

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE RUSSIAN FEDERATION ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the United Arab Emirates and the Government of the Russian Federation (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 will increase prosperity in the states of the Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

1. The term "investment" shall mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with legislation of the latter Contracting Party. This term shall include, in particular:

(a) Movable and immovable property as well as any property rights such as mortgages;

(b) Shares, debentures, deposits, placement of funds and other securities, as well as stocks and any other forms of interests in a company's capital;

(c) Claims to money or performance under loan agreement or under other contract having an economic value and related to an investment;

(d) Intellectual property rights, including in particular, copyrights, patents, trademarks, industrial designs, trade names as well as know-how, trade secrets;

(e) Goodwill;

(f) Rights conferred by law or under contract to carry out economic activity, or by virtue of any licenses and permits pursuant to legislation.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment provided that such alteration is not contrary to the legislation of the Contracting Party in the territory of which the investment was made.

2. The term "investor" shall mean with regard to each Contracting Party:

(a) Any natural person holding the citizenship of the State of that Contracting Party in accordance with its legislation;

(b) Any legal entity, constituted in accordance with the legislation of that Contracting Party, including corporation, company, association, enterprise, partnership or other organization, irrespective of whether their liabilities are limited or otherwise;

3. The term "returns" shall mean amounts yielded from investment, and include in particular profits, interest, capital gains, dividends, royalties, management, technical assistance payments or other fees; as well as returns in kind;

4. The term "territory of the Contracting Party" shall mean the territory of the United Arab Emirates or the territory of the Russian Federation, as well as the exclusive economic zone and the continental shelf, adjacent to the outer limits of the

territorial sea of the respective State, over which it exercises in accordance with the international law sovereign rights and jurisdiction for the purpose of exploration, exploitation and conservation of natural resources;

5. The term "legislation of the Contracting Party" shall mean the laws and other regulations of the Russian Federation or the laws and other regulations of the United Arab Emirates;

6. The term "without delay" shall mean such period as normally required to fulfill the necessary formalities for the transfer of payments. The said period shall commence on the day which the request for transfer has been submitted and shall not exceed 5 working days.

## **Article 2. Promotion and Reciprocal Protection of Investments**

1. Each Contracting Party shall aspire to create favourable conditions to investors of the other Contracting Party to make investments in the territory of the former Contracting Party and shall admit such investments in accordance with legislation of the former Contracting Party.

2. Each Contracting Party in accordance with its legislation shall provide full protection in its territory to investments of investors of the other Contracting Party.

3. Neither Contracting Party shall impose any additional requirements as a condition of expansion or maintenance of investments to export goods produced, or to purchase goods or services locally, unless such additional requirements are provided for by specific written arrangement reached between the investor of the other Contracting Party and the Contracting Party in the territory of which investment was made.

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

1. Each Contracting Party shall ensure in its territory fair and equitable treatment of the investments made by investors of the other Contracting Party related to management, maintenance, use, enjoyment or disposal of the investments.

2. The treatment referred to in paragraph 1 of this Article shall not be less favorable than that granted by the Contracting Party to the investments of its own investors or to investments of investors of any third state, whichever is more favorable according to the investor.

3. Each Contracting Party shall reserve the right to apply and introduce exemptions of national treatment, granted in accordance with paragraph 1 of this Article, to foreign investors and their investments, including reinvestments.

4. The most favoured nation treatment granted in accordance with paragraph 2 of this Article shall not apply to benefits that the Contracting Party is providing or will provide in the future:

a) In connection with its participation in a free trade area, a customs or economic union;

b) By virtue of the agreements in the field of economic cooperation of the Russian Federation with the states that constituted the former Union of Soviet Socialist Republics;

c) By virtue of the Unified Economic Agreement between the Countries of the Gulf Cooperation Council of which the United Arab Emirates is a party;

d) On the basis of agreements meant to avoid double taxation, or other arrangements on taxation issues.

5. Provided that the Russian Federation becomes a member of the World Trade Organization and without prejudice to the provisions of the Articles 4, 5 and 9 of this Agreement the Contracting Parties may accord the treatment no more favourable than the treatment granted by such Contracting Party in accordance with the Agreement establishing the World Trade Organization (The WTO Agreement) signed in April 15th, 1994 including the obligations under the General Agreement on Trade in Services (GATS).

## **Article 4. Compensation for Damages or Losses**

Investors of one Contracting Party whose investments suffer losses in the territory of the other Contracting Party as the result of war, civil disturbance or other similar circumstances shall be accorded a treatment as regards restitution, indemnification, compensation or other types of settlement, not less favorable than that which the latter Contracting Party accords to investors of any third state or to its own investors.

## **Article 5. Expropriation**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to other measures having effect equivalent to expropriation or nationalization including measures resulting in the losses of ownership of the investments (hereinafter referred to in this Article as "expropriation"), except when such measures are taken for public interest, under due process of law of that other Contracting Party, on a non-discriminatory basis and against prompt, adequate and effective compensation.
2. The investor shall have the right to refer to the administrative bodies of the Contracting Party in the territory of which the investments were made to assess whether expropriation has been made in accordance with the principles of this Agreement.
3. The investor shall have the right to contest against the expropriation in accordance with the provisions of Article 9 of this Agreement.
4. Such compensation shall be computed on the basis of the market value of the investment immediately prior to the date when the actual or impending expropriation has become officially known. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested depreciation, capital already repatriated, replacement value, goodwill and other relevant factors.
5. The compensation shall be paid without undue delay in freely convertible currency and freely transferred from the territory of one of the Contracting Parties to the territory of the other Contracting Party in accordance with the provisions of Article 6 of this Agreement. From the moment of expropriation until the moment of payment the amount of compensation shall be subject to accrued interest at a commercial rate established on a market basis, but no lower than six months U.S. dollar credits LIBOR rate.

## **Article 6. Transfer of Payments**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party upon fulfillment by them of all tax obligations free transfer abroad of payments related to an investment and in particular:
  - a. Capital invested and returns;
  - b. Funds in repayment of loans and credits recognized by both Contracting Parties as investments as well as accrued interest;
  - c. Proceeds from sale or full or partial liquidation of investments;
  - d. Compensation stipulated in Articles 4 and 5 of this Agreement;
  - e. Wages and other remunerations received by investor and natural persons of the other Contracting Party authorized to work in connection with investments in the territory of the former Contracting Party.
2. The transfer of payments provided for in paragraph 1 of the Article, shall be effected without delay, in a freely convertible currency and at the rate of exchange applicable on the date of transfer, pursuant to the foreign exchange legislation of the Contracting Party in whose territory the investment was made.

## **Article 7. Subrogation**

1. A Contracting Party or its designated agency having made payment to an investor based on a guarantee issued for non-commercial risks in relation to an investment in the territory of the other Contracting Party shall be by virtue of subrogation entitled to exercise the rights of the investor to the same extent as the said investor. Such rights shall be exercised in accordance with the legislation of the latter Contracting Party.
2. In case the legislation or administrative proceedings of the Contracting Party in the territory of which the investments were made so require, subrogation is subject to prior consent of the competent authorities of that Contracting Party

## **Article 8. Consultations**

The Contracting Parties may, whenever necessary, hold consultations on any matter concerning the interpretation or application of the Agreement, including on the matters of Article 5 of this Agreement.

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

## **other Contracting Party**

1. Disputes between one Contracting Party and an investor of the other Contracting Party arising in connection with an investment of that investor in the territory of the former Contracting Party, including disputes relating to the amount, conditions and procedure of payment of a compensation in accordance with Articles 4 and 5 or to the procedure of transfer of payments set in Article 6 of this Agreement, shall be settled if possible by way of negotiations.

2. If a dispute cannot be settled by way of negotiations during a period of six months starting from the date of the request of any party to the dispute about its settlement by way of negotiations it shall be submitted for consideration to an administrative body under the procedures established by the legislation of the Contracting Party in the territory of which the investments were made.

3. In case the dispute has not been settled in accordance with the provisions of paragraph 2 of this Article the investor has the right to submit the dispute at his choice for consideration to:

- A competent court or arbitration court of the Contracting Party in the territory of which the investments were made, or
- An ad hoc arbitration court in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or
- To the International Centre for Settlement of Investment Disputes, created pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States signed at Washington on 18 March 1965 for settlement of a dispute according to provisions of this Convention (subject to its entry into force for both Contracting Parties), or in accordance with the Additional Facility Rules of International Centre for Settlement of Investment Disputes (provided that Convention did not enter into force for either Contracting Party or both).

4. An Arbitration award shall be final and binding upon both parties to the dispute. Each Contracting Party undertakes to enforce this award in accordance with its legislation.

5. At any stage of the proceedings held under the provisions of paragraph 3 of this Article, but before the arbitral award was made, the parties to the dispute may agree on amicable settlement of the dispute.

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

1. Disputes arising between Contracting Parties out of this Agreement shall be settled amicably through negotiations and diplomatic channels.

2. If the dispute has not been settled within six months following the date on which such 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 Part, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions:

a. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member to the tribunal and then these two members of the tribunal shall agree upon a national of a third state as the Chairman of the arbitral tribunal to be appointed by both Contracting Parties. The members of the tribunal shall be appointed within two months, and the Chairman of the tribunal within four months, from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal;

b. If the periods specified above have not been complied with, either Contracting Party may, in the absence of any other arrangements 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 either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party and is not prevented from discharging the said function shall be invited to make the necessary appointments provided that the appointed members of tribunal should be nationals of a country both Contracting Parties have diplomatic relations with;

c. The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with the norms of international law and shall be binding on both Contracting Parties. Each Contracting Party shall bear the expenses of the member of the arbitral tribunal it has appointed, as well as the expenses for its representation in the arbitration proceedings. The cost of the Chairman of the arbitral tribunal as well as other costs shall be borne in equal parts by the two

Contracting Party. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 11. Application of other Rules and Special Commitments**

Where a matter is governed simultaneously both by this Agreement and general principles of law commonly recognized by both Contracting Parties or legislation of the Contracting Party in the territory of which the investments were made, nothing in this Agreement shall prevent either Contracting Party or any of its investors who made investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favorable for the investor.

## **Article 12. Application of the Agreement**

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party starting from 1 January 1987 but shall not apply to investment disputes arisen or settled before its entry into force.

## **Article 13. Entry Into Force, Duration and Termination of the Agreement**

1. Each Contracting Party shall notify in writing the other Contracting Party on the completion of its internal procedures required for entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.
2. This Agreement shall be concluded for a period of 10 years. It will be automatically extended for subsequent 10 year periods, unless one of the Contracting Parties notifies the other Contracting Party in writing, at least twelve months before the expiry of the initial or any subsequent period of its intention to terminate this Agreement.
3. In respect of investments made prior to the date of termination of this Agreement the provisions of this Agreement shall remain in force for a further period of fifteen years from that date.

Done in duplicate at on date 2010 corresponding to in Russian, Arabic, and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall be used.

For the Government of the Russian Federation

For the Government of the United Arab Emirates

### **PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE RUSSIAN FEDERATION ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

On the signing of the Agreement between the Government of the Russian Federation and the Government of the United Arab Emirates on Promotion and Reciprocal Protection of Investments (hereinafter referred to as the Agreement), the undersigned representatives have agreed on the following provisions which constitute an integral part of the Agreement:

1. Notwithstanding the provisions of the Agreement it is understood that both Contracting Parties retain full sovereignty over natural resources situated within their respective territories. In case of the United Arab Emirates such natural resources are the property of each Emirate as provided for in the Constitution of the United Arab Emirates.

Therefore, only legislation of the Russian Federation shall be applied to natural resources situated within its territory.

Therefore, only legislation of each Emirate shall be applied to natural resources situated within its territory.

2. The Contracting Parties have expressed the position that MFN treatment provided for in paragraph 3 of Article 3 of the Agreement does not apply to Article 9 of the Agreement.

Nothing in this Protocol shall be interpreted as an indication that the Russian Federation has modified its position in respect of the scope of application of the MFN treatment agreed under any other international agreements which the Russian Federation participates or may participate in future.

Done in duplicate at \_\_\_\_\_ on \_\_\_\_\_, 2010 in Russian, Arabic and English languages, all texts being equally authentic. In case

of divergent interpretation, the English text shall be used.

NFor the Government of the Russian Federation

For the Government of the United Arab Emirates