

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE HELLENIC REPUBLIC AND THE GOVERNMENT OF THE STATE OF KUWAIT ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Hellenic Republic and the Government of the State of Kuwait, Hereinafter referred to as the "Contracting Parties",

Desiring to create favorable conditions for the development of economic cooperation between them and, in particular, for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of such investments, will be conducive to the stimulation of business initiative and to the increase of prosperity in both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement: ;

1. The term "investment" shall mean every kind of asset in the territory of one Contracting Party that is owned or controlled directly or indirectly by an investor of the other Contracting Party, and in particular, though not exclusively, includes:

(a) tangible and intangible, movable and immovable property and any rights in rem such as usufructs, mortgages, liens and pledges;

(b) a company or shares, stock and other forms of equity participation in a company, bonds, debentures and other forms of debt interests in a company as well as other debts, loans and securities issued by an investor;

(c) claims to money and claims to any other assets or performance pursuant to contract having an economic value;

(d) intellectual property rights;

(e) any right conferred by law, contract or by virtue of any licenses or permits granted pursuant to law, including rights to search for, extract, or exploit natural resources;

The term "investment" shall also apply to "returns" retained for the purpose of re-investment and to proceeds from "liquidation".

Any change in the form in which assets are invested shall not affect their character as investments.

2. The term "investor" shall mean with respect to a Contracting Party:

(a) a natural person holding the nationality of that Contracting Party in accordance with its applicable laws;

(b) any legal person or any other entities, including companies, corporations, business associations and partnerships, which are constituted under the laws of that Contracting Party;

(c) the Government of that Contracting Party.

3. The term "returns" shall mean the amounts yielded by an investment, irrespective of the form in which they are paid and in particular, though not exclusively, include profits, interest, capital gains, dividends, royalties, and management, technical assistance or other payments or fees, and payments in kind.

4. The term "territory" shall mean the territory of a Contracting Party including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated under the laws of a Contracting Party, as an

areas over which a Contracting Party may exercise sovereign rights or jurisdiction.

5. The term "freely convertible currency" shall mean a currency that is widely traded in international foreign exchange markets and widely used in international transactions.

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

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

2. Each Contracting Party shall, in respect of investments admitted in its territory, grant such investments all necessary permits, approvals, consents, licenses and authorizations to such an extent and on such terms and conditions as may be determined by its laws and regulations.

3. The Contracting Parties may consult with each other in any manner they may deem appropriate to promote and facilitate investment opportunities within their respective territories.

4. Subject to the application of a Party's laws, regulations and procedures relating to the entry, stay and work of natural persons:

(a) a Contracting Party shall examine in good faith requests by investors of the other Party and key personnel who are employed by such investors including, family members, to enter and remain temporarily in its territory to engage in activities connected with the investments, including the provision of advice or key technical services,

(b) companies which are constituted under the applicable laws and regulations of one Party, and which are investments of investors of the other Party, shall be permitted to engage top managerial and technical personnel of their choice, regardless of nationality.

5. Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall, to the extent permissible under its relevant laws and regulations, permit the operation of such transport by enterprises of the other Contracting Party.

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

1. Investments by investors of a Contracting Party shall, at all times, enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting Party in a manner consistent with international law and the provisions of this Agreement. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures, the management, maintenance, use, expansion, enjoyment, sale, or other form of disposal, in its territory, of investments by investors of the other Contracting Party,

2. Each Contracting Party shall make publicly available its laws, regulations, procedures, directives, guidelines and administrative rulings and judicial decisions of general application as well as international agreements, which pertain or may affect the operation of this Agreement or of investments, in its territory, of investors of the other Contracting Party.

3. Each Contracting Party shall provide effective means of asserting claims and enforcing rights with respect to investments, Each Contracting Party shall ensure to investors of the other Contracting Party, the right of access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority and the right to mandate persons of their choice, who qualify under applicable laws and regulations for the purpose of the assertion of claims and the enforcement of rights with respect to their investments.

4. Investments, once admitted, shall not be subjected by either Contracting Party to additional requirements which may be detrimental to their viability or adversely affect their management, maintenance, use, expansion, enjoyment, sale or other form of disposal.

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

1. Each Contracting Party shall accord to investments, made in its territory by investors of the other Contracting Party, treatment not less favorable than that which it accords to investments of its own investors or to investments of investors of any third state, whichever is more favorable.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the management, maintenance, use, expansion, enjoyment, sale or other form of disposal of their investments in its territory, treatment not less favorable

than that which it accords to its own investors or to investors of any third state, whichever is more favorable.

3. The provisions of paragraphs 1 and 2 of this Article;

(a) shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- its participation in any existing or future customs union, monetary union, economic union, regional economic integration agreement or similar international agreement, or

- any international agreement or arrangement relating wholly or mainly to taxation,

(b) shall not apply with regard to paragraph 5 of Article 7 of this Agreement.

## **Article 5. Expropriation**

1. (a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party, shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party, under due process of law of general application, on a non-discriminatory basis and against payment of prompt, adequate and effective compensation.

(b) Such compensation shall amount to the actual value of the expropriated investment and shall be determined and calculated in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier. Such compensation shall include interest at a commercial rate established on a market basis, from the date of expropriation until the date of payment.

2. In light of the principles set out in paragraph 1 and without prejudice to the rights of the investor under Article 9 of this Agreement, the investor affected shall have the right to prompt review by a judicial or other competent and independent authority of the Contracting Party which made the expropriation, of its case, including the valuation of its investment and the payment of compensation therefore.

3. For further certainty, expropriation shall include situations where a Contracting Party expropriates the assets of a company or legal entity which is constituted under the laws in force in its own territory and in which an investor of the other Contracting Party has an investment.

4. For the purposes of this Agreement, the term "expropriation" shall also include interventions or regulatory measures by a Contracting Party that have a de facto expropriatory effect, in that their effect results in depriving the investor in fact : from his ownership, control or substantial benefits over his investment or which may result in loss or damage to the economic value of the investment, such as the freezing or blocking of the investment, the levying of arbitrary or excessive taxes on the investment, the compulsory sale of all or part of the investment, or other comparable measures.

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

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the other Contracting Party accords to its own investors or to investors of any third state, whichever is more favorable to the investor,

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from :

(a) requisitioning of their investment or part thereof by the other's forces or authorities;

(b) destruction of their investment or part thereof by the other's forces or authorities, which was not required by the necessity of the situation,

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

## **Article 7. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

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

(b) returns;

(c) payments under a contract, including amortization of principal and accrued interest payments made pursuant to 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 the whole or any part of the investment;

(f) earnings and other remuneration of personnel engaged from abroad in connection with investment;

(g) payments of compensation pursuant to Articles 5 and 6;

(h) payments referred to in Article 8;

(i) payments arising out of the settlement of disputes.

2. Transfers under paragraph 1 shall be effected without delay or restrictions and, except for in the case of payments in kind, in a freely convertible currency. In case of such delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay.

3. Transfers shall be made at the spot market rate of exchange prevailing in the host Contracting Party on the date of transfer for the currency to be transferred.

4. The term "without delay" shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month,

5. The provisions of paragraphs 1 - 4 of this Article do not preclude a Contracting Party from fulfilling its international obligations or any obligations resulting from its membership to an organisation of regional economic integration to which it has transferred sovereign competences, with regard to restrictions of the movement of capital to or from any third country.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated agency (the "Indemnifying Party") makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting Party (the "Host State"), the Host State shall recognize:

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

(b) That the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

(a) the rights and claims acquired by it by virtue of the assignment, and

(b) any payments connected in pursuance of those rights and claims,

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

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor**

1. Disputes between a Contracting Party and an investor of the other Contracting Party concerning an obligation of the former under this Agreement, in relation to an investment of the latter shall, if possible, be settled by the disputing parties in an amicable way.

2. If such disputes cannot be settled within a period of six months from the date at which either party to the dispute requested amicable settlement by delivering a notice in writing to the other party, the dispute shall be submitted for resolution, at the election of the investor party to the dispute, through one of the following means:

(a) to the competent courts of the Contracting Party in the territory of which the investment has been made;

(b) in accordance with any applicable, previously agreed dispute-settlement procedures;

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

3. In the event that an investor elects to submit the dispute for resolution to international arbitration, the dispute shall be submitted to one of the following bodies:

(a) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (the "Washington Convention");

(b) an arbitral tribunal established under the Arbitration Rules (the "Rules") of the United Nations Commission on International Trade Law (UNCITRAL), as those Rules may be modified by the parties to the dispute (the Appointing Authority referred to under Article 7 of the Rules shall be the Secretary General of the Centre);

(c) an arbitral tribunal constituted pursuant to the arbitration rules of any arbitral institution mutually agreed upon between the parties to the dispute.

4. Notwithstanding the fact that the investor may have submitted a dispute to binding arbitration under paragraph 3, it may, prior to the institution of the arbitral proceeding or during the proceeding, seek before the judicial or administrative tribunals of the Contracting Party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interests, provided it does not include request for payment of any damages,

5. Each Contracting Party hereby gives its unconditional consent to the submission of an investment dispute for settlement by binding arbitration in accordance with the choice of the investor under paragraph 3(a) and (b) or the mutual agreement of both parties to the dispute under paragraph 3(c).

6. (a) The consent given in paragraph 5, together with the consent given under paragraph 3, shall satisfy the requirement for written agreement of the parties to a dispute for the purposes of each of, Chapter II of the Washington Convention, the Additional Facility Rules, Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article, as may be mutually agreed by the parties to the dispute, must be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(c) Neither Contracting Party shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting Party shall have failed to abide by and comply with the award rendered in such dispute. However, diplomatic protection for the purposes of this sub-paragraph shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

7. An arbitral tribunal established under this Article shall decide the issues in dispute in accordance with such rules of law as may be agreed by the parties to the dispute. In the absence of such agreement, it shall apply the law of the Contracting Party, party to the dispute, including its rules on conflict of laws, the relevant provisions of this Agreement and such recognized rules of international law as may be applicable.

8. For the purpose of Article 25(2)(b) of the Washington Convention, an investor, other than a natural person, which has the nationality of a Contracting Party, party to the dispute on the date of the consent in writing 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 as a "national of another Contracting State" and for the purpose of Article 1(6) of the Additional Facility Rules shall be treated as a "national of another State".

9. The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out promptly any such award and shall make provision for the effective enforcement in its territory of such awards.

10. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment dispute between a Contracting Party and an investor of the other Contracting Party, a Contracting Party shall not

assert, as a defense, its sovereign immunity. Any counterclaim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whomsoever, whether public or private, including such other Contracting Party and its subdivisions, agencies or instrumentalities.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by consultations or negotiations through diplomatic channels.
2. If the dispute has not been settled within six months following the date on which such consultations or negotiations were requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.
3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state as Chairman of the arbitral tribunal who shall then be appointed by the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President or if he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the member of the Court next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.
5. The arbitral tribunal shall decide on the basis of this Agreement as well as such generally recognized rules of international law as may be applicable.
6. The tribunal shall determine its own procedure. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.
7. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties.

## **Article 11. Application of other Rules**

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 rule, 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 rule shall to the extent that it is more favourable, prevail over this Agreement.
2. Each Contracting Party shall observe any other obligation it may have entered in to with regard to a specific investment of an investor of the other Contracting Party.

## **Article 12. Consultations**

The Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

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

This Agreement shall apply to all investments in the territory of one Contracting Party, made in accordance with its legislation, by investors of the other Contracting Party, prior to as well as after its entry into force.

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

This Agreement shall enter into force thirty (30) days after the date on which the Contracting Parties have exchanged written notifications informing each other that the procedures required by their respective constitutional requirements for its entry into force have been completed.

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

1. This Agreement shall remain in force for a period of twenty (20) years and shall continue in force thereafter for successive periods of ten (10) years, unless, at least one year before the expiry of the initial or any subsequent period of validity, either Contracting Party notifies the other Contracting Party in writing, of its intention to terminate this Agreement.
2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a further period of twenty (20) years from the date of termination of this Agreement.

In witness whereof, the respective plenipotentiaries of the two Contracting Parties have signed this Agreement,

Done at Athens on 12 June 2014, in two originals in the Greek, Arabic and English languages, all texts being equally authentic. In case of divergence in the interpretation of the Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

EVANGELOS VENIZELOS

DEPUTY PRIME MINISTER AND MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF KUWAIT

SABAH KHALEED AL-HAMAD AL-SABAH

FIRST DEPUTY PRIME MINISTER AND MINISTER OF FOREIGN AFFAIRS