursuance of those rights and claims,

As the party indemnified was entitled to receive by virtue of this Treaty, in respect of the investment concerned and its related returns.

Article 12. Application of other Obligations

If the domestic laws of either Party or international obligations existing at present or established thereafter between the Parties in addition to the present Treaty, contain a rule, whether general or specific, entitling investments made by investors of the other Party to a treatment more favourable than is provided for by the present Treaty, such rule shall to the extent that it is more favourable prevail over the present Treaty.

Article 13. Settlement of Disputes between a Party and an Investor of the other Party

1. The avoidance and settlement of disputes between an investor of a Party and the other Party shall be governed by this Article.

2. In the case of a dispute between an investor of a Party and the other Party, the investor shall notify the other Party if it intends to submit the dispute for conciliation or arbitration by the Center established by the ICSID Convention. An investor shall not submit a dispute for such conciliation or arbitration unless it provides such notification to the other Party and satisfies the other conditions that are set out under this Article.

3. When an investor of a Party has given notice to the other Party that it intends to submit a dispute for conciliation or arbitration by the Center established by the ICSID Convention, both parties to the dispute shall seek to resolve the dispute amicably through negotiations.

4. The Party intending to resolve such a dispute through negotiations under paragraph 3 of this Article shall give written notice to the other Party of its intention. Thereafter, the Parties shall within forty five days from the date of receipt of such notice by the other Party, convene an expert working group consisting of officials designated by both Parties which shall enter into consultations with a view to facilitating the amicable resolution of the dispute.

5. Either party to the dispute may only submit a dispute for conciliation or arbitration by the Center established by the ICSID Convention if the dispute cannot be resolved by negotiations or consultations as provided for in paragraphs 3 and 4 of this Article, within nine months from the date of the notice given by the investor to the other Party under paragraph 2 of this Article. For this purpose, each Party hereby consents to the submission of a dispute to conciliation or arbitration pursuant to Article 25 of the ICSID Convention. Such consent shall satisfy the requirements of Article 25 of the ICSID Convention for the written consent of the parties to the dispute.

Article 14. Settlement of Disputes between the Parties

1. Any dispute between the Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled through negotiations.

2. If any dispute cannot be thus settled, it shall upon the request of either Party be submitted to arbitration. The arbitral tribunal (hereafter, "the tribunal") shall consist of three arbitrators, one appointed by each Party and the third, who shall be the Chairperson of the tribunal, appointed by agreement of the Parties.

3. Within two months of receipt of the request for arbitration, each Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Parties shall appoint the third arbitrator.

4. If the tribunal has not been constituted within four months of receipt of the request for arbitration, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a national of either Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either Party may be invited to make the necessary appointments, and so on.

5. The tribunal shall reach its decision by a majority of votes.

6. The tribunal's decision shall be final and the Parties shall abide by and comply with the terms of its award.
7. Each Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairperson and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.
8. Apart from the above, the tribunal shall, in consultation with the Parties, establish its own rules of procedure.

Article 15. Senior Management

A Party shall not require that an investor of the other Party or its investment appoint to senior management positions individuals of any particular nationality.

Article 16. Transparency

Each Party shall ensure that its laws, regulations and administrative rulings of general application respecting any matter covered by this Treaty are promptly published or otherwise made available in such a manner as to enable interested persons or the other Party to become acquainted with them.

Article 17. Non-disclosure of Confidential Information

Nothing in this Treaty shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of investors or investments.

Article 18. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, between the Parties where like conditions prevail, or a disguised restriction on investments in the territory of a Party by investors of the other Party, nothing in this Treaty shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) Necessary to protect public morals or to maintain public order(5) ;
- (b) Necessary to protect human, animal or plant life or health;
- (c) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Treaty including those relating to:
 - (i) The prevention of deceptive and fraudulent practices or to deal with the effects of fraud on a default of contract;
 - (ii) The protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) Safety;
- (d) Imposed for the protection of national treasures of artistic, historic or archaeological value;
- (e) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

Article 19. Security Exceptions

Nothing in this Treaty shall be construed:

- (a) To require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) To prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) Relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) Taken in time of war or other emergency in international relations;

(iii) Relating to the production or supply of arms and ammunition.

(c) To prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 20. Contact Point

The Contact Points designated by the Parties pursuant to Article 8.2 of the Agreement shall also serve as the Contact Points for this Treaty for the purpose of facilitating communications between the Parties on any matter concerning this Treaty.

Article 21. Footnotes, Exchange of Letters and Annexes

The footnotes, exchanges of letters and any Annexes to this Treaty are integral parts of this Treaty.

Article 22. Amendments

This Treaty may, subject to Article 24 of this Treaty, be amended by the written agreement of the Parties.

Article 23. Review

1. The Joint Committee formed pursuant to Article 8.1 of the Agreement shall undertake a general review of this Treaty in conjunction with any reviews of the Agreement pursuant to paragraph 2(a) of Article 8.1 of the Agreement.

2. If a Party accords more favourable treatment to investors of any other State or their investments by virtue of a future free trade agreement, customs union, or other future similar agreement that provides for substantial liberalisation of investments, it shall not be obliged to accord such treatment to investors of the other Party or their investments. However, and within the review procedures in paragraph 1 of this Article, both Parties may afford adequate opportunity to negotiate the benefits therein.

Article 24. Entry Into Force

This Treaty and any amendments to it shall come into force sixty days after the date of the last notification through which the Parties have informed each other, through diplomatic channels that the necessary domestic requirements for entry into force have been complied with, or after such other period as the Parties may agree.

Article 25. Duration and Termination

This Treaty shall remain in force unless terminated by either Party by written notification to the other Party. This Treaty shall expire six months after the date of such notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Amman, Jordan, in duplicate, in the English language, this 16th day of May 2004, which corresponds to this 26th day of Rabi' Al-Awal, 1425 H. An Arabic text of the Treaty shall be prepared by Jordan that shall be considered equally authentic upon receipt of the text by Singapore via diplomatic channels. In the event of a discrepancy, the English text shall prevail.

FOR THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN

DR. MOHAMED HALAIQAH

DEPUTY PRIME MINISTER MINISTER OF INDUSTRY AND TRADE

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

MR. RAYMOND LIM

MINISTER OF STATE FOR FOREIGN AFFAIRS AND TRADE AND INDUSTRY

1 For the purposes of this Treaty, a joint venture means any equity partnership registered according to the laws and regulations of any of the Parties.

2 The Parties' further understanding on this paragraph is set out in the letter exchange on Article 2 of this Treaty.

3 The Parties' further understanding on this Article is set out in the letter exchange on Article 6.

4 Article 7 is subject to, and is to be interpreted in accordance with the exchange of letters on indirect expropriation and measures having equivalent effect to expropriation, and land expropriation.

5 The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

6 The Parties' further understanding on this Article is set out in the letter exchange on Article 19.