

Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the United Arab Emirates

The Kingdom of the Netherlands

And

The United Arab Emirates,

Hereinafter referred to as the Contracting Parties,

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the nationals of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is important,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) the term "investments" means every kind of asset and more particularly, though not exclusively:

(i) movable and immovable property as well as any other rights in rem in respect of every kind of asset, such as mortgages, usufructs, liens and pledges;

(ii) rights derived from shares, bonds, securities, placements, debentures, loans and other kinds of interests in companies and joint ventures;

(iii) claims to money, to other assets or to any performance having an economic value;

(iv) rights in the field of intellectual property, such as copyrights, trademarks, patents, industrial designs and other industrial property rights; technical processes, goodwill and know-how;

(v) rights granted under public law or under contract and permit pursuant to law, excluding natural resources for the part of the United Arab Emirates.

The rights concerning natural resources are excluded, unless individual Member Emirate allows by decree that this Agreement is applicable to rights concerning natural resources granted through an agreement between a national of the Kingdom of the Netherlands and the respective Emirate.

Any change in the form of an investment will not affect its qualification as an investment.

b) the term "nationals" shall comprise with regard to either Contracting Party:

(i) natural persons having the nationality of that Contracting Party;

(ii) legal persons constituted under the law of that Contracting Party;

(iii) legal persons constituted under the law of a Contracting Party but controlled, directly or indirectly, by legal persons as

defined in (ii).

(iv) the Government of that Contracting Party.

c) Freely convertible currency means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

d) The term "territory" means:

The land territory of the Contracting Party concerned, including islands, the airspace above and all sub-soil resources, and any area adjacent to the territorial sea which, under the laws applicable in the Contracting Party concerned, and in accordance with international law, is the exclusive economic zone or continental shelf of the Contracting Party concerned, in which that Contracting Party exercises jurisdiction or sovereign rights.

Article 2. Promotion of Investments

1. Each Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of nationals of the other

Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

2. Both Contracting Parties recognize the right of each Contracting Party to establish its own level of domestic environmental protection and its own sustainable development policy and priorities, and to adopt or modify its environmental laws and regulations and shall strive as far as possible to continue to improve their laws and regulations.

3. Each Contracting Party shall promote as far as possible and in accordance with their domestic laws the application of the OECD Guidelines for Multinational Enterprises to the extent that is not contrary to their domestic laws.

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting Party shall accord to such investments full physical security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the national concerned.

3. If a Contracting Party has accorded special advantages to nationals of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.

4. Each Contracting Party shall create and maintain in its territory a general legal framework that guarantees the investor the continuity of the legal treatment, including any additional commitments entered into between the Contracting Party and the investor regarding its investments, as well as the compliance in good faith of all undertakings assumed with regard to specific investors.

5. If the provisions of law of either Contracting Party or obligations under international treaties existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments as referred to in paragraph (1) of this Article by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 4. Fiscal Treatment

1. With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting

Party shall, regarding the operation, management, maintenance, use, enjoyment and disposal of the investment, accord to nationals of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State who are in the same circumstances,

whichever is more favourable to the nationals concerned. For this purpose, however, any special fiscal advantages accorded by that Party, shall not be taken into account:

- a) under an agreement for the avoidance of double taxation; or
- b) by virtue of its participation in a customs union, economic union or similar institution; or
- c) on the basis of reciprocity with a third State.

2. Nothing in this article shall be considered as imposing a legal obligation on a Contracting Party to extend for the resident of the other Contracting Party the benefit of any treatment, preference or privilege which may be accorded to any other State or/its residents by virtue of the formation of a custom union, economic area, special arrangement, free trade area or by virtue of any regional or sub-regional arrangement relating wholly or mainly to the movement of capital or taxation to which the mentioned State may be a party.

Article 5. Transfers

1. The Contracting Parties shall guarantee that payments relating to an investment shall be

Transferred in accordance with the decision of the national. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- a) profits, interests, dividends and other current income;
- b) funds necessary
 - (i) for the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - (ii) to replace capital assets in order to safeguard the continuity of an investment;
- c) additional funds necessary for the development of an investment;
- d) funds in repayment of loans;
- e) royalties or fees;
- f) earnings of natural persons;
- g) the proceeds of sale or liquidation of the investment;
- h) payments arising under Article 7.

2. This Agreement shall not be construed so as to prevent the Contracting Parties from fulfilling, in good faith, its obligations resulting from a measure adopted by an international organisation constituting an economic and monetary union, such as the European Union or the Gulf Cooperation Council, to which they are members concerning the movement of capital or payments related to investments between the Member States of the said organisations and third countries.

3. The Contracting Parties shall consult each other regarding the implementation of the measures adopted under paragraph 2 of this Article.

Article 6. Expropriation

Neither Contracting Party shall nationalise or take any other measures depriving, directly or indirectly, the nationals of the other Contracting Party of their investments, unless the following conditions are complied with:

- a) the measures are taken in the public interest and under due process of law;
- b) the measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;
- c) the measures are taken against prompt, adequate and effective compensation. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation referred to above shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the

claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

Article 7. Compensation for Losses

Nationals of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution,

Indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

Article 8. Subrogation

1. If the investments of a national of the one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said national pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

2. Each Contracting Party may request consultations with the other Contracting Party on any matter related to the subrogation referred to in paragraph 1 of this Article.

Article 9.

"Settlement of Disputes between a National of a Contracting Party and the other Contracting Party

1. For the purpose of solving disputes with respect to investments between a Contracting Party and a national of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case amicably.

2. If these consultations do not result in a solution within three months from the date of the written request for consultations, the national shall submit the dispute to the competent court of the Contracting Party in the territory of which the investment was made.

3. In case of a legal dispute concerning an investment in the territory of the United Arab Emirates, the dispute may only be referred to ICSID if the national, party to the dispute, has first submitted the dispute to the competent court of the United Arab Emirates and the dispute has not been settled to the satisfaction of the national.

After 6 months from the date of request for consultations, the national may refer the case to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965.

4. Each Contracting Party hereby consents to submit any legal dispute arising between that

Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the ICSID.

5. A legal person which is incorporated or constituted under the law in force in the territory of one of the Contracting Parties and in which before such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall, [in accordance with Article 25 (2) (b) of the Convention], for the purpose of the Convention be treated as a national of the other Contracting Party.

Article 10. Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 11. Consultations

Either Contracting Party may propose to the other Party that consultations be held on any matter concerning the interpretation or application of the Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels by the Contracting Parties.

Article 12.

"Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of the

Present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party and who is a national of a third State that has diplomatic relations with both Contracting Parties.

2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment. The President shall consult both Parties and such consultations will take no longer than one month after this invitation to the President has been made.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

4. If, in the cases provided for in the paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5. The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may

At any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Parties so agree.

6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and

Binding on the Parties.

8. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half of the costs of the chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of the costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

Article 13. Territorial Application

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the European part of the Netherlands, to Aruba, Curacao, Sint Maarten and the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba), unless the notification provided for in Article 14, paragraph (I) provides otherwise.

Article 14.

"Entry into Force, Duration and Termination

1. The present Agreement shall enter into force on the first day of the second month following the

Date on which the Contracting Parties have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of fifteen years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry

of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph (2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE in two originals at Abu Dhabi, on 26th November 2013, in the Arabic, Netherlands and English languages, the three texts being authentic. In case of difference of interpretation the English text shall prevail.

For the Kingdom of the Netherlands,

H.G.J. KAMP

For the United Arab Emirates,

OBAID HUMAID AL TAYER

Protocol

Protocol to the Agreement on encouragement and reciprocal protection of investments between the United Arab Emirates and the Kingdom of the Netherlands.

On the signing of the Agreement on encouragement and reciprocal protection of investments between the United Arab Emirates and the Kingdom of the Netherlands, the undersigned representatives have agreed on the following provisions, which constitute an integral part of the Agreement:

Ad Article 1(b)(iii)

An investor of one Contracting Party having a subsidiary with a bonafide business lawfully established in the other Contracting Party shall with regard to its investments benefit from the protection of this Agreement.

Ad Article 3

1. Each Contracting Party shall, subject to its laws, regulations and procedures affecting the entry, stay and work of natural persons, permit natural persons who are nationals of the other Contracting Party and personnel employed by companies of the other Contracting Party, to enter and remain in its territory for the purpose of engaging in activities connected with the investment.

2. Each Contracting Party shall, subject to its laws, regulations and procedures, permit nationals of the other Contracting Party to engage managerial and technical personnel of their choice, regardless of their nationality.

3. Nationals of each Contracting Party may apply to the competent authorities of the other Contracting Party for the appropriate facilities, incentives and other advantages, and the other Contracting Party shall, subject to its laws, regulations and procedures, grant them all assistance, consents, approvals and licences as may be required.

4. It is understood that a Contracting Party or its designated agency or entity may stipulate in accordance with this Agreement with the investor of the other Contracting Party an investment contract, which will govern the legal relationship of the investor concerned.

Ad Article 6

Due process of law includes the right of a national of a Contracting Party, which claims to be affected by expropriation by the other Contracting Party, to prompt review of its case, including the valuation of its investment and the payment of compensation by a judicial authority or another competent and independent authority of the other Contracting Party.

Ad Article 9

It is understood that the Most Favourite Nation (MFN) treatment shall not be applied to any procedural or judicial matter, which falls within the scope of this Agreement.

Ad Article 12(5)

It is confirmed that an arbitral tribunal shall decide on the basis of the law, taking into account the following:

- The law in force of the Contracting Party concerned;
- The provisions of this Agreement, and other relevant Agreements between the Contracting Parties;
- The provisions of special agreements between the Contracting Party and the investor relating to the investment;
- The general principles of international law.

For the Kingdom of the Netherlands,

H.G.J. KAMP

For the United Arab Emirates,

OBAID HUMAID AL TAYER