

**AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC
AND THE GOVERNMENT OF THE REPUBLIC OF IRAQ ON THE
RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS
SIGNED IN BAGHDAD ON 31 OCTOBER 2010**

Part Preamble

The Government of the French Republic and the Government of the Republic of Iraq, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favourable conditions for French investments in Iraq and Iraqi investments in France,

Convinced that the encouragement and protection of such investments are conducive to stimulating the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article 1. Definitions

For the application of this Agreement:

1. The term "investment" means all assets, such as capital, property, rights and interests of any kind which contribute value to the economy, in particular, but not exclusively:

(a) movable and immovable property and all other rights in rem such as mortgages, liens, usufruct, guarantees and all analogous rights;

(b) shares, stocks and other forms of participation, whether small or indirect, in companies formed in the territory of one of the Contracting Parties;

(c) financial rights, obligations and all legitimate rights of economic value;

(d) intellectual, commercial and industrial property rights, such as copyrights, patents, licences, trademarks, industrial designs and models, technical processes, know-how, trade names and goodwill;

(e) concessions granted by law or by contract, in particular concessions relating to the exploration, development and extraction of natural resources, including those in the maritime zones of the Contracting Parties.

It is understood that the investments concerned are those which have already been made or will be made after the entry into force of this Agreement, in accordance with the legislation of the Contracting Party in whose territory or maritime area the investment is made.

No change in the form of investment of the assets shall affect their qualification as investments, provided that such change is not contrary to the legislation of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "investor" refers to:

(a) natural persons possessing the nationality of one of the Contracting Parties;

(b) legal persons:

(i) in the case of the French Republic, constituted in the territory or maritime zone of the French Republic in accordance with the laws of France and having their registered office therein; or

(ii) in the case of the Republic of Iraq, having Iraqi nationality, in accordance with the laws of the Republic of Iraq.

For the purposes of this Article, legal persons shall include companies as well as non-profit organizations with legal personality.

(3) The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period. Income from the investment and, in the case of reinvestment, the income from its reinvestment, shall enjoy the same protection as the investment.

4. Nothing in this Agreement shall be construed to prevent either Contracting Party from taking any measures to regulate investments by foreign investors and the conditions of their activities, in the context of measures to preserve and encourage cultural and linguistic diversity.

Article 2. Scope of Application of the Agreement

This Agreement shall apply to the territory of each of the Contracting Parties, as well as to the maritime area of each of the Contracting Parties, hereinafter defined as the economic zone and the continental shelf, which extends beyond the limits of the territorial waters of each of the Contracting Parties and over which they have, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

For the purposes of this Agreement, it is understood that the Contracting Parties shall be responsible for the actions or omissions of their sub-national entities, including but not limited to their federated States, regions, local authorities or any other entity over which the Contracting Party exercises trusteeship, representation or responsibility for its international relations or sovereignty in accordance with its domestic law.

Article 3. Encouragement and Admission of Investments

Each Contracting Party shall, within the framework of its laws and the provisions of this Agreement, encourage and admit investments made by investors of the other Contracting Party.

Article 4. Fair and Equitable Treatment

Each Contracting Party undertakes to ensure fair and equitable treatment for investments made in its territory and maritime area by investors of the other Contracting Party and to ensure that the exercise of the right so recognized is not hindered either in law or in fact. In particular, but not exclusively, restrictions on the purchase and transport of raw and auxiliary materials, energy and fuels, and of means of production and exploitation of all kinds, restrictions on the sale and transport of products within the country and abroad, and all other measures having a similar effect shall be regarded as impediments in law or in fact to fair and equitable treatment.

The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and permission to stay, work and travel made by nationals of one of the Contracting Parties in connection with an investment made in the territory or maritime area of the other Contracting Party.

Article 5. National Treatment and Most-favoured-nation Treatment

Each Contracting Party shall, in its territory and maritime area, apply to investors of the other Party, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its investors, or the treatment accorded to most-favoured-nation investors, whichever is more favourable. In this connection, nationals authorised to work in the territory and in the maritime zone of one of the Contracting Parties shall be entitled to benefit from appropriate material facilities for the exercise of their professional activities.

This treatment does not, however, extend to the privileges which one of the Contracting Parties grants to investors from a third State by virtue of its participation in or association with a free trade area, customs union, common market or any other form of regional economic organisation.

The provisions of this Article shall not apply to fiscal matters.

Article 6. Dispossession and Compensation

1. Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory and maritime zone of the other Contracting Party.

2. The Contracting Parties shall not take expropriation or nationalisation measures or any other measures the effect of which is to deprive, directly or indirectly, investors of the other Party of investments belonging to them in their territory and maritime area, except in the public interest and provided that such measures are neither discriminatory nor contrary to a particular commitment.

Any dispossession measures which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, equal to the real value of the investments concerned, shall be assessed in relation to a normal economic situation and prior to any threat of dispossession. This compensation, its amount and the manner of its payment shall be fixed no later than the date of dispossession.

The compensation shall be effectively realisable, paid without delay and freely transferable. It shall bear interest up to the date of payment at the appropriate market rate.

3. Investors of one of the Contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, national emergency or revolt in the territory or maritime zone of the other Contracting Party shall receive from the latter treatment no less favourable than that accorded to its own investors or to those of the most favoured nation.

Article 7. Free Transfer

Each Contracting Party in whose territory or maritime area investments have been made by investors of the other Contracting Party shall grant such investors, whether natural or legal persons, free transfer:

- a) interest, dividends, profits and other current income;
- b) royalties deriving from the intangible rights referred to in Article 1(l)(d) and (e);
- c) royalties on the repayment of loans duly contracted;
- d) the proceeds of the sale or liquidation of the investment, in whole or in part, including capital gains, in accordance with the legislation of the Contracting Party;
- e) compensation for loss or dispossession as provided for in Article 6 (2) and (3) above.

Nationals of each Contracting Party who have been authorised to work in the territory or maritime area of the other Contracting Party in respect of an approved investment shall also be authorised to transfer to their country of origin an appropriate proportion of their remuneration.

The transfers referred to in the preceding paragraphs shall be effected without delay at the official rate of exchange in force on the date of transfer.

Where, in exceptional circumstances, movements of capital from or to third countries cause or threaten to cause a serious disequilibrium in its balance of payments, each Contracting Party may temporarily apply safeguard measures relating to transfers, provided that such measures are strictly necessary and are applied on an equitable, non-discriminatory and bona fide basis and for a period not exceeding six months.

The provisions of the above paragraphs of this Article shall not prevent a Contracting Party from exercising in good faith its international obligations and its rights and obligations under its participation in, or association with, a free trade area, customs union, common market, economic and monetary union or any other form of regional cooperation or integration.

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

1. Any investment dispute between one Contracting Party and an investor of the other Contracting Party shall be settled amicably between the two parties concerned.
2. If the dispute has not been resolved through domestic remedies within one hundred and eighty (180) days from the date on which it arose, it shall be submitted at the request and choice of the investor or the Party receiving the investment:
 - (a) if the Contracting Parties or one of the Contracting Parties is not a signatory to the Washington Convention of 18 March 1965 for the Settlement of Investment Disputes between States and Nationals of Other States, the dispute may be settled under the Additional Facility (for the administration of conciliation, arbitration and fact-finding procedures by the Secretariat) of ICSID; or
 - (b) arbitration by an ad hoc international tribunal constituted under the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL);
 - (c) in the event that both Contracting States become Contracting States to the Washington Convention, to the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States signed at Washington on 18 March 1965;
 - (d) to the competent tribunal of the Contracting Party that is a party to the dispute.
- (3) In the event that the dispute is of such a nature as to give rise to liability on the part of one of the Contracting Parties for acts or omissions of its sub-national entities, as defined in Article 2 of this Agreement, the sub-national entity concerned shall be obliged to consent without reservation to recourse to arbitration, as defined in Article 8(2) of this Agreement.

Article 9. Guarantee and Subrogation

1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case examination, to investments made by nationals or companies of that Party in the territory or maritime area of the other Party.
2. Investments made by investors of one of the Contracting Parties in the territory or maritime area of the other Party may benefit from the guarantee referred to in the above paragraph only if they have received prior approval from that other Party.
3. If one of the Contracting Parties, by virtue of a guarantee given for an investment in the territory or maritime area of the other Party, makes payments to one of its investors, it shall thereby be subrogated to the rights and shares of that investor. Such subrogation shall not entitle a public agency or public enterprise of the first Contracting Party to own, in whole or in part, a public enterprise in the other Contracting Party.
4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to arbitration proceedings within the meaning of Article 8, paragraph 2, of this Agreement or to continue the actions brought by him until the conclusion of the proceedings.

Article 10. Specific Commitment

Investments which have been the subject of a specific commitment by one of the Contracting Parties to investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that commitment to the extent that it contains more favourable provisions than those provided for in this Agreement. The provisions of Article 8 of this Agreement shall apply even in the case of a specific undertaking providing for the waiver of international arbitration or designating an arbitral body different from that referred to in Article 8 of this Agreement.

Article 11. Settlement of Disputes between Contracting Parties

1. Disputes concerning the interpretation or application of this Agreement shall be settled, to the extent possible, through diplomatic channels.
2. If the dispute is not settled within six months from the date on which it was raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an Arbitration Tribunal.
3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint one member and the two members shall designate, by common agreement, a national of a third State, who shall be appointed chairman of the tribunal by both Contracting Parties. All members shall be appointed within two months from

the date on which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits set out in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is prevented for any other reason from exercising this function, the most senior Deputy Secretary-General who is not a national of one of the Contracting Parties shall make the necessary designations.

5. The Tribunal shall take its decisions by a majority of votes. Such decisions shall be final and binding as of right on the Contracting Parties.

The tribunal shall determine its own rules of procedure. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, having regard to special circumstances, the costs of the arbitral proceedings, including the fees of the arbitrators, shall be shared equally between the Contracting Parties.

Article 12. Prohibitions and Restrictions

The Contracting Parties may incorporate in their legislation the measures necessary for the protection of the environment in accordance with the provisions of this Agreement.

Article 13. Entry Into Force and Duration

Each Contracting Party shall notify the other of the completion of the constitutional procedures required for the entry into force of this Agreement, which shall take effect thirty (30) days after the date of receipt of the last notification.

The Agreement shall be concluded for an initial period of ten years; it shall be renewable for further periods of ten years, unless one of the Contracting Parties denounces it in writing through diplomatic channels one year before its expiry date.

At the end of the period of validity of this Agreement, investments made during the period of validity of this Agreement shall continue to benefit from the protection of its provisions for a further period of 20 years.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Baghdad on 31 October 2010, in duplicate, in the Arabic and French languages, both texts being equally authentic.

For the Government of the French Republic:

ANNE-MARIE IDRAC,

Secretary of State for Foreign Trade

For the Government of the Republic of Iraq:

BAYAN BAQIR JABER AL ZUBAIDY,

Minister of Finance