

PROTOCOL BETWEEN THE GOVERNMENTS OF THE STATE OF KUWAIT AND THE REPUBLIC OF IRAQ ON THE PROMOTION OF THE MOVEMENT OF CAPITAL AND INVESTMENTS BETWEEN THE TWO COUNTRIES

In their desire to strengthen the ties of economic co-operation between their two countries on bases which achieve the best conditions for the flourishing of the economics of each of them as well as for the development of resources and securing of conditions suitable for investments of natural and legal persons in each of the two countries within the borders of the other country and the provision of protection for such investments, the Governments of the State of Kuwait and the Republic of Iraq have agreed on the following:

Article 1.

For the purposes of this Protocol the following terms will have the meanings stated below:

1. Investment:

- a) movable and immovable property.
- b) company shares.
- c) copyright and industrial ownership rights and technical operations.

2. Revenues:

The amounts yielded by investment for a certain period, including profits and interest.

3. Natural persons:

- a) As regards the Republic of Iraq, Iraqis under the Iraqi Nationality and Naturalisation Law.
- b) As regards Kuwait, Kuwaitis under the Kuwaiti Nationality Law,

4. Legal persons:

- a) As regards the Republic of Iraq - any legal person or firms which are bodies corporate established within the borders of the Republic of Iraq in accordance with the laws in force there regardless of whether they are with limited, unlimited or joint liability.
- b) As regards the State of Kuwait - commercial firms in accordance with the Kuwaiti Commercial Companies Law and any legal person or establishment or body set up under the laws in force in Kuwait.

Article 2.

Each of the two contracting parties shall encourage natural and legal persons belonging to the other party to invest in its own country in accordance with local legislation by ensuring for their investments just and equitable treatment as well as full protection in accordance with the provisions of this Protocol.

Article 3.

Natural and legal persons belonging to each of the two contracting parties and having investments in the other country shall have the right to transfer annual interest and profits, when they fall due, in accordance with the regulations and laws of foreign exchange in force in the territory of each of the two contracting parties. Such investors shall also have the right to transfer the capital and the liquidated assets as soon as liquidation is concluded in accordance with the provisions of this

Protocol. The profits, capital and liquidated assets may be transferred in the same currency as that in which the capital was provided for purpose of investment.

Article 4.

Neither of the two contracting parties may expropriate the investments owned by natural and legal persons belonging to the other party and invested within its borders except in the public interest and in return for a just and immediate compensation; the value of the compensation shall be equal to that of the expropriated investments at the time of expropriation. The compensation shall be paid as soon as such investments are assessed; the time taken up by such assessment shall not exceed one year. The value of the compensation shall be transferred in the same currencies as those in which they were provided for investment.

Article 5.

For the purposes of this Protocol the exchange rate shall be determined in accordance with the official rates agreed by the International Monetary Fund. In the event of such rates not being available, the rate of exchange gold or dollars or any convertible currency shall be used.

Article 6.

After the payment of the compensation, each of the two contracting parties shall acknowledge the transfer of the ownership of the expropriated investments, owned by natural and legal persons belonging to it, to the Government of the other party and the Government of the other party shall become the sole owner of such investments.

Article 7.

1. Any dispute which arises out of the interpretation or application of this Protocol and which cannot be settled by direct negotiations between the two parties shall be referred to an arbitration committee.
2. The arbitration committee shall be composed of three arbitrators two of whom shall be appointed by the two contracting parties and the third by the Secretary-General of the Arab League. It is stipulated that the third arbitrator shall not be a national of either of the two contracting parties nor shall he have economic interest in the subject of dispute nor shall he be a citizen of a country which has no diplomatic relations with either of the two contracting parties. The third party shall be the chairman of the arbitration committee.
3. In its arbitration and decisions on the subject of dispute, the arbitration committee shall apply the provisions and rules of international law and usage and commercial practice.
4. The decisions of the arbitration committee shall be binding on the two contracting parties.

Article 8.

The provisions of this Protocol shall be valid for a period of five years from the date of its coming into force and it shall be automatically renewed for another period of ten years unless one of the two contracting parties informs the other party in writing, twelve months before the expiry of the first period or the subsequent one, of its desire to terminate the protocol, provided that its provisions are applied to the movement of capital and investment created during its validity until the rights related to them are liquidated, and that such period must not exceed twenty years from the date of the expiry of the Protocol.

Article 9.

This Protocol shall be considered complementary to the economic co-operation agreement between the Governments of the Republic of Iraq and the State of Kuwait and shall be subject to ratification by both contracting parties each in accordance with its constitutional rules. It shall come into force from the date of the exchange of its instruments of ratification.

Made in Kuwait in two original copies in Arabic on October 25, 1964.

For the Government of the State of Kuwait

For the Government of the Republic of Iraq