

# Agreement between the Republic of Sudan and the State of Kuwait for the Encouragement and Mutual Protection of Investments

The Government of the Republic of the Sudan and the Government of the State of Kuwait, (hereinafter referred to as the two Contracting Parties);

Desiring to create conditions for the development of economic cooperation between them, and in particular for investments made by investors of a Contracting Party in the territory of the other Contracting Party;

Aware that the encouragement and mutual protection of such investments will be an incentive to stimulate business initiative and to increase prosperity in both Contracting Parties;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this agreement;

1. The term "investment" means every kind of investment of assets owned or controlled by investors of the Contracting Parties in another Contracting Party directly or indirectly whether through branch establishments, as long as its headquarters are based in a Contracting Party or a third country. This term include without limitations:

(A) Tangible and intangible assets, movable and immovable assets, and any property rights connected herewith such as rents liens, mortgages, pledges and beneficial rights or similar.

(B) Business concessions or joint commercial project or joint project, shares, and other forms of interest in ownership, bonds, debentures and other forms of rights in company obligations or commercial project or joint project, and other obligations and securities issued by any investor of the contracting country.

(C) Titles and claims to money and other assets claims or performance under contract having financial value.

(D) Intellectual property and industrial rights including without limitations printing and publishing trade marks and patents, designs and industrial prototypes and technical processes, know how and commercial secrets, trade name and goodwill.

(E) Any right acknowledged by law or contract or license, or permits granted according to law including the rights of prospecting and discoveries and extraction or exploitation of natural resources, manufacturing and utilization rights and practice of other economic commercial or the provision of services, in accordance with the laws regulating this activities in the the host country, and any agreement concluded between the two countries.

Any change in shape where investment is made in assets or reinvestment in it shall not affect its nature as an investment.

The term "investment" shall also apply to "returns" retained for the purposes of reinvestment, as well returns from "liquidation" as per later definitions.

2. For a Contracting State, the term "investor" means:

(A) Natural persons who derive their status as citizens of either party in accordance with its applicable law;

(B) The government of that Contracting State and its bodies and institutions;

Any legal person or any other entity legally established under the laws and regulations of that Contracting State, such as institutes, development funds, charitable and scientific foundations and foundations, establishments, agencies, projects, cooperative societies and companies of all shapes and types, trade unions or similar entities; any entity established outside the authority of a Contracting Party as a nominal person owned or controlled by the other Contracting Party or any of its nationals or any entity within its jurisdiction.

3. The term "returns" means the amounts that an investment yield, regardless of the form in which it is paid, and includes, but not limited to, profits, interest, capital gains, dividends, royalties, management fees, technical assistance or other payments and fees in kind, and payments in kind.

4. The term "liquidation" means any action taken for the purpose of total or partial termination of the investment, in accordance with the laws regulating this.

5. The term "territory" means:

With regard to the State of Kuwait: the territory of the State of Kuwait and includes any region outside the territorial sea of the State of Kuwait, which according to international law has been determined or may later be determined in accordance with the law of the State of Kuwait as a region in which the State of Kuwait may exercise the rights of sovereignty or jurisdiction.

With regard to the Republic of Sudan: the territory of the Republic of Sudan, which is under its sovereignty, including islands, the territorial sea, and the exclusive economic zone, as well as the continental shelf areas and other marine areas that have the right of sovereignty or jurisdiction over them in accordance with international law.

6. The term "related activities" means activities related to investment carried out in accordance with the laws of the host country of the investment, including, but not limited to, those activities not:

(A) The establishment, domination, and maintenance of branches, agencies, offices, or other facilities for managing labor;

(B) The organization of companies, the acquisition of companies or interests in companies or their properties, management, domination, maintenance, use, enjoyment, expansion, sale, liquidation or any other conduct of organized or acquired companies;

(C) The conclusion, performance and execution of investment contracts;

(D) Acquisition, ownership, use and disposal of all kinds of property by any legal means, including intellectual property, as well as their protection;

(E) Borrowing funds from local financial institutions, as well as buying and selling, issuing stocks and other securities in the local financial markets, and buying foreign exchange for the implementation of investments.

7. The term "freely convertible currency" means any currency designated by the International Monetary Fund from one period to another as a currency freely used in accordance with the provisions of the IMF agreement and any amendments thereto.

8. The term "without delay" means that period, which is usually required to complete the formalities necessary for the transfer of payments. The aforementioned period starts from the day on which the request for transfer is submitted, provided that in no case does it exceed two months.

## **Article 2. Acceptance and Encouragement of Investments**

1. Each of the two Contracting Parties shall, in accordance with its laws and regulations in force, accept and encourage investments in its territory, which shall be made by investors of the other Contracting Party.

2. Each of the Contracting Parties, for the accepted investments in its territory, shall grant the necessary investments and related activities related to them the necessary permits, approvals, licenses, licenses and permits, to the extent permitted and in accordance with the principles and conditions specified in its laws and regulations.

3. The two Contracting Parties may consult with each other by any means that they deem appropriate to encourage and facilitate investment opportunities within their respective territories.

4. Each of the Contracting Parties, in accordance with its laws and regulations relating to the entry, residence and work of natural persons, shall in good faith study the requests of the investors of the other Contracting Party and the requests of senior management, personnel of technicians and administrators appointed for investment purposes, in order to enter and temporary reside in its territory. It also shall give their immediate family members the same treatment with regard to entry and temporary residence in the host Contracting Party.

Each of the Contracting Parties, in accordance with its laws and regulations, shall permits the investors of the other Contracting Parties who have investments in the region, to employ any key personnel chosen by the investor without regard to nationality or citizenship, during the period in which such a key personnel has been allowed to enter, reside and work in

the territory of the first-mentioned Contracting Party.

5. When goods or persons connected with an investment are transported, each of the two Contracting Parties allows, to the extent permitted by its laws and regulations, that such transport is made by projects on the other Contracting Party.

### **Article 3. Protection of Investments**

1. Investments by investors from either of the Contracting Parties shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with the recognized principles of international law and the provisions of this Agreement. Neither Contracting Party will in any way take arbitrary or discriminatory measures that would harm such investments or related activities including the use and enjoyment of, management, development, maintenance, and expansion of investments.

2. Each of the two Contracting Parties shall declare all laws, regulations, regulations and provisions that directly or directly affect the investments or related activities in their region for investors like two parts of the other Contracting Party.

3. Both Contracting Parties shall provide effective means to confirm claims and implement rights in relation to investments. Each Contracting Party shall guarantee the investors of the other Contracting Party the right to resort to the courts, administrative bodies and all other bodies exercising judicial powers, as well the right to appoint persons qualified according to applicable laws and regulations for the purposes of affirmation of claims and execution of rights for their investments and connected economic activities.

4. Neither Contracting Party may impose on the investors of the other Contracting Party compulsory measures, which may require or restrict the purchase of materials, energy, fuel, means of production, transportation, or operation of any kind, or restrict the marketing of products within or outside the territory of the host Contracting Party; Or any measures that have a discriminatory effect against investments made by investors of the other Contracting Party in favor of investments made by its investors, or investors from a third country.

5. In addition, investments in the host Contracting Party may not be subject to performance requirements that may be harmful to its growth capabilities or have an adverse impact on their use, enjoyment, management, maintenance, or expansion or on other related activities, unless such requirements are considered vital, for public health considerations or public order or the environment which shall be applied according to a general legal instrument.

6. Investments made by investors from either of the Contracting Parties in the host country should not be subject to confiscation or expropriation or any similar procedures except in accordance with the legal procedures and in accordance with the applicable principles of international law, and other relevant provisions of this agreement.

7. Each of the Contracting Parties shall consider any commitment or obligation, with regards to any investment or connected activity in its territory, towards investors of the other Contracting Party.

### **Article 4. Investment Treatment**

1. Each Contracting Party shall guarantee at all times a fair and equitable treatment to the investments made in its territory by investors of the other Contracting State. The treatment shall not be less favorable than that granted in similar circumstances to the investments of its investors or the investors of any third country, whichever is more favorable.

2. Each Contracting Party shall grant the investors of the other Contracting Party in respect of activities related to their investments, including its use and enjoyment, managing, developing, maintaining, expanding or disposing of such investments, treatment no less favorable than that accorded to its investors or the investors of any third country, whichever is the most favorable.

3. Notwithstanding this, the provisions of this Article shall not be construed as requiring a Contracting Party to provide investors of the other Contracting State with the advantage of any transaction, preference, or concession resulting from:

(A) Any customs union, economic union, free trade area, monetary union or any other form of regional economic arrangement, or any international agreement formed between the two Contracting Parties, or may become a party to it;

(B) Any international or regional agreement, or bilateral agreement or any other similar arrangement, or any legislation wholly or mainly related to taxes.

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

1. Investors from one of the two Contracting Parties whose investments in the territory of the other Contracting Party are subject to damages or losses due to the war or any other armed conflict, a national emergency, revolution, disturbances, riots or other similar events, shall be granted treatment by the latter Contracting Party with regard to the return to previous conditions, or return of losses or compensation or any other settlement, not less favorable than treatment granted to by the other Contracting Party to its own investors or investors of a third country whichever is more favorable.

2. Without prejudice to paragraph 1, the investors of one of the two Contracting Parties who suffer damage or loss as a result of any of the events referred to are in that paragraph in the territory of the other Contracting Party resulting from:

(A) Temporary confiscation of their property or parts thereof by its forces or authorities;

(B) Destruction of their properties or parts thereof by its forces or authorities without being a cause to combat operations or without due cause to circumstances;

Shall be given prompt, adequate and effective compensation for the damages or losses suffered during the period of confiscation or resulted from the destruction of their properties. Payments must be made in a freely convertible currency and its transfer shall be permitted freely without delays.

## **Article 6. Expropriations**

1. (A) Investments made by investors of either Contracting Party in the territory of the other Contracting Party will not be nationalized, expropriated, deprived of their possession, or subject directly or indirectly, to measures of an effect equivalent to nationalization, expropriation, or dispossession (referred to collectively hereafter as "expropriation") by the other Contracting Party except for a general purpose related to a national interest of that Contracting Party and in exchange for immediate, adequate and effective compensation, provided that those measures were taken on the basis of non-discrimination and in accordance with generally applicable legal procedures.

(B) The value of this compensation amounts to the actual value of the expropriated investment, and it is determined and calculated according to internationally recognized valuation principles on the basis of the fair market value of the expropriated investment at the time immediately before the expropriation proceedings were made public, or imminent expropriation is known, whichever is earlier (hereinafter referred to as "the valuation date"). This compensation is calculated in a freely convertible currency chosen by the investor, on the basis of the market value of the prevailing exchange rate for that currency at the date of valuation. Compensation shall be paid without delay and enjoying the freedom of transfer. Delay in paying this compensation will result in an accumulated annual interest until the date of payment, which shall represent the true value of the damage suffered by the investment, as a result of the losses sustained and the loss of profits due to the delay in the payment of compensation.

(C) If the fair market value mentioned above cannot be easily ascertained, the compensation is determined based on fair principles taking into account all factors and circumstances related to it such as the invested capital, the nature and period of the investment, the value of the replacement, the increase in the value of the investment, current returns and the value of calculated cash flow, book value and goodwill. The amount of the finally compensation determined finally is to be paid immediately to the investor in a freely convertible currency and allow to be transferred freely and without delay the principles set forth in paragraph 1, and without prejudice to the rights of the investor.

2. In the light of the principles set forth in paragraph 1, and without prejudice to the investor's rights mentioned in Article 9 of this Agreement, the affected investor has the right to an immediate review, by a judicial authority or other independent competent authority of that Contracting Party, of his case including the valuation of his investment and the payment of compensation for this investment.

3. Expropriation also includes cases in which a Contracting Party expropriates the ownership of the assets of a company or project established or established under the laws in force in its territory in which an investor of the other Contracting Party has an investment in it without ownership of shares, shares, debt securities, rights, or other interests.

4. The term "expropriation" also includes any regulatory interventions or procedures by a Contracting Party such as freezing or restricting investment, imposing an arbitrary or exaggerated tax on the investment, compulsory sale of all or part of the investment, or other similar measures that have the same effect as expropriating property or expropriation, which results in the investor being deprived of his ownership, property of his or her interests in the investment, or which may result in a loss or damage to the economic value of the investment.

## **Article 7. Transfer of Payments Related to Investments**

1. Each of the Contracting Parties shall guarantee the investors of the other Contracting Party the free transfer of payments

related to investment inside and outside its territory, including the transfer of:

(A) the original capital and any additional capital for the maintenance, management and development investment;

(B) the returns;

(C) payments under a contract, including settlement of principal and accrued interest payments made under a loan agreement;;

(D) The royalties and fees for the rights referred to in article 1, paragraph 1 (d);

(E) The returns due from the sale or liquidation of all or any part of the investment;

(F) Wages, and other compensation for employees contracted from abroad in relation with the investment;

G) Payments of compensation according to articles 5 and 6;

H) Payments of compensation referred to in Article 8;

(I) Payments arising from the settlement of conflicts.

2. The transfer of payments received under paragraph 1 shall be carried out without delay or restrictions, and in a freely convertible currency, except in the case of payments in kind.

3. Transfers shall be made, without any discrimination, at the exchange rate of the spot deals prevailing in the host Contracting Party at the date of the transfer in relation to the spot transactions of the currency to be converted.

In the absence of the foreign exchange market, the applied price is the most recent rate applied to the inputs, the exchange rate determined according to the regulations of the International Monetary Fund or the exchange rate set for the exchange of special drawing rights or the United States dollar, whichever is most favorable to the investor.

## **Article 8. Subrogation**

1. If a Contracting Party or its relevant agency or any other agency designed by it (the Guaranteeing Party) makes a payment in terms of compensation or guarantee against non commercial risks, undertaken by the terms of an investment in the territory of the other Contracting Party (the host country), then the host country shall recognize:

(A) A waiver of the Guaranteeing Party under the law or a legal agreement regarding all rights and claims resulting from such investment;

(B) The right of the Guaranteeing Party to exercise such rights and implement those claims and obligations related to investment based on the principle of substitution of the creditor.

2. In all circumstances, the Guaranteeing Party is entitled to:

(A) The same treatment relating to rights, claims acquired and obligations assumed under the assignment referred to in paragraph 1 above;

(B) Any payments received based on those rights and claims.

3. Without prejudice to Article 7, any payments received by the Guaranteeing Party in the local currency based on the rights and claims gained, must be made available and used freely to the Guaranteeing Party for the purpose of meeting any expenses that may be incurred in the territory of the host country.

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

1. Disputes that arise between a Contracting State and an investor of the other Contracting State with respect to an investment of the latter in the territory of the first mentioned State, shall be settled as far as possible by friendly means.

2. If the dispute cannot be resolved during six month from the date of application by any party to the dispute for an amicable settlement by way of delivery of a written notification to the other party, the dispute shall be referred for settlement at the choice of the investor party to the dispute by any of the following methods:

(A) According to any appropriate procedures previously agreed upon for the settlement of dispute.;

(B) According to the provisions of the Special Chapter on Dispute Resolution of the Unified Agreement for the Investment of

Arab Capitals in the Arab Countries of 1980 and any subsequent amendments thereto;

(C) International arbitration in accordance with the following paragraphs of this article.

3. In case the investor chooses to submit the dispute for settlement to an international arbitration, then the investor must also submit his written consent to submit the dispute for settlement to one of the following mechanisms:

(A) (1) The International Center for Settlement of Investment Disputes (the Center), which was established on the basis of an Convention on the settlement of investment disputes between States and nationals of other States, open for signature in Washington on March 18, 1965 (the "Washington Convention") in the event that the two Contracting States are parties to the Washington Convention and the application of the Washington Convention on the dispute;

(2) The Center, in accordance with the rules governing the Additional Facility for the administration of procedures by the Center's Secretary (the "Additional Facility Rules"), if the investor or Contracting State party to the dispute, but not both, is a party to the Washington Convention;

(B) An arbitral tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), as these rules are amended by the parties to the dispute (the appointing body referred to in Article 7 of the rules is the Secretary-General of the Center);

(C) An arbitral tribunal to be appointed based on the arbitration rules of any arbitral tribunal to be agreed upon between the parties to the dispute.

4. Although the investor has submitted the dispute to binding arbitration under paragraph 3 above, he may, before commencing arbitration procedures or vacating those procedures, request the courts of the Contracting State that is a party to the dispute to issue a temporary judicial order to preserve his rights and interests. This does not include requesting compensation for any damages.

5. Each of the two Contracting Parties gives their unconditional approval to present the investment dispute for the purpose of settlement by binding arbitration according to the investor's choice under paragraph 3 (a) and (b) or the mutual agreement of the parties to the dispute under paragraph 3 (c).

6. (A) The approval contained in the paragraph, together with the approval contained in paragraph 3, fulfills the written request of the parties to the dispute for the purposes of each of Chapter Two of the Washington Convention, of the Additional Facility Rules, and Article Two of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed In New York on 10 June 1958 (the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(B) Any arbitration under this Article, and as mutually agreed upon between the two parties, shall be held in a country that is a party to the New York Convention. The claims submitted to arbitration in accordance with the provisions of this agreement are considered to result from a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(C) Neither Contracting Party shall grant diplomatic protection or make an international claim relating to any dispute referred to arbitration unless the other Contracting Party fails to comply with or apply the judgment issued in respect of that dispute. However, informal diplomatic notes may be exchanged only for the purpose of facilitating dispute settlement.

7. The arbitral tribunal established under this Article shall decide the issues related to the dispute in accordance with the rules of law as agreed by the parties to the dispute. In the absence of such an agreement, the law of the Contracting State party to the conflict applies, including its rules for conflict of laws, and recognized rules of international law as they apply, also taking into account the relevant provisions of this agreement.

8. Investors from a Contracting State, except a natural person who holds the nationality of the other Contracting State party to the dispute from the date of the written approval referred to in paragraph (6) which prevailed over it before the dispute arising between him and that Contracting State, shall be treated for the purposes of Article 25 (2) (B) of the Washington Convention "As a citizen of another Contracting State" and for the purpose of Article 1 (6) of the Additional Facilities Rules "as a citizen of another state."

9. Arbitral decisions are final and binding for both parties to the dispute, and each of the two Contracting Parties implements any such ruling immediately and without fragmentation, and takes the necessary measures to effectively implement those provisions in its territory.

10. A Contracting Party shall not use its immunity in any judicial, arbitral, or other legal proceeding, or in the implementation of any decision or provision related to an investment dispute between a Contracting Party and an investor of the other

Contracting Party. Also, it is not permissible to make any counter-claim or settlement based on the fact that the investor in question has received or will receive, based on an insurance contract, compensation for damage or any other compensation for all or part of the damages alleged by any third party, whether public or private, including that of the other Contracting Party, its subdivisions, agencies or apparatus.

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

1. The Contracting Parties shall, as far as possible, settle any dispute connected with the implementation or application of this Agreement through consultations or diplomatic channels.
2. If the dispute is not settled within six months from the date of requesting the holding of such consultations, or from the date of requesting settlement through diplomatic channels by either of the Contracting Parties, and unless the Contracting Parties agree in writing to the contrary, any of the Contracting Parties may by written notification to the other Contracting Party, submit the dispute to an arbitral tribunal, especially established for this purpose in accordance with the following provisions of this article.
3. The arbitral tribunal Court shall be formed as follows: Each of the two Contracting Parties shall appoint one member and these two members shall agree on a citizen of a third country to be their President, to be appointed by the two Contracting Parties. The two members shall be appointed within two months, and the President within four months from the date of notification to either Contracting Party, by the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.
4. If the periods specified in paragraph 3 above are not complied with, then either of the two Contracting Parties 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 citizen of one of the two Contracting Parties or any impediment prevent the performance of the mentioned tasks, he shall ask the Vice-President of the International Court of Justice to make the necessary appointments. If the Vice-President of the International Court of Justice is a citizen of one of the two Contracting Parties or any impediment prevent the performance of the mentioned tasks, then the next senior International Court of Justice member who is not a citizen of one of the two Contracting Parties is required to make the necessary appointments.
5. The arbitral tribunal takes its decision by majority vote. This decision shall be taken in accordance with the provisions of this agreement and the recognized rules of international law, including its implementation, and it shall be final and binding for each of the two Contracting Parties. Each of the Contracting Parties shall bear the fees of the arbitral member appointed by that Contracting Party, as well as the fees of its representative in the arbitration procedures. As for the president's fees, as well as any other costs, the two Contracting Parties shall be equally borne by the Contracting Parties. The arbitral tribunal may, at its discretion, award a larger percentage of the arbitrator costs mentioned to the two Contracting Parties. The arbitral tribunal shall determine its procedures in relation to all other matters.

## **Article 11. Relations between the Two Contracting Parties**

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

## **Article 12. Execution of other Provisions**

If the legislation of either Contracting Party, or existing obligations under international law or that may arise at a later time between the two Contracting Parties in addition to this Agreement, contains a provision, whether public or private, granting investments or associated activities with the investments made by investors of the other Contracting State a treatment that is more favorable than those stipulated in this agreement, this provision shall prevail over this agreement to the extent that it provides a more favourable treatment.

## **Article 13. Scope of the Agreement**

This Agreement apply to all investments, whether existing at the date of entry into force of this agreement, or that may come after the agreement entering into force by investors of any of the Contracting Parties in the territory of the the other Contracting Party. This agreement shall not apply to the disputes arising before coming into force, unles otherwise agreed by the parties to the dispute.

## **Article 14. Entry Into Force of the Agreement**

Each of the Contracting Parties shall notify the other of their fulfillment of the constitutional requirements necessary for this agreement to enter into force, and the agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

## **Article 15. Duration and Termination**

1. This agreement shall remain in force for a period of thirty (20) years, and thereafter will continue in force for a similar period or periods, unless either of the Contracting Parties notifies the other Contracting Party, in writing, one year before the end of the first period or any subsequent period, its intention to terminate the agreement.

2. With regard to investments made before the effective date of the notice of termination of this agreement, the provisions of this agreement shall remain in effect for a period of twenty (20) years from the date of termination of this agreement.

In witness thereof, the relevant commissioners of both Contracting States have signed this Agreement.

Done in Kuwait on this fourth day of the February 2001, corresponding to Shua 1422 AH, in two original copies in the Arabic language, each of them equally authentic.

For the Government of the State of Kuwait

Dr . Yousef Hamad Al-Ibrahim

Minister of Finance and Minister of Planning, and the Minister of State for Administrative Development Affairs

For the Government of the Republic of Sudan

Dr. Celal

Minister of Industry and Investment