

# **AGREEMENT BETWEEN THE REPUBLIC OF SINGAPORE AND THE KINGDOM OF SAUDI ARABIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Singapore and the Government of the Kingdom of Saudi Arabia (each hereinafter referred to as a "Contracting Party"),

DESIRING to intensify economic cooperation between both States;

INTENDING to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, and to increase prosperity in their respective territories;

RECOGNIZING that promotion and protection of such investments will increase business initiative and benefit the economic prosperity of both States;

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party in accordance with its legislation, including, though not exclusively, any:

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

(b) shares, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;

(c) claims to money such as loans or to any performance under contract having economic value, associated with an investment;

(d) intellectual property rights (including but not limited to) copyrights, patents, industrial designs and trademarks, know-how, trade and business secrets, trade names and good-will;

(e) any right conferred by law or under contract or any licenses, permits or concessions issued according to law;

Any alteration of the form in which assets are invested or reinvested shall not affect their classification as an investment, provided that such alteration has been made in accordance with Article 2 of this Agreement and is not in conflict with the legislation of

The Contracting Party and granted in respect of the assets originally invested in the territory in which the investment is made.

2. The term "returns" means the monetary amounts yielded by an investment including, profits, dividends, royalties, capital gains or any similar fees or payments.

3. The term "investor" means: -

(a) in respect of the Republic of Singapore:

(i) any person who is a citizen of Singapore within the meaning of the Constitution of the Republic of Singapore;

(ii) any company, firm, association or body, with or without legal personality, incorporated, established or registered under the laws in force in the Republic of Singapore.

(b) in respect of the Kingdom of Saudi Arabia:

(i) any natural person possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

(ii) any entity with or without legal personality, constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, registered offices, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;

(iii) The entities of the Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in the Kingdom of Saudi Arabia,

4. The term "territory" means:

(a) in respect of the Republic of Singapore, the territory' as well as the exclusive economic zone, the seabed and subsoil, over which the Republic of Singapore exercises, in accordance with international law, sovereign rights or jurisdiction, for the exploration and exploitation of natural resources.

(b) in respect of the Kingdom of Saudi Arabia, means in addition to the zones contained within the land boundaries, the marine, airspace and submarine zones over which the Kingdom of Saudi Arabia exercises sovereignty and sovereign or jurisdictional rights under national law, in conformity with international law.

5. The term "freely usable currency" means any currency that is widely used to make payments for international transactions as classified by the International Monetary Fund.

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

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit or approve such investments in accordance with its laws, regulations and policies. It shall in any case accord such investments fair and equitable treatment.

2. The provisions of the foregoing paragraph shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, 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 3. Treatment and Protection**

1. Each Contracting Party shall accord fair and equitable treatment to investments admitted or approved under Article 2 of this Agreement. Such investments shall enjoy full protection and security in accordance with this Agreement.

2. Each Contracting Party shall grant investments once admitted or approved and investment returns of the investors of the other Contracting Party treatment not less favourable than that accorded to investments and investment returns of investors of any third state.

3. In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted or approved and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its investors.

4. Each Contracting Party shall accord to the investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments, like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords in paragraph (2) or paragraph (3), whichever is more favourable.

5. The provisions in paragraphs (1) to (4) of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third state by virtue of any existing or future customs union, free trade area, common market, monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a customs union or free trade area.

6. The treatment granted under this Article shall not apply to tax matters.

## **Article 4. Expropriation**

1. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure, the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") by the other Contracting Party except for the public benefit of that Contracting Party and against prompt, adequate and effective compensation, provided that these measures are in accordance with domestic laws of general application and are not discriminatory. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which expropriation has taken place or has become publicly known, whichever is earlier.

2. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate of return from the date of expropriation until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made for an appropriate mechanism at or prior to the time of expropriation for the determination of such compensation.

3. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

## **Article 5. Compensation for Losses**

1. Investors of either Contracting Party whose investments suffer losses 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 treatment not less favourable than that which such Contracting Party accords to its investors in accordance with its laws and regulations or to the investors of any third state as regards restitution, indemnification, compensation or other valuable consideration.

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

(a) the requisitioning of the property by its forces;

(b) destruction of the property by its forces or authorities which was not caused in combat action,

Shall be accorded such compensation as may be prescribed by the laws of the latter Contracting Party.

3. Payments in accordance with this Article shall be freely transferable without delay.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, the free transfer, on a non-discriminatory basis, of payments in connection with investments and investment returns they hold in the territory of the former Contracting Party, in particular, though not exclusively:

(a) the principal and additional amounts to maintain or increase the investment;

(b) the returns, such as profits, capital gains, dividends, royalties, returns on investment and other current income accruing from an investment;

(c) the repayment of loans;

(d) the proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) the compensation provided for in Articles 4 and 5;

(f) license fees in relation to the matters in Article 1(1)(d);

(g) payments in respect of technical assistance, technical service, management fees and contracting projects;

(h) earnings of investors of one Contracting Party who work in connection with an investment in the territory of the other Contracting Party.

2. Notwithstanding paragraph (1) of this Article, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to insolvency, criminal offences, law enforcement, adjudicatory proceedings and satisfaction of judgements and compulsory savings schemes.

## **Article 7. Subrogation**

If a Contracting Party or any designated agency makes a payment to an investor under an indemnity it has given in respect of an investment made by that investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any rights or claims from the investor or any of its affiliates to the former Contracting Party or any designated agency.

## **Article 8. Exchange Rates**

1. Transfers under Articles 4, 5 and 6 shall be made without delay, in a freely usable currency, at the prevailing market rate of exchange applicable on the date on which the investor applies for the transfers.

2. The rate of exchange shall, in the absence of a market rate of exchange, correspond to the cross rate obtained from the rates which would be applied by the International Monetary Fund for conversion of the currencies concerned into Special Drawing Rights.

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

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party in connection with these investments in the territory of the former Contracting Party shall be amicably settled as far as possible. The party intending to resolve such disputes amicably shall give written notice to the other of its intention,

2. If such disputes cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of the notice given thereunder, then, unless the parties have otherwise agreed, it shall, upon the request of either party to the dispute, be submitted to:

(a) the competent court of the Contracting Party for decision; or

(b) conciliation or arbitration by the International Centre for the Settlement of Investments Disputes (hereinafter referred to as "the Centre") established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, of March 18, 1965 done in Washington, D.C. For this purpose, each Contracting Party hereby irrevocably consents in advance under Article 25 of the Convention to submit any dispute to the Centre.

In the event that the investor and the Contracting Party each choose a different body for the settlement, the choice of the investor shall prevail.

3. A dispute shall be submitted to only one forum. The judgment of the court or the arbitral award shall be final and the parties shall abide by and comply with the judgment or the award.

4. If the dispute is submitted in accordance with paragraph (2) to the competent court of law of the Contracting Party, the investor cannot at the same time seek international arbitration. If the dispute is filed for arbitration, the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

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

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be amicably settled by the two Contracting Parties through diplomatic channels.

2. If a dispute cannot thus be amicably settled, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal (hereinafter referred to as "the tribunal").

3. The ad hoc tribunal shall be constituted as follows:

Each Contracting Party shall appoint one member, and the third, who shall be the Chairman of the tribunal, shall be appointed by the agreement of the Contracting Parties. The two members shall be appointed within two months, and the 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 a tribunal,

4. If the periods specified in paragraph (3) of this Article have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to appoint the arbitrator or

arbitrators not yet appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice President should make the necessary appointments. If the Vice President is a national of either Contracting Party or 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 should make the necessary appointments and so on until one is qualified to make the necessary appointments.

5. The tribunal shall reach its decision by a majority of votes. Such decisions shall be final and the Parties shall abide by and comply with the terms of its award. Each Contracting Party shall bear the cost of its own member. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. 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. In all other respects, the tribunal shall determine its own procedure.

## **Article 11. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty days after the date on which both Contracting Parties have notified each other, in writing through diplomatic channels, that their respective internal legal processes have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years. It shall remain in force thereafter until either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement. The notice of termination shall become effective one year after the date of notification.

3. In respect of investments made prior to the date of the termination of this Agreement becomes effective, the provisions of Article 1 to 10 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

Done in Singapore, on 10 April 2006, corresponding to 12 Rabi'l 1427 H, in duplicate in the English and Arabic languages, both texts being equally authentic.

For the Government of the Republic of Singapore

LIM KNG KIANG

Minister for Trade and Industry

For the Government of the Kingdom of Saudi Arabia

AMRAL DABBAGH

Governor of the Saudi Arabian General Investment Authority

Protocol

On the signing of the Agreement between the Republic of Singapore and the Kingdom of Saudi Arabia concerning the Promotion and Reciprocal Protection of investments (hereinafter referred to as "the Agreement"), the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the Agreement:

### **2(1).**

The reference to "approve" and "policies" in this provision covers the specific approval system of the Republic of Singapore and accordingly in respect of investments made by investors of the Kingdom of Saudi Arabia in the territory of the Republic of Singapore, the Agreement shall apply to all investments which are specifically approved in writing by the competent authority designated by the Government of the Republic of Singapore and upon such conditions, if any, as it shall deem fit.

### **3.**

Any provision relating to land expropriation in investment guarantee agreements entered into by the Republic of Singapore prior to 1991 shall not apply to this Agreement.

#### **4.**

Notwithstanding the provisions of Article 4, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

#### **9.**

An investor covered by Article 1(3)(a)(iii) of this Agreement shall be deemed to have irrevocably consented in advance to submit to the jurisdiction of the forums listed in Article 9 of the Agreement or any other forum agreed to by the parties for the settlement of the dispute.

For the Government of the Republic of Singapore

LIM KNG KIANG

Minister for Trade and Industry

For the Government of the Kingdom of Saudi Arabia

AMRAL DABBAGH

Governor of the Saudi Arabian General Investment Authority