

# **Agreement between the Government of the State of Kuwait and the Government of the Republic of Yemen for the encouragement and mutual protection of investments**

The Government of the State of Kuwait and the Government of the Republic of Yemen (hereinafter referred to as the "Contracting States");

Desiring to create favorable conditions for the development of economic cooperation between them and in particular for investments made by investors of a Contracting State in the territory of the other Contracting State;

Recognizing that the encouragement and mutual protection of such investments will be an incentive to revitalize commercial initiative and to increase prosperity in both Contracting States;

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement,

1. Unless the context otherwise requires, the term "investment" means all kinds of assets situated in a Contracting State which are owned or controlled by an investor of the other Contracting State, directly or indirectly, and whether through a subsidiary or affiliated enterprises wherever it is based in a Contracting State or a third country. This term includes in particular, but is not limited to:

(a) movable and immovable property and any related property rights such as rents, mortgages, debt liens, encumbrances, usufructs and other similar rights;

(b) debt securities and other forms of debt rights in a company, business or joint venture, and other debts, loans and securities issued by any investor of a Contracting State;

(c) claims to money and claims to any other assets or performance under a contract of economic value relating to the investment;

(d) intellectual and industrial property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and models, technical processes, know-how, trade secrets, trade names, and goodwill;

(e) any right established by law or contract or by virtue of any licenses or permits granted in accordance with the law.

Any change in the form in which the assets are invested or reinvested will not affect its nature as an investment.

The term "investment" also applies to "proceeds" held for the purpose of reinvestment, resulting from "liquidation" as these terms are defined herein.

2. The term "investor" means in relation to a Contracting State:

(a) a natural person who has the nationality of that Contracting State in accordance with its applicable laws;

(b) the government, bodies and institutions of that Contracting State;

(c) any legal person or other entity legally incorporated under the laws and regulations of that Contracting State, such as institutes, development funds, charitable and scientific bodies, establishments, agencies, projects, cooperative societies, corporations of all kinds and types, trade associations, or similar entities; and any entity that was established outside the authority of the contracting state as a legal person and is owned or controlled by that contracting state or any of its nationals or any entity established within its authority.

3. The term "returns" means amounts earned by an investment, regardless of the form in which they are paid, and includes, in particular, but not limited to, dividends, interest, capital gains, dividends, royalties, management fees, technical assistance or other payments and fees and payments in kind, of any kind.

4. The term "liquidation" means any activity carried out for the purpose of total or partial termination of the investment.

5. The term "territory"

in relation to the State of Kuwait means: the territory of the State of Kuwait and includes any region outside the territorial sea of the State of Kuwait which, in accordance with international law, has been determined or may subsequently be defined in accordance with the law of the State of Kuwait as a region in which the State of Kuwait may exercise the rights of sovereignty or jurisdiction.

in relation to the Republic of Yemen The territory under its sovereignty, including the areas within its land borders, islands, the territorial sea, the continental shelf, the economic zone, and other areas over which the Republic of Yemen exercises its sovereignty in accordance with its laws and international law.

6. The term "related activities" means activities related to an investment that are exercised in accordance with the laws of the Contracting State hosting the investment, and includes, without limitation, "activities such as:

(a) the establishment, control, and maintenance of branches, agencies, offices, or other facilities for the management of the business and connected with the investment;

(b) corporate organization, corporate acquisition or interests in companies or their property, management, dominance, maintenance, use, exploitation, expansion, sale, liquidation or any other disposition of organized or acquired companies of investment activity;

(c) the conclusion, performance, and execution of contracts relating to investments;

(d) acquiring, owning, using, and disposing of the investment-related property of all kinds by any legal means including intellectual property as well as protecting it;

(e) Borrowing funds from local financial institutions, as well as buying, selling, and issuing shares and other securities in the local financial markets, and buying foreign exchange in order to carry out investments.

7. The term "freely convertible currency" means any currency designated by the International Monetary Fund from one period to another as a freely used currency in accordance with the provisions of the International Monetary Fund Agreement and any amendments thereto.

8. "Without delay" means such a period of time normally required to complete the necessary formalities for the transmission of payments. The aforementioned period starts from the day on which the transfer milk is submitted, provided that it does not, in any case, exceed one month.

## **Article 2. Investment Promotion**

1. Each of the Contracting States shall, in accordance with its laws and regulations in force, accept and encourage investments in its territory made by investors from the other Contracting State.

2. Each Contracting State may, in respect of investments acceptable to its territory, grant such investments and related activities the necessary permissions, approvals, licenses, licenses, and permits, to the extent permitted and in accordance with the principles and conditions specified in its laws and regulations.

3. Both Contracting States may consult with each other by any means they deem appropriate to encourage and facilitate investment opportunities within their respective territories.

4. Each of the Contracting States shall, in accordance with its laws and knowledge relating to the entry, stay, and work of natural persons, and in good faith study the requests of investors of the other Contracting State and the requests of senior management personnel of technicians and administrators appointed for investment purposes for temporary entry and residence in its territory. Immediate family members are also accorded the same treatment with respect to entry and temporary residence in the host Contracting State.

Each Contracting State shall, in accordance with its laws and regulations, allow investors of another Contracting State who have investments in its territory, to employ any principal person chosen by the investor, without regard to nationality or citizenship, during the period during which this principal person has been permitted to enter, reside and work in the

territory of the said first Contracting State.

5. When goods or persons connected with an investment are transferred, each Contracting State shall, to the extent permitted by its laws and regulations, permit such transfer to be carried out by enterprises of the other Contracting State.

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

1. Investments by investors of either Contracting State shall enjoy complete protection and security in the territory of the other Contracting State in a manner consistent with the recognized principles of international law and the provisions of this Agreement. Neither of the two Contracting States shall, in any way, take arbitrary or discriminatory measures that would harm such investments or related activities, including the use, exploitation, management, development, maintenance, and expansion of investments.

2. Each of the Contracting States shall announce all laws, rules, regulations, and provisions that relate to or directly affect investments or related activities in its territory to the other Contracting State.

3. Each of the two Contracting States shall endeavor to provide effective means to assert claims and enforce rights in respect of investments. Each Contracting State shall guarantee to investors of the other Contracting State the right of recourse to the courts, administrative bodies, and all other organs exercising judicial power, as well as the right to assign qualified Bakhtiar persons in accordance with applicable laws and regulations for the purpose of asserting claims and executing rights in respect of their investments and related activities relating to with it.

4. Neither Contracting State may impose as a condition for the acquisition, expansion, use, management, conduct or operation of investments by investors of the other Contracting State mandatory measures, which may require or restrict the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside its territory, or any other measures having the effect of discrimination against investments by investors of the other Contracting State in favour of investments by its own investors or by investors of third country, and investments in the Contracting State may not be subject to host performance requirements that may be detrimental in their viability or have a negative impact on its use, enjoyment, management, maintenance, expansion or other related activities other, unless such requirements are considered vital for considerations of public health or public interest, or the environment and are applied under a generally applicable legal instrument.

5. Investments made by investors of either Contracting State in the host Contracting State shall not be subject to custody, confiscation or any similar measures except in accordance with legal procedures and in conformity with the applicable principles of international law and other relevant provisions of this Agreement.

6. Each Contracting State shall observe any obligation or undertaking to which it may be a party in respect of investments and related activities in its territory of investors of the other Contracting State.

### **Article 4. Treatment of Investments**

1. Each Contracting State shall at all times ensure fair and equitable treatment of investments made in its territory by investors of the other Contracting State. The transaction shall not be less favorable to you than that which it accords in similar circumstances to the investments of its investors or investors of any third country, whichever is more favourable.

2. Each Contracting State shall grant investors and and related to their investments, including the use, exploitation, management, development, maintenance, expansion or disposal of such investments, treatment no less favorable than that which it accords to its investors or to the investors of any third country, whichever is the most favourable.

3. Notwithstanding this, the provisions of this Article shall not be construed as obligating a Contracting State to offer to investors of the other Contracting State the advantage of any treatment, preference, or advantage resulting from:

(a) any customs union, economic union, free trade area, monetary union or any other another form of a regional economic arrangement or any other similar international agreement to which either Contracting State is or may become a party;

(b) any international or regional agreement, bilateral agreement, or another similar arrangement, and any domestic legislation relating wholly or principally to taxation.

### **Article 5. Compensation for Losses**

1. Investors of one Contracting State whose investments in the territory of the other Contracting State suffers damage or loss by reason of war, any brotherly armed conflict, riot or other events, a national emergency, revolution, disturbance, or

similar acts shall be accorded treatment by the latter Contracting State with respect to the restoration of restitution, compensation or any other settlement, not less favorable than that which the last Contracting State accords to its own investors or to the investors of any third State, whichever is more favorable.

2. Without prejudice to paragraph 1, investors of one of the Contracting States who suffer damage or loss as a result of any of the events referred to in that paragraph are in the territory of the other Contracting State and resulting from:

(a) the temporary seizure of their property or part of it by its forces or authorities;

(b) the destruction of their property, or part thereof, by its forces or authorities, without due to hostilities or without being required by the necessity of the situation;

shall be granted immediate, adequate, and effective compensation for the damage or loss that they sustained during the period of requisition or as a result of the destruction of their property, when this is proven. The resulting payments shall be made in a freely convertible currency and shall be permitted to be freely transferred without delay.

## **Article 6. Expropriation**

1. (a) Investments made by investors of either Contracting State in the territory of the other Contracting State shall not be nationalized, expropriated, dispossessed or subject, directly or indirectly, to measures of an effect equivalent to nationalization, expropriation or dispossession (hereinafter together referred to as "expropriation") by the other Contracting State except for a general purpose relating to the national interest of that Contracting State and in return for prompt, adequate and effective compensation, provided that such recourses have been taken on a non-discriminatory basis and in accordance with generally applicable legal procedures.

(b) This compensation is the actual value of the expropriated investment, determined and computed in accordance with internationally recognized valuation principles on the basis of the fair market value of the expropriated investment at the time immediately before the expropriation took place or the imminent expropriation became publicly known, whichever is earlier (hereinafter referred to as the "valuation date"). This compensation is calculated in a freely transferable currency that the investor chooses, on the basis of the market value of the prevailing exchange rate for that currency on the valuation date and includes the assumed compensation for the project from the date of expropriation until the date of payment of compensation.

(c) If the above-mentioned fair market value cannot be easily ascertained, compensation will not be determined based on equitable principles taking into account all factors and circumstances related to it, such as the capital invested, the nature and period of the investment, the replacement value, the increase in the value of the investment and current returns. The calculated cash flow value, book value and goodwill. The final compensation amount is immediately paid to the investor in a freely convertible currency and allowed to be transferred freely and without delay.

2. In light of the principles set forth in paragraph 1, and without prejudice to the investor's rights under Article 9 of this Agreement, the aggrieved investor shall have the right to prompt review, by a judicial or other independent competent authority of that Contracting State, of his case, including the valuation of compensation payments for his investment.

3. Expropriation also includes cases in which a Contracting State expropriates the assets of a company or project established or established under the laws in force in its territory and in which an investor of the other Contracting State has an investment through the ownership of shares, shares, debentures, rights or other interests.

4. The term "expropriation" also includes any statutory interventions or measures by a Contracting State such as freezing or restricting an investment, imposing special or excessive financial restrictions on an investment, the compulsory sale of all or part of an investment, or other similar measures having the same effect as expropriation, which results in really depriving the investor of his ownership or dominance over his investment or his fundamental interests in it, or that may result in a loss or damage to the economic value of the investment.

## **Article 7. Transfers of Funds**

1. Each Contracting State guarantees to investors of the other Contracting State the free transfer of payments related to an investment inside and outside its territory, including the transfer of:

(a) the original share capital and any additional capital for the maintenance, management, and development of the investment;

(b) proceeds;

- (c) payments under a contract, including repayment of principal and interest payments made under a loan agreement;
- (d) royalties and fees for the rights referred to in Article 1, paragraph 1 (d);
- (e) proceeds from the sale or liquidation of all or any part of an investment;
- (f) earned funds and other remunerations for employees contracted from abroad who are related to the investment;
- (g) compensation payments under Articles 5 and 6;
- (h) payments referred to in Article 8;
- (i) Payments arising from the settlement of disputes.

2. The transfer of payments received under paragraph (without delay or restriction, and in a freely convertible currency, except in the case of payments in kind) shall be effected.

3. Transfers shall be made without any discrimination, at the spot transaction exchange rate prevailing in the host contracting state on the date of transfer for spot transactions of the currency to be converted. In the absence of a foreign exchange market, the applicable rate is the most recent rate applied to inward investments or the exchange rate specified in accordance with the regulations of the International Monetary Fund or the exchange rate specified for currency conversion of SDRs or United States dollars, whichever is more favorable to the investor.

## **Article 8. Subrogation**

1. If a Contracting State or its relevant agency or any other body designated by it (a "guarantor party") established or established in that Contracting State makes a payment under an indemnity or security against non-commercial risks it has assumed in connection with an investment in the territory of the other Contracting State ("Host State"), the host State shall recognize:

(a) by assigning to the guarantor by law or legal consent all rights and claims arising from such investment;

(b) The right of the guarantor party to exercise such rights and enforce those claims and obligations related to the investment based on the principle of substitution of the creditor.

2. In all circumstances, the guarantor has the right:

(a) the same treatment of rights and claims acquired and obligations assumed under the assignment referred to in paragraph 1 above;

(b) any payments received pursuant to those rights and claims.

3. Without prejudice to Article 7, any payments received by the guarantor in local currency based on rights and claims acquired shall be freely made available and used by the guarantor for the purpose of meeting any expenses it may incur in the territory of the host country.

## **Article 9. Disputes between a Contracting State and an Investor**

1. Disputes arising between a Contracting State and an investor of the other Contracting State in relation to an investment belonging to the latter in the territory of the first-mentioned State shall, as far as possible, be settled amicably.

2. If it is not possible to settle those disputes within six months from the date of either of the two parties to the dispute requesting an amicable settlement by delivering written notification to the other party, the dispute shall be resolved by choosing the investor, the party to the dispute, by one of the following means:

(a) in accordance with any appropriate dispute settlement procedures previously agreed upon;

(b) In accordance with the provisions of the Special Chapter on the Settlement of Disputes of the Unified Agreement for the Investment of Arab Capital in the Arab Countries of 1980;

(c) International arbitration in accordance with the following paragraphs of this Article.

3. In the event that the investor chooses to submit the dispute to international arbitration, the investor must also submit his written consent to submit the dispute for settlement through one of the following bodies:

(a) (i) The International Center for the Settlement of Investment Disputes (the "Center"), established pursuant to the Agreement on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on March 18, 1996 (the "Washington Agreement") in the event that the Contracting States are parties to the Washington Convention and the Washington Convention applies to the dispute;

(ii) the Centre, under the Rules Governing Additional Facilities for the Administration of Proceedings by the Secretary of the Center (the "Additional Facilities Rules"), if the Contracting State of the investor or the Contracting State party to the dispute, but not both, is a party to the Washington Convention;

(b) an arbitral tribunal establishing pursuant to the arbitration rules (the "Rules") of the United Nations Commission on International Trade Law (UNCITRAL), as these Rules are modified by the parties to the dispute (the appointing body referred to in Article 7 of the Rules is the Secretary-General of the Centre);

(c) an arbitral tribunal its appointment is based on the arbitration rules of any arbitral tribunal agreed upon between the parties to the dispute.

4. Notwithstanding that the investor has submitted the dispute to binding arbitration under paragraph 3 above, he may, before or during the commencement of the arbitration proceedings, petition the courts of the Contracting State which is a party to the dispute to issue an interim injunction to preserve his rights and interests, provided this does not include a request for compensation for any damages.

5. Each Contracting State gives its unconditional consent to submit the investment dispute for settlement by arbitration, which is binding, as applicable, at the option of the investor under paragraphs 3 (a) and (b) or by mutual agreement of the parties to the dispute under paragraph 3 (c).

6. (a) The consent in paragraph 5, together with the consent in paragraph 3, satisfies the requirement for the written consent of the parties to the dispute for the purposes of both Chapter II of the Washington Convention and the Rules of Additional Facilities, and Article II of the United Nations Convention on the Recognition, Enforcement and Enforcement of Foreign Arbitral Awards, drawn up in New York on 10 June 1958 (the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this article, as may be mutually agreed between the parties, shall be held in a State which is a party to the New York Convention. Claims submitted to arbitration in accordance with the provisions of this Agreement are deemed to arise from a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(c) Neither Contracting State shall grant diplomatic protection or submit an international claim in connection with any dispute referred to arbitration, except in the event of the failure of the other Contracting State to comply with or apply the judgment rendered in respect of that dispute. However, unofficial diplomatic notes may be exchanged solely for the purpose of facilitating the settlement of the dispute.

7. The arbitral tribunal established under this Article shall decide the issues related to the dispute in accordance with those rules of law as agreed upon by the parties to the dispute. For the purposes of such an agreement, the law of the contracting state party to the dispute shall apply, including its rules of conflict of laws, and the recognized rules of international law, as applicable, taking into account also the relevant provisions of this agreement.

8. An investor, other than a natural person holding the nationality of a Contracting Party to the dispute on the date of the written consent referred to in Paragraph 6 and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting Party, shall be treated for the purpose of Article 25 (2) (b) of the Washington Convention as a "national of another Contracting Party" and shall for the purpose Article 1 (6) of the Additional Facility Rules be treated as a "national of another State".

9. Arbitration decisions shall be final and binding on each of the parties to the dispute, and each Contracting State shall implement any such provision immediately, and shall take the necessary measures for the effective implementation of those provisions in its territory.

10. A Contracting State shall not defend its immunity in any judicial, arbitral, or otherwise proceedings or in the enforcement of any decision or judgment relating to an investment dispute between a Contracting State and an investor of the other Contracting State. Nor may any counterclaim or right of set-off be established on the fact that the concerned investor has received, or will receive, based on an insurance contract, compensation for damage or any other compensation for all or part of the damages claimed by any third party, whether general or private, including that of the other Contracting State and its subsidiary agencies, agencies or agencies.

## **Article 10. Disputes between Contracting States**

1. The Contracting States shall, as far as possible, settle any dispute relating to the interpretation or application of this Agreement through diplomatic consultations or channels.
2. If the dispute is not settled within six months from the date of the request for holding those consultations or from the date of the request for settlement through diplomatic channels by either Contracting State, and unless the Contracting States agree otherwise in writing, either Contracting State may by written notification For another Contracting State, the dispute shall be submitted to an arbitral tribunal established for this purpose in accordance with the following provisions of this Article.
3. The arbitration court shall be constituted as follows: Each of the two contracting states appoints one member, and these two members agree on a citizen of a third country to be their president, who is then appointed by the two Contracting States. These two members shall be appointed within two months, and the president within four months from the date on which either of the two Contracting States notifies the other Contracting State of its intention to submit the dispute to an arbitral tribunal.
4. If the periods specified in paragraph 3 above are not observed, either of the two attached states may, in the absence of any other arrangement, 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 of the two Contracting States, or if there is an impediment preventing him from performing the aforementioned mission, then the Vice-President of the International Court of Justice will be requested to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of one of the Contracting States or there is an impediment preventing him from performing the said task, the member of the International Court of Justice next in seniority and who is not a citizen of one of the Contracting States shall be required to make the necessary appointments.
5. The arbitral tribunal takes its decision by a majority vote. This decision shall be taken in accordance with the provisions of this agreement and the recognized rules of international law, as applicable, and shall be final and binding on both contracting states. Each Contracting State shall bear the fees of the member of the arbitration court appointed by it, as well as the fees of its representative in the arbitration proceedings. As for the fees of the President, as well as any other costs, they shall be borne equally by both Contracting States. The arbitration court may, at its discretion, decide to entrust one of the two contracting states with a proportion greater than or all of the aforementioned costs. The arbitral tribunal shall determine its own procedures with respect to all other matters.

## **Article 11. Diplomatic Relations**

The provisions of this Agreement shall be applicable regardless of the existence of diplomatic or consular relations between the two Contracting States.

## **Article 12. Most Favourable Treatment**

If, in addition to this Agreement, the legislation of either Contracting State or obligations under international law existing or which may subsequently arise between the Contracting States, in addition to this Agreement, a provision, whether general or special, grants to investments or related activities carried out by investors of the other Contracting State More favourable treatment than that provided for in this Agreement, this provision shall prevail over this Agreement to the extent that it provides more favourable treatment.

## **Article 13. Scope of Application**

This Agreement applies to all investments, whether existing on the date of entry into force of this Agreement or made after that date by investors of either Contracting State in the territory of the other Contracting State. However, this agreement does not apply to disputes that may have arisen prior to its entry into force.

## **Article 14. Entry Into Force**

Each of the Contracting States shall notify the other of their fulfillment of the constitutional requirements necessary for the entry into force of this Agreement, and the agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

## **Article 15. Duration and Termination**

1. This Agreement shall remain in force for a period of thirty (30) years, and thereafter shall continue in force for a similar period or periods, unless either Contracting State notifies the other Contracting State in writing one year prior to the expiry of the first term or any subsequent period of its intention to terminate the Agreement.
2. With regard to investments made prior to the effective date of the notice of termination of this agreement, the provisions of this agreement shall remain in effect for a period of twenty (20) years from the date of termination of this agreement.

In witness thereof, the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done in Kuwait on this twenty-seventh day of the month of Dhu al-Qa'dah 1421 AH corresponding to the twenty-first of February 2001, in two original copies in the Arabic language, and each of them equally authentic.

For the Government of the Republic of Yemen

Juz Awlaki

Ambassador of the Republic of Yemen at the State of Kuwait

For the Government of the State of Kuwait

Abdul Mohsen Yusuf Al Hanif

Undersecretary of the Ministry of Finance

Undersecretary of the Ministry of Finance