

# **Agreement for the Reciprocal Promotion and Protection of Investments between the Government of the Arab Republic of Egypt and the Government of the State of Kuwait**

The Government of Arab Republic of Egypt and the Government of the State of Kuwait (hereinafter referred to as the Contracting Parties),

Whereas the two Contracting Parties desire to create suitable conditions for the development and strengthening economic cooperation for the benefit of the two parties in particular creation of and suitable and favorable conditions and the suitable guarantee for investments of investors each of Contracting Parties in the territory of the other Contracting Party.

Recognizing that the promotion of investment flow of investments between them and mutual protection for such investments will be an incentive for the revitalization of initiatives in business for the purpose of economic prosperity and increase development in both Contracting Parties.

As both Contracting Parties have a desire to conclude an agreement for the promotion and protection of investments in a more comprehensive manner than the agreement signed between the two Contracting Parties on 15/5/1989 in line with local economic developments and on an international level.

The Contracting Parties have agreed as follows:

## **Article 1. Definitions**

For the purposes of this agreement, unless the text states otherwise:

1. The term "Investment" means all types of assets located in a Contracting party possessed or has an interest an investment affiliated to the other Contracting Party directly or indirectly and whether through a branch or affiliated institutions wherever its main place in a Contracting Party or a third party according to laws and regulations which organize investment in host party region for investment. This term includes in particular and limited to :

(a) Movable and immovable properties and any other property rights such as rents, mortgages, debts privileges, pledges, usufruct rights and other similar rights.

(b) A company, business or joint venture, shares, stocks and other forms of equity participation, bonds, debentures, and other forms of debt rights in a company, business, or enterprise, or a joint project, other debts, loans and securities issued by any investor of a Contracting Party.

(c) Claims to money and claims to any other assets or performance under contract having an economic value.

(d) Rights of intellectual and industrial property which includes without limitation, rights of copyright, publishing, trademarks, patents of invention, designs, industrial models, technical operations, trade secrets, trade names and goodwill.

(e) Any right established by law or contract or under any licenses or permits granted in accordance with law including the rights of exploration, excavation, extraction or exploitation of natural resources, rights of manufacture, use and sale, and the rights to engage in other economic and commercial activities or to provide services.

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

The term "investment" also applies to "revenues" that are held for the purpose of reinvestment or resulting from "liquidation" as these two terms are defined hereafter.

2. The term "investor" also means for each Contracting Party:

(a) A natural person who has the nationality of that Contracting Party in accordance with the laws in force of that

Contracting Party;

(b) The government, bodies and institutions, of that Contracting Party;

(c) Any legal person or any economic entity legally established pursuant to laws and systems of the Contracting Party.

(d) If the legal or natural persons of a Contracting State have more than half of the capital of a legal person or economic entity legally existing in a third country and that legal person or economic entity invests in the territory of the State of the other Contracting Party, that person is considered a legal person of the state of the first Contracting Party for the purposes of this Agreement.

3. The term "returns" means the amounts yielded by an investment, regardless of the form in which it is paid. This includes, in particular, but not limited to profits, interests and dividends of capital, dividends of stocks, royalties and management fees, technical assistance or payments or other fees and other kind of payments, whatever its type.

4. The term "liquidation" means any behavior performed for the purposes of final or partial investment.

5. The term "territory" means

For the State of Kuwait: any area outside the territorial sea of the State of Kuwait, which according to international law has been determined or may be later determined in accordance with the Law of the State of Kuwait as an area where the State of Kuwait may exercise its sovereign rights or jurisdiction in it;

For the Arab Republic of Egypt: land located inside the international borders of Arab Republic of Egypt, regional sea, continental area and the special economic area subjected for state sovereignty or its regional mandate according to international law and the applicable laws in the Arab Republic of Egypt.

6. The term "freely convertible currency" is any currency determined by the International Monetary Fund from a period to another as a currency used freely in accordance with rules of the International Monetary Fund and any modifications thereto.

7. The term "without delay" means the period required to complete formalities necessary to transfer payments. The mentioned period starts from the date of presenting transfer of payments provided that they do not exceed a month.

## **Article 2. Admission and Promotion of Investments**

1. Each of the Contracting Parties shall, in accordance with its laws and applicable regulations, admit and promote investments made in its territory by investors of the other Contracting Party.

2. For investments admitted in its territory, both Contracting Parties shall grant to these investments and associated activities, the related permissions, approvals, necessary licenses and permits as allowed and according to the principles and specified conditions in its laws and systems.

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

4. Each Contracting Party shall, in accordance with its laws and regulations relating to entry, residence and work of natural persons, and in good faith, study the requests of investors for other Contracting Party and the requests of senior management personnel such as technicians and competent administrators appointed for the purposes of the investment, for entry and temporary residence in its territory. Moreover, direct family members are granted the same treatment in terms of entry and temporary residence in the host Contracting Party.

Each Contracting Party in accordance with its laws and regulations shall allow investors of the other Contracting Party who have investments in its territory, to recruit any key personnel of their choice, and during the period that has allowed such a person to enter, to reside and work in the territory of the former Contracting Party.

5. Both Contracting Parties shall, within the limits permitted by its laws and regulations, allow that the transfer of goods or persons connected with an investment is made through projects affiliated to other Contracting Party.

## **Article 3. Protection of Investments**

1. Investments by investors from any of the Contracting Parties, shall enjoy full protection and security in the territory of the other Contracting Party in a manner compatible with the recognized principles of International law and the provisions of this Agreement. Neither Contracting Party shall in any way, take arbitrary or discriminatory measures that harm such

investments or activities associated with the use, enjoyment in, management, development, maintenance, and expansion of investments.

2. Each Contracting Party shall publish all laws, regulations, rules and provisions related to or directly affecting investments or related activities in its territory of investors of the other Contracting Party.

3. Each Contracting Party shall provide effective means to bring claims and enforce rights with regards to investments. Each Contracting Party shall guarantee to investors of the other Contracting Party the right to have recourse to the courts, administrative bodies and all other organs exercising judicial authority, as well as the right to appoint qualified persons of their choice, according to applicable laws and regulations, for the purpose of bringing claims and enforcing rights for their investments and activities related to them.

4. Neither Contracting Party may impose on investors of the other Contracting Party any compulsory measures which may require or restrict the purchase of materials, energy, fuels, or means of production, transportation or operation, or any kind of market restriction of products within or outside the territory of the host Contracting State, or any measures which have a discriminatory effect against investments made by investors of the other Contracting Party, to favor investments made by its investors or investors from a third party.

5. Investments in the host Contracting Party shall not be subject to performance requirements which may harm or have a negative effect on its use, enjoyment, management, maintenance, expansion, or other connected activities, unless these requirements are considered vital for considerations of public health, public order or the environment, and applied pursuant to the applicable legal instrument.

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

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

#### **Article 4. Returns of Investments**

Investment returns that are reinvested according to the laws and regulations of the host Contracting Party, as well as those resulting from the liquidation of the investment, shall benefit from the same protection and privileges granted to the original investment.

#### **Article 5. Most Favoured Nation Treatment**

1. Each Contracting Party shall all times guarantee the investments made in its territory by investors of the other Contracting Party a fair and equitable treatment, which shall not be less favourable than that granted in similar circumstances to investments or the investors for any third country, whichever is the most favourable.

2. Each Contracting Party in its territory, shall grant investors, investments and returns of investors of the other Contracting Party a treatment not less favourable than that granted to investments and returns of investors of any third country.

3. Notwithstanding this, the provisions of this Article shall not be construed as obligating a Contracting Party to provide investors of the other Contracting Party, the advantages of any treatment, preference or concession resulting from:

(a) Any customs union, economic union, free trade area, or monetary union, or any other form of regional economic agreement or any similar international agreement where either Contracting Party is or may become party to it.

(b) Any international, regional, or bilateral agreement or any similar convention or any domestic legislation wholly or partly related to taxation.

#### **Article 6. Compensation for Damage or Losses**

1. If investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer damages or losses caused by war, or any other armed conflict, national emergency, revolution, unrest, riots or other similar events, the treatment granted from the latter Contracting Party with respect to restoring the situations to their previous state, refund of losses, compensation or any other settlement, shall be no less favourable than those granted by the Contracting Party to its own investors or to investors of any third state.

2. With no prejudice to paragraph 1, the investors of one of the Contracting Parties who suffer damages or losses as a result of any of the events referred to in that paragraph in the territory of the other Contracting Party 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 a part of it by its forces or authorities without cause of combat or operations or without being required by the necessity of the situation;

they shall be granted prompt, adequate and effective compensation for the damage or loss they have suffered within a period of seizure or as a result of the destruction of their property, and the resulting payments shall be made in a freely convertible currency, being allowed to transfer it freely and without delay

## **Article 7. Expropriation of Property**

(a) Investments made by investors of either Contracting Party in the territory of the other Contracting Party are not subject to nationalization, expropriation or confiscation, or subject to measures having directly or indirectly effects equivalents to, nationalization, expropriation or confiscation (hereinafter referred as expropriation) by the other Contracting Party except for a public purpose related to a national interest of that Contracting Party, and in return for prompt, adequate and effective compensation, provided that such measures have been taken on a non-discriminatory basis and according to generally applicable legal measures.

(b) Compensation for the expropriated investment is determined in accordance with internationally recognized valuation principles based on the fair market value of the investment at the time immediately prior to the expropriation proceeding or in which the imminent expropriation has become publicly known, whichever is earlier (hereinafter referred to it as the date of evaluation). This compensation shall be paid in a convertible free currency chosen by the investor, based on the market rate of exchange prevailing for that currency on the valuation date, and includes interests from the date of expatriation until the date of payment, at a fair market value to be determined on the basis of the expropriation date, provided that it is not, in any case, less than the interest rate prevailing among London banks (LIBOR) or equivalent.

(c) If the above fair market value cannot be easily ascertained, then compensation is determined based on fair principles taking into account all factors and circumstances such as the invested capital, nature and period of the investment, replacement value, increase of investment value, current returns, cash flow value, accounting book value, and goodwill. The specified compensation amount shall be finally paid immediately to the investor in freely convertible currency, and allow it to be transferred freely without delay.

4. In light of principles stated in paragraph 1 and without prejudice of the rights of the investor mentioned in Article 10 of this Agreement, the aggrieved investor has the right to immediate review of his case by a judiciary authority or independent competent authority of the Contracting Party, including the evaluation of his investment as well as the payments of compensations for that investment.

5. Expropriation also includes cases in which a Contracting Party expropriates the assets of a company or a project that has been established or is newly established pursuant to applicable laws in its territory, in which an investor of the other Contracting Party, has a substantial or significant investment through the ownership of shares, debt securities, rights or other interests.

6. The term "expropriation" also includes any legal intrusion or action on the part of a Contracting Party, such as freezing or restricting an investment, or the compulsory sale of all or part of an investment, or other similar measures that have the same effect as confiscation or expropriation and that result in depriving the investor in fact of his ownership, property, or substantial interests in his investment, which may result in loss or damage to the economic value of the investment.

## **Article 8. Transfer Payments Related to Investments and Its Procedures**

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

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

(b) returns;

(c) payments pursuant to a contract including principal and interest payments performed according to a loan agreement;

(d) royalties and fees for the rights referred to in Article 1, paragraph 1 (d);

- (e) revenues from the sale or liquidation of all or any part of the investment;
- (f) earned funds and other remuneration for employees contracted from abroad and who are connected to the investment;
- (g) payments of compensation under Articles 6 and 7;
- (h) payments referred to in Article 9;
- (i) Payments arising from the settlement of disputes.

2. Each of the Contracting Parties, in accordance with the applicable laws and regulations in force in them, shall permit the implementation of transfers of payments pursuant to paragraph 1 without undue delay or restriction, by completing transfers in a freely convertible currency, according to the prevailing market exchange rate.

## **Article 9. Subrogation**

1. If a Contracting Party or its relevant agency or any other body designated by it ("Guarantor Party") incorporated or created in that Contracting Party, makes a payment of compensation under a guarantee against non-commercial risks undertaken in connection with an investment in the territory of the other Contracting Party (the "Host State"), the host state shall recognize:

- (a) the assignment to the guarantor party pursuant to law or legal agreement of all rights and claims arising from such an investment.
- (b) the guarantor party's right to exercise such rights and enforce such claims and obligations related to investment based on the principle of subrogation of the investor.

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

- (a) the same treatment of rights and claims acquired and obligations undertaken by virtue of the guarantee referred to in paragraph 1 above;
- (b) any payments received pursuant to those rights and claims.

3. Without prejudice to Article 8, any payments received by the guarantor party in local currency based on the rights and claims acquired, may be freely used for the purpose of facing any expenses the guarantor party may incur in the territory of the host state.

## **Article 10. Settlement of Disputes between a Contracting Party and an Investor**

1. Disputes arising between a Contracting Party and investors of the other Contracting Party in respect of an investment from the latter in the territory of the former party, it shall be settled as far as possible in amicable ways.

2. If it is impossible to settle those disputes within six months from the date of the request of either party to the dispute for amicable settlement by giving written notice to the other party, the dispute shall be settled at the choice of the investor party to the dispute, by one of the following means:

- (a) the court of the Contracting Party hosting the investment having jurisdiction thereto;
- (b) in accordance with any appropriate dispute settlement procedures agreed upon in advance;
- (c) in accordance with the provisions of Chapter Five for dispute settlement of the unified agreement for Arab funds capitals in Arab countries of the year 1980;
- (d) the Cairo Regional Center for International Commercial Arbitration;
- (e) International arbitration in accordance with following paragraphs of this Article.

3. In the event the investor chooses to submit the dispute for settlement to international arbitration, the investor shall also submit his written consent to submit the dispute for settlement by one of the following rules :

- (a) the International Centre for Settlement of Investment Disputes (the "Center") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signatures in Washington D.C., on March 18, 1965 (the "Washington Convention") in the case both Contracting Parties are parties to the Washington Convention and the application to the Washington Convention to the dispute;

(b) an arbitral tribunal established under the rules of arbitration (the "Rules") of the United Nations Commission for International Trade Law (UNCITRAL), as these rules may be modified by the parties to dispute (the appointing authority referred to in Article 7 of the Rules is the Secretary-General of the Center);

(c) an arbitral tribunal to be appointed under the arbitration rules of any arbitration body agreed upon it between the disputing parties.

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

5. Each Contracting State gives its unconditional consent for the purpose of settle the investment dispute by binding arbitration at the option of the investor under paragraphs 3 (a) and (b) or the 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 2, fulfills the request of the written consent of the parties to the dispute for the purposes of Chapter II of the Washington Convention, and Article II of the United Nations Convention on the recognition and implementation of foreign arbitral awards, done at New York on 10 June 1958 (New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article, as mutually agreed between the parties, shall take place in a country that is a party to the New York Convention, and the claims presented to arbitration in accordance with the provisions of this Agreement shall be deemed to arise from a business relationship or transaction for the purposes of Article 1 of the New York Convention.

(c) Neither Contracting Party shall grant diplomatic protection or present an international claim related to any dispute that has been referred to arbitration except if the event of failure of the other Contracting Party to apply or abide by the award issued in respect of that dispute. However; it is possible to exchange non-official diplomatic notes only for the purpose of facilitating the settlement of the dispute.

(d) the arbitral tribunal established under this Article shall decide the matters relating to the dispute in accordance with those rules of law as agreed upon by parties of dispute. In the absence of such this agreement, shall apply the law of the Contracting Party party to the dispute, including its rules on conflict of laws, and the recognized rules of international law, as applicable, taking into account also the relevant provisions of this Agreement.

(e) arbitral awards are final and binding on each of the parties to the dispute and may include a provision for the payment of interest. Each Contracting Party shall give immediate effect to any ruling and implement the necessary procedures for the effective implementation of those decisions in its territory.

(f) Neither Contracting Party shall, in any way, take any action or measure that would disrupt any judicial, arbitration or other proceedings or implementing any decision or ruling related to investment expropriation between a Contracting Party and investor of the other Contracting Party. Also, no counterclaim or right of set-off may be established against the concerned investor on the basis that has received or will receive compensation for damage by virtue of an insurance contract, or any other compensation for all or part of the damages claimed by any third party, whether public or private, including the other Contracting State, its agencies and bodies.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or diplomatic channels.

2. If the dispute is not settled and an agreement is reached within six months from the date of written request to hold such consultations or from the date of a request for settlement through diplomatic channels by any of the Contracting Parties, and unless the Contracting Parties agree otherwise in writing, either Contracting State may, by written notification to the other Contracting State, submit the dispute to an arbitral tribunal court convened for this purpose in accordance with the following provisions of this Article.

3. The arbitral tribunal is established as follows: Each Contracting Party shall appoint one member, and these two members shall agree on a citizen of a third country to be their President, to be appointed by both Contracting Party. These two members shall be appointed within two months and the President within four months from the date of notification of one of the Contracting Parties to the other Contracting Party about its intention to submit the dispute to an arbitral tribunal.

4 If the periods specified in paragraph 3 above are not 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 of the International Court of Justice is a national of one of the Contracting Parties or if he finds an impediment preventing him from performing the aforementioned task, he shall ask the Vice-President of the International Court of Justice to make the necessary appointments. And if the Vice-President of the International Court of Justice is a national of one of the Contracting Parties, or if there is an impediment preventing him from performing the aforementioned mission, the member of the International Court of Justice next in seniority and who is not a citizen of one of the Contracting Parties shall make the necessary appointments.

5. The arbitration court shall take its decisions by a majority of votes. These decisions shall be taken in accordance with the provisions of this Agreement and the recognized rules of international law, as applicable, and it shall be final and binding on each of the Contracting Parties. Each Contracting Parties shall bear the fees of a member of the arbitral tribunal appointed by that Contracting Party and the fees of its representative in the arbitral proceedings. The President's fees and any other costs shall be borne in equal parties between both Contracting Parties unless the arbitral tribunal decides otherwise.

## **Article 12. Application of other Rules**

If the laws of either Contracting Party or existing obligations under international law or which may at a later time arise between the two Contracting Parties in addition to this Agreement include provisions, whether general or special, granting investments or activities conducted by investors of the Contracting Party a treatment more favourable than that provided for in this Agreement, such provision shall prevail over this Agreement to the extent that it provides a most favourable treatment.

## **Article 13. Scope of the Agreement**

This Agreement applies to all existing investments made or established by investors from any of the Contracting Parties in territory of the other Contracting Party according to its laws and regulations prior to the entry into force of this Agreement. However, this agreement does not apply to disputes that arose prior to its entry into force, even if its effects extend beyond that date.

## **Article 14. Validity of the Agreement**

Each Contracting Party shall notify the other that it has fulfilled the necessary constitutional requirements for the final validity in that State of the provisions of this Agreement and its ratification for its entry into force. This 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 twenty (20) years, after which it shall continue in force for the same period unless one party notifies the other party in writing one year before the termination of the first period or any subsequent period about their intention to terminate the Agreement.

2. With respect to investments made prior to the effective date of termination of this Agreement, the provisions of this Agreement shall remain valid for a period of fifteen years (15) from date of termination.

In witness whereof, the respective Plenipotentiaries of both Contracting Parties have signed this Agreement.

Signed in Kuwait on this twenty-third day of Muharram 1422 AH corresponding to the seventeenth day of April 2001 AD, in two originals in Arabic, being each of the originals is equally authentic.

For the Government of the Arab Republic of Egypt

Amr Moussa

Minister of Foreign Affairs

For the Government of the State of Kuwait

Sabah Al-Ahmad Al-Jaber Al-Sabah

First Deputy Prime Minister and Minister of Foreign Affairs