

AGREEMENT FOR PROMOTION, PROTECTION AND GUARANTEE OF INVESTMENTS AMONG MEMBER STATES OF THE ORGANISATION OF THE ISLAMIC CONFERENCE

The Governments of the Member States of the Organisation of the Islamic Conference signatory to this Agreement,

In keeping with the objectives of the Organisation of the Islamic Conference as stipulated in its Charter,

In implementation of the provisions of the Agreement for Economic, Technical and Commercial Cooperation among the Member States of the Organisation of the Islamic Conference and particularly the provisions of Article 1 of the said Agreement,

Endeavouring to avail of the economic resources and potentialities available therein and to mobilize and utilize them in the best possible manner, within the framework of close cooperation among Member States,

Convinced that relations among the Islamic States in the field of investment are one of the major areas of economic cooperation among these States through which economic and social development therein can be fostered on the basis of common interest and mutual benefit,

Anxious to provide and develop a favourable climate for investments, in which the economic resources of the Islamic countries could circulate between them so that optimum utilization could be made of these resources in a way that will serve their development and raise the standard of living of their peoples,

Have approved this Agreement,

And have agreed to consider the provisions contained therein as the minimum in dealing with the capitals and investments coming in from the Member States,

And have declared their complete readiness to put the Agreement into effect, in letter and in spirit, and of their sincere wish to extend every effort towards realizing its aims and objectives.

Chapter One. DEFINITIONS

Article 1.

The following terms which are used in the Agreement shall have the meanings assigned to each of them for the purpose of the Agreement unless the context indicates a different meaning :

1. THE AGREEMENT

The Agreement for the Promotion, Protection and Guarantee of Investments among the Member States of the Organisation of the Islamic Conference.

2. CONTRACTING PARTIES

The Member States of the Organisation of the Islamic Conference signatories to the Agreement and in respect of which the Agreement has become effective.

3. HOST STATE

Every contracting party in which the invested capital is present and to which it has become lawfully, or which permits the investor to employ his capital therein.

4. CAPITAL

All assets (including everything that can be evaluated in monetary terms) owned by a contracting party to this Agreement or by its nationals, whether a natural person or a corporate body and present in the territories of another contracting party whether these were transferred to or earned in it, and whether these be movable, immovable, in cash, in kind, tangible as well as everything pertaining to these capitals and investments by way of rights or claims and shall include the net profits accruing from such assets and the undivided shares and intangible rights.

5. INVESTMENT

The employment of capital in one of the permissible fields in the territories of a contracting party with a view to achieving a profitable return, or the transfer of capital to a contracting party for the same purpose, in accordance with this Agreement.

6. INVESTOR

The Government of any contracting party or- natural corporate person, who is a national of a contracting party and who owns the capital and invests it in the territory of another contracting party. Nationality shall be determined as follows :

(a) Natural Person:

Any individual enjoying the nationality of a contracting party according to the provisions of the nationality law in force therein.

(b) Legal Personality: Any entity established in accordance with the laws in force in any contracting party and recognized by the law under which its legal personality is established.

7. INVESTMENT RETURNS

The sums yielded by the investment or derived therefrom for a specified period which shall include, without limitation, the profits, dividends, licence fees, royalties, leases, services and all the increases achieved on the capital assets and the utilization of intangible property rights.

8. THE GENERAL SECRETARIAT

The General Secretariat of the Organisation of the Islamic Conference.

9. THE SECRETARY GENERAL

The Secretary General of the Organisation of the Islamic Conference.

10. THE ORGANISATION

The Organisation of the Islamic Conference.

Chapter Two. GENERAL PROVISIONS REGARDING PROMOTION, PROTECTION AND GUARANTEE OF THE CAPITALS AND INVESTMENTS AND THE RULES GOVERNING THEM IN THE TERRITORIES OF THE CONTRACTING PARTIES

Article 2.

The contracting parties shall permit the transfer of capitals among them and its utilization therein in the fields permitted for investment in accordance with their laws. The invested capital shall enjoy adequate protection and security and the host state shall give the necessary facilities and incentives to the investors engaged in activities therein.

Article 3.

The contracting parties shall endeavour to open up various fields and investment opportunities to the capital on the widest possible scale, in such away that may suit their economic conditions and on the basis of achieving mutual benefits for the parties to the investment in a way that will foster the social and economic development of the host state in accordance with its set objectives and plans while, at the same time, achieving a profitable investment return for the capital.

Article 4.

The contracting parties will endeavour to offer various incentives and facilities for attracting capitals and encouraging its investment in their territories such as commercial, customs, financial, tax and currency incentives, especially during the early years of the investment projects, in accordance with the laws, regulations and priorities of the host state.

Article 5.

The contracting parties shall provide the necessary facilities and grant required permits for entry, exit, residence and work for the investor and his family and for all those whose work is permanently or temporarily connected with the investment such as experts, administrators, technicians and labourers in accordance with the laws and regulations of the host state.

Article 6.

The host state shall - within the provisions of its regulations and its economic and social policies - encourage the local private sector to cooperate with and participate in investments in the contracting parties.

Article 7.

In the case of withdrawal of a contracting party from the Agreement, the rights and obligations arising under the Agreement in the host state towards the investor, which have accrued before the receipt of the notice of withdrawal of the contracting party shall continue and shall not be affected by the withdrawal.

Article 8.

1. The investors of any contracting party shall enjoy, within the context of economic activity in which they have employed their investments in the territories of another contracting party, a treatment not less favourable than the treatment accorded to investors belonging to another State not party to this Agreement, in the context of that activity and in respect of rights and privileges accorded to those investors.

2. Provisions of paragraph 1 above shall not be applied to any better treatment given by a contracting party in the following cases :

- a) Rights and privileges given to investors of one contracting party by another contracting party in accordance with an international agreement, law or special preferential arrangement.
- b) Rights and privileges arising from an international agreement currently in force or to be concluded in the future and to which any contracting party may become a member and under which an economic union, customs union or mutual tax exemption arrangement is set up.
- c) Rights and privileges given by a contracting party for a specific project due to its special importance to that state.

Article 9.

The investor shall be bound by the laws and regulations in force in the host state and shall refrain from all acts that may disturb public order or morals or that may be prejudicial to the public interest. He is also to refrain from exercising restrictive practices and from trying to achieve gains through unlawful means.

Chapter Three. INVESTMENT GUARANTEES

Article 10.

1. The host state shall undertake not to adopt or permit the adoption of any measure - itself or through one of its organs, institutions or local authorities - if such a measure may directly or indirectly affect the ownership of the investor's capital or investment by depriving him totally or partially of his ownership or of all or part of his basic rights or the exercise of his authority on the ownership, possession or utilization of his capital, or of his actual control over the investment, its management, making use out of it, enjoying its utilities, the realization of its benefits or guaranteeing its development and growth.

2. It will, however, be permissible to :

- (a) Expropriate the investment in the public interest in accordance with the law, without discrimination and on prompt

payment of adequate and effective compensation to the investor in accordance with the laws of the host state regulating such compensation, provided that the investor shall have the right to contest the measure of expropriation in the competent court of the host state.

(b) Adopt preventive measures issued in accordance with an order from a competent legal authority and the execution measures of the decision given by a competent judicial authority.

Article 11.

1. The host state shall undertake to guarantee the free transfer to any contracting party of the capitals and its net proceeds in cash without the investor being subject to any discriminatory banking, administrative or legal restrictions and without any taxes or charges on the transfer. This shall not apply to the bank service charges. The repatriation of the original capital shall be effected on the termination of the investment according to its nature or after five years from the date of its transfer to the host state, whichever is earlier.

2. The transfer shall be effected in the currency in which the investment was made or in any other convertible currency, at the exchange rate fixed by the International Monetary Fund on the day when the transfer was made.

3. The transfer must be effected within the period normally required for the completion of bank procedures and without delay. In all cases this period shall not exceed 90 (ninety) days from the day in which a request for transfer fulfilling all the legal conditions was made.

4. It shall not be considered as a restriction

the procedural measures instituted for exchange control in the host state for administrative purposes or to prevent the illegal transfer abroad of the funds of its nationals. Neither shall the fixing of the percentage of transferable amounts of the salaries, wages, and rewards of the employees and investment experts within the range of 50% (fifty per cent) be considered a restriction.

Article 12.

The host state shall guarantee for the investor the freedom to dispose of the ownership of the invested capital by selling it, wholly or partly, by liquidation, cession, or grant or by any other means. The capital shall continue to be treated in accordance with the provisions of this Agreement on condition that the transfer is made to an investor who is a subject of one of the contracting parties and subject to the approval of the host state.

Article 13.

1. The investor shall be entitled to compensation for any damage resulting from any action of a contracting party or one of its public or local authorities or its institutions in the following cases :

(a) Violation of any of the rights or guarantees accorded to the investor under this Agreement;

(b) Breach of any of the international obligations or undertakings imposed on the contracting party and arising under the Agreement for the benefit of the investor or the non-performance of whatever is necessary for its execution whether the same is intentional or due to negligence;

(c) Non-execution of a judicial decision requiring enforcement directly connected with the investment;

(d) Causing, by other means or by an act or omission, damage to the investor in violation of laws in force in the state where the investment exists.

2. The compensation shall be equivalent to the damage suffered by the investor depending on the type of damage and its quantum.

3. The compensation shall be monetary if it is not possible to restore the investment to its state before the damage was sustained.

4. The assessment of monetary compensation shall be concluded within 6 (six) months from the date when the damage was sustained and shall be paid within a year from the date of agreement upon the amount of compensation or from the date when the assessment of the compensation has become final.

Article 14.

The investor shall be accorded a treatment not less than that accorded by the host state to its national investors or others regarding the compensation of damage that may befall the physical assets of investment due to hostilities of international nature committed by any international body or due to civil disturbances or violent acts of general nature.

Article 15.

The Organisation shall through the Islamic Development Bank, and in accordance with the provisions of its Agreements, establish as a subsidiary organ of the Organisation, an Islamic Institution for the Guarantee of Investments which is to take charge of the insurance of property invested in the territories of the contracting parties, in accordance with this Agreement and in conformity to the principles of Islamic Sharia.

Article 16.

The host state undertakes to allow the investor the right to resort to its national judicial system to complain against a measure adopted by its authorities against him, or to contest the extent of its conformity with the provisions of the regulations and laws in force in its territory, or to complain against the non-adoption by the host state of a certain measure which is in the interest of the investor, and which the state should have adopted, irrespective of whether the complaint is related, or otherwise, to the implementation of the provisions of the Agreement to the relationship between the investor and the host state.

Provided that if the investor chooses to raise the complaint before the national courts or before an arbitral tribunal then having done so before one of the two quarters he loses the right of recourse to the other.

Article 17.

1. Until an Organ for the Settlement of disputes arising under the Agreement is established, disputes that may arise shall be entitled through conciliation or arbitration in accordance with the following rules and procedures :

1. Conciliation

a) In case the parties to the dispute agree on conciliation, the agreement shall include a description of the dispute, the claims of the parties to the dispute and the name of the conciliator whom they have chosen. The parties concerned may request the Secretary General to choose the conciliator. The General Secretariat shall forward to the conciliator a copy of the conciliation agreement so that he may assume his duties.

b) The task of the conciliator shall be confined to bringing the different view points closer and making proposals which may lead to a solution that may be acceptable to the parties concerned. The conciliator shall, within the period assigned for the completion of his task, submit a report thereon to be communicated to the parties concerned. This report shall have no legal authority. before a court should the dispute be referred to it.

2. Arbitration

a) If the two parties to the dispute do not reach an agreement as a result of their resort to conciliation, or if the conciliator is unable to issue his report within the prescribed period, or if the two parties do not accept the solutions proposed therein, then each party has the right to resort to the Arbitration Tribunal for a final decision on the dispute.

b) The arbitration procedure begins with a notification by the party requesting the arbitration to the other. party to the dispute, clearly explaining the nature of the dispute and the name of the arbitrator he has appointed. The other party must, within sixty days from the date on which such notification was given, inform the party requesting arbitration of the name of the arbitrator appointed by him. The two arbitrators are to choose, within sixty days from the date on which the last of them was appointed arbitrator, an umpire who shall have a casting vote in case of equality of votes. If these second party does not appoint an arbitrator, or if the two arbitrators do not agree on the appointment of an Umpire within the prescribed time, either party may request the Secretary General to complete the composition of the Arbitration Tribunal.

The Arbitration Tribunal shall hold its first meeting at the time and place specified by the Umpire. Thereafter the Tribunal will decide on the venue and time of its meetings as well as other matters pertaining to its functions.

The decisions of the Arbitration Tribunal shall be final and cannot be contested. They are binding on both parties who must respect and implement them. They shall have the force of judicial decisions. The contracting parties are under an obligation to implement them in their territory, no matter whether it be a party to the dispute or not and irrespective of whether the investor against whom the decision was passed is one of its nationals or residents or not, as if it were a final and

enforceable decision of its national courts.

Chapter Four. GENERAL AND FINAL PROVISIONS

Article 18.

Two or more contracting parties may enter into an agreement between them that may provide a treatment which is more preferential than that stipulated in this Agreement.

Article 19.

The Agreement shall continue to be in force in the event that disputes of any kind arise between the contracting parties and notwithstanding the existence or otherwise of diplomatic relations or any other type of representation between the states concerned.

Article 20.

The General Secretariat will follow up the implementation of this Agreement.

Article 21.

The Agreement shall come into force after three months from the date on which the instruments of ratification of ten Member States of the Organisation of the Islamic Conference are deposited; and shall come into force, with regard to each new state that may join it, after three months from the date of depositing its instruments of ratification.

Article 22.

The Agreement may be amended with the approval of four-fifth of the contracting parties and on the request of at least five states.

Article 23.

The Agreement shall continue in force for an unlimited period and the contracting parties may withdraw from it, after five years from its coming into force with regard to the state concerned by notice in writing to the Secretary General provided that the withdrawal shall not become effective before the lapse of one year from the date of notification.

Article 24.

The original text of the Agreement shall be deposited with the General Secretariat for signature. The General Secretariat shall receive the instruments of ratification. The General Secretariat shall notify all contracting parties of the signatures and ratifications of the Agreement.

Article 25.

This Agreement is drawn up in Arabic, English and French languages each version being equally authentic.