

# **AGREEMENT BETWEEN THE GOVERNMENT THE STATE OF KUWAIT AND THE GOVERNMENT OF THE KINGDOM OF CAMBODIA ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the State of Kuwait and the Government of the Kingdom of Cambodia (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 State 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 Contracting Parties;

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 includes assets or rights consisting or taking the form of:

- a) company shares, or stocks, and other forms of equity participation, and bonds, debentures, and other forms of debt interests in a company, and other debts and loans and securities issued by any investor of a Contracting Party;
- b) claims to money and claims to any other assets or performance pursuant to contract having an economic value;
- c) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and patterns and technical processes, know-how, trade secrets, trade names, and goodwill;
- d) any right conferred by law, contract or by virtue of any licenses or permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to undertake other economic or commercial activities or to render services;
- e) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, debt privileges and pledges.

The term "investment" shall also apply to "returns" retained for the purpose of reinvestment and to proceeds from "liquidation" as these terms are defined hereinafter.

Any change in the form in which assets or rights are invested or reinvested shall not affect their character as investments,

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

- a) the Government of that Contracting Party;
- b) a natural person holding the nationality of that Contracting Party in accordance with its applicable laws;
- c) any legal person constituted under the domestic laws and legislations of that Contracting Party, such as institutions, development funds, agencies, charitable foundations, and other legal and governmental institutions and companies.

3. The term "company" shall mean any legal entity, whether or not organized for pecuniary gain, and whether privately or governmentally owned or controlled, which is constituted under the laws of a Contracting Party or is owned or controlled by investors of a Contracting Party, and includes public institutions, secretariats, corporations, sole proprietorships, branches,

joint ventures, and unions or other similar organizations.

4. The term "returns" shall mean 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, regardless of its type.

5. The term "liquidation" shall mean any disposal effected for the purpose of completely or partly giving up an investment.

6. The term "territory" shall mean:

a) As regards the State of Kuwait: 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 area over which a Contracting Party may exercise sovereign rights or jurisdiction.

b) As regards the Kingdom of Cambodia: the territory of the Kingdom of Cambodia including all the land territory, territorial sea, its floor, subsoil and the airspace, over which it exercises its sovereign rights or jurisdiction in accordance with international and national law,

7. The term "freely convertible currency" shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

8. 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.

## **Article 2. Investment Protection**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory, and subject to its right to exercise powers conferred by its laws, shall admit such investment.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with recognized principles of International Law and the provisions of this Agreement. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its state territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

3. Once established, investments of investors of either Contracting Party shall not be subject to additional performance requirements which may hinder or restrict their use, management, conduct, operation, expansion, sale or any other disposition.

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

1. With respect to the use, management, conduct, operation, expansion and sale or other disposition of investments made in its state territory by investors of the other Contracting Party, each Contracting Party shall accord treatment no less favorable than that it accords, in like situations, to investments of its own investors or investors of any third state, whichever is more favorable,

2. However, the provisions of this Article 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:

a) any customs union, economic union, free trade area, monetary union, or other form of regional economic arrangement or other similar international agreement, to which either of the Contracting Parties is or may become a party; or

b) any international regional or bilateral agreement or other similar arrangement or any domestic legislation relating wholly or mainly to taxation,

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

1. Except when enforcing Article 6, when investments made by investors of either Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, riots or other similar events in the

territory of the State of the other Contracting Party, he shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement, not less favorable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is more favorable,

2. Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to in that paragraph suffer a loss in the territory of the State of the other Contracting Party resulting from:

- a) temporary appropriation of their investments or part thereof by its forces or authorities;
- b) destruction of their investments or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation;

shall be accorded prompt, adequate and effective compensation for the destruction or the losses they suffered.

## **Article 5. Expropriation**

(a) Investments made by investors of one Contracting Party in the state 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 and against prompt, adequate and effective compensation and on condition that such measures are taken on a nondiscriminatory basis and in accordance with due process of law of general application.

(b) Such compensation shall amount to the actual value of the expropriated investment, and shall be determined and computed 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 expropriation took place or the impending expropriation became publicly known, whichever is earlier (hereinafter referred to as the "valuation date"). Such compensation shall be calculated in a freely convertible currency to be chosen by the investor, on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at a commercial rate established on a market basis, however, in no event less than the prevailing LIBOR - rate of interest or equivalent, from the date of expropriation until the date of payment.

(c) For further certainty, expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise that is incorporated or established under the laws in force in its own territory in which an investor of the other Contracting Party has an investment, including though the ownership of shares, stocks, debentures or other rights or interests,

(d) For the purpose of this Agreement, the term "expropriation" shall also include interventions or regulatory measures by a Contracting Party such as the freezing or seizure of a legal investment and its activities.

## **Article 6. Transfer of Payments Related to Investments**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments, and returns thereon both inside and outside its territory.

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

3. Each Contracting Party shall grant to the investors of the other Contracting Party treatment not less favorable than that granted to investors of any third party with regards to transfers.

## **Article 7. 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 agreement, of all the rights and claims resulting from such an investment;
- b) the right of the Indemnifying Party to exercise all such rights and enforce such claims and to assume all obligations

related to the investment by virtue of subrogation.

2. The Indemnifying Party shall be entitled in all circumstances to:

a) the same treatment in respect of the rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above; and

b) any payments received in pursuance of those rights and claims, as the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor**

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of any investment of the latter in the territory of the State of the former Contracting Party shall, as far as possible, be settled amicably.

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

a) the competent court of the host Contracting Party to make the decision;

b) 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 investor shall further provide its consent in writing for the dispute be submitted to one of the following bodies:

a) 1. the International Centre for Settlement of Investment Disputes ("ICSID"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 ("the Washington Convention"), if both Contracting Parties are parties to the Washington Convention and the Washington Convention is applicable to the dispute;

2. ICSID, under the ICSID Additional Facility Rules, provided that either the Contracting Party of the investor, or the Contracting Party to the dispute, but not both, is a party to the Washington Convention;

b) an ad hoc arbitral tribunal established under the Arbitration Rules (the "Rules") of the United Nations Commission on International Trade Law ("UNCITRAL"), where these rules may be amended by the parties to the dispute (the designating authority referred to in Article 7 of the Rules shall be the Secretary General of ICSID);

c) an ad hoc 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 request for compensation for any damages.

5. 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 defence, its sovereign immunity. In addition, 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 9. 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 other diplomatic channels,

2. If the dispute has not been settled within six (6) months following the date on which such consultations or other diplomatic channels 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 to be appointed by the two Contracting Parties. The two members shall be appointed within two (2) months, and the Chairman within four (4) 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 the periods specified in paragraph 3 are not complied with, 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 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 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 shall be invited to make the necessary appointments.

5. The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with this Agreement and such recognized rules of international law as may be applicable and shall be final and binding on both Contracting Parties. 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. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 10. Relations between Contracting Parties**

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

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

If the legislation of either Contracting Party or obligations taken under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such rules shall to the extent that they are more favorable prevail over this Agreement.

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

The present Agreement is subject to ratification and shall enter into force on the date of exchange of ratification documentation. The provisions of this Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute concerning an investment which arose, or any claim which was settled, before its entry into force.

## **Article 13. Entry Into Force**

Each Contracting Party shall notify the other Contracting Party in writing of the fulfillment of its constitutional procedures required for the entry into force of this Agreement, and this Agreement shall enter into force on the date of receipt of the later notification.

## **Article 14. Duration and Termination**

1. This Agreement shall remain in force for a period of twenty (20) years and shall continue to remain in force automatically unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement. The terminated agreement shall remain in force for one year from the receipt of the written notification.

2. Even though the Agreement would be terminated in accordance with paragraph (1) of this article, the Agreement shall remain in force for another 20 years from the date of termination with regards to investments made prior to the termination of this Agreement.

3. The provisions of this Agreement may be amended by mutual written agreement between the Contracting Parties. Any amendment shall enter into force when both Contracting Parties inform each other of the completion of all the procedures

required for the entry into force of such an amendment.

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

Done at Banum Bena on the third day of the month of Shaban 1429 H, corresponding to the 4th of August 2008, in two originals each in the Arabic, Khmer and English languages. All texts are equally authentic. In case of divergence, the English text shall prevail.

For The State of Kuwait

Mostafa Jassim Al Shamali

Minister of Finance

For The Government of the Kingdom of Cambodia

Cham Prasidh

Senior Minister and Minister of Commerce Vice President of the Council for the Development of Cambodia