

Agreement between The Kingdom of Saudi Arabia and The Republic of Austria concerning the Encouragement a

THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF SAUDI-ARABIA (hereinafter referred to as the "Contracting Parties"),

DESIRING to intensify economic co-operation between both Contracting Parties,

INTENDING to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the reciprocal promotion and protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both Contracting Parties,

HAVE AGREED AS FOLLOWS:

Article 1.

For the purpose of this Agreement

1 . the term "investment" means every kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation and in particular, but not exclusively, includes:

- (a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufructs and similar rights;
- (b) Shares, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;
- (c) Claims to money such as loans or to any performance having an economic value associated with an investment;
- (d) Intellectual property rights, including but not limited to copyrights, patents, industrial designs, technical processes, know-how, trademarks, trade and business secrets, trade names and goodwill;
- (e) Any rights conferred by law or under contract or any licenses, permits or concessions issued according to law.

Any extension or alteration of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that they are consistent with the legislation of the Contracting Party in the territory of which the investment is made.

2 . the term "returns" means the amounts yielded by an investment, in particular, profits, dividends, royalties, capital gains or any similar fees or payments.

3 . the term "investor" means

(a) In respect of the Republic of Austria:

- (i) A natural person having the nationality of Austria in accordance with its applicable law; or
- (ii) An enterprise constituted or organized under its applicable law

(b) In respect of the Kingdom of Saudi Arabia:

- (i) Natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;
- (ii) Any entity having or having no legal personality and constituted in accordance with the laws of the Kingdom of Saudi

Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;

(iii) Its public financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds, and other similar governmental institutions existing in Saudi Arabia;

Making or having made an investment in the other Contracting Party's territory.

4. the term "territory" means the zones within the land boundaries, marine and submarine zones, airspace and the areas of the exclusive economic zone and the continental shelf insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

Article 2.

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation. It shall in any case accord such investments fair and equitable treatment.

2. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3.

1. Each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third State.

2. In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its investors.

3. Each Contracting Party shall accord the investors of the other Contracting Party in connection with the management, operations, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of a third State, whichever is more favourable.

4. The provisions in paragraph 1, 2 and 3 of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third State by virtue of its membership of, or association with, a customs union, an economic union, a common market, a free trade area or any similar economic arrangement.

5. The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or other agreement regarding matters of taxation or to domestic legislation regarding taxation.

Article 4.

1. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2. Investments by investors of either Contracting Party shall not be expropriated, nationalized, or subjected to any other measure, the effects of which would be tantamount to expropriation or nationalization by the other Contracting Party except for the public interest of that Contracting Party and against prompt, adequate and effective compensation, provided that these measures are not discriminatory and in accordance with domestic laws of general application. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the prevailing market rate of return until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to a prompt review by due process of law.

3. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of general emergency, or revolt, shall be accorded treatment not less favourable by such other Contracting Party than that accorded by the latter Contracting Party to its own investors or to the investors of a third State as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

Article 5.

If a Contracting Party or any related agency makes a payment to an investor under a guarantee it has assumed in respect of any investment made by that investor in the territory of the other Contracting Party the latter Contracting Party shall recognize the transfer of any rights or claims from the investor or any of its affiliates to the former Contracting Party or any related agency. This shall not affect the rights of the investor under Article 11 of this Agreement.

Article 6.

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with investments and investment returns they hold in the territory of the other Contracting Party, in particular:

- (a) The principal and additional amounts to maintain or increase the investment;
- (b) The returns;
- (c) In repayment of loans;
- (d) The proceeds from the liquidation or the sale of the whole or any part of the investment;
- (e) The compensation provided for in Article 4;
- (f) Payments arising out of the settlement of a dispute;
- (g) Earnings and other remuneration of personnel engaged in connection with an investment.

Article 7.

1. Transfers under Article 4, paragraph 2 or 3, and under Articles 5 or 6 shall be made without delay at the prevailing rate of exchange on the date of transfer. It shall be made to the country designated by the claimants concerned and in any freely convertible currency accepted by the claimants.

2. In the absence of a prevailing rate of exchange, the rate of exchange shall correspond to the cross-rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

3. A transfer shall be deemed to have been made "without delay" within the meaning of this Article if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed one month.

Article 8.

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party 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 in this context.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 9.

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 10.

- 1 . Disputes between the Contracting Parties concerning the interpretation or application of the Agreement should as far as possible be settled amicably through consultation, mediation or conciliation by the governments of the two Contracting Parties.
- 2 . If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.
- 3 . Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their Chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.
- 4 . If the periods specified in paragraph 3 above have not been observed, either Contracting Party 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 is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.
- 5 . The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding upon the parties to the dispute. Each Contracting Party shall bear the cost of its own member and the cost of counselling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects the arbitration tribunal shall determine its own procedure.

Article 11.

- 1 . Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party in connection with these investments in the territory of the former Contracting Party, should be amicably settled as far as possible by consultation or negotiation.
- 2 . If the dispute cannot be settled in the way prescribed in paragraph 1 of this Article within six months of the date when the request for the settlement has been submitted, it shall be, at the request of the investor, filed to the competent court of law of the Contracting Party in whose territory the investment was made, or filed for arbitration:
 - (a) To the International Centre for the Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C. on 18th March 1965, or
 - (b) By an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or
 - (c) To any other form of dispute settlement agreed upon by the parties to the dispute.
- 3 . Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration. However, a dispute may not be submitted to international arbitration if a local court in either Contracting Party has rendered its decision on the dispute.
- 4 . If the investor chooses to file for arbitration, the Contracting Party agrees not to request the exhaustion of local settlement procedures.
- 5 . At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to the guarantee provided for in Article 5 of this Agreement.
- 6 . Issues in dispute under Article 8, paragraph 2 of this Agreement shall be decided, absent other agreement, in accordance with the law of the Contracting Party, party to the dispute, including its rules on the conflict of laws, the law governing the authorisation or agreement and such rules of international law as may be applicable.
- 7 . The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said

Convention. The award shall be enforced promptly in accordance with domestic law.

Article 12.

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 13.

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

Article 14.

1 . This Agreement shall be ratified.

2 . This Agreement shall enter into force sixty days after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall remain in force thereafter for an unlimited period. After the expiry of the period of ten years, this Agreement may be denounced in writing at any time by either Contracting Party giving twelve months' notice.

3 . In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 13 shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

For the Republic of Austria:

DDr. Harald Wiesner

Ambassador Extraordinary and Plenipotentiary of the Republic of Austria in the Kingdom of Saudi Arabia

For the Kingdom of Saudi Arabia:

Dr. Ibrahim Abdulaziz Al-Assaf

Minister of Finance and National Economy to the Kingdom of Saudi Arabia