

# **Agreement Between the Government of the United Arab Emirates and the Government of the Arab Republic of Egypt for the Promotion, Protection and Guarantee of Investments**

The Government of the United Arab Emirates and the Government of the Arab Republic of Egypt (both Countries hereinafter collectively referred to as the 'Contracting Parties' and each referred to as a 'Contracting Party').

Desiring to create favorable conditions for greater economic corporation between them and particularly for investments by investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing that the reciprocal promotion and protection under international agreements will be conducive to the stimulation of business initiatives and will increase prosperity in both Contracting Parties.

Keen on providing and developing the appropriate environment for investment, based on which economic and financial resources can be exchanged between them.

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this agreement:

1. The term "Investment" shall comprise every kind of asset invested by natural or legal persons of either Contracting Party in the territory of the other Contracting Party, in accordance with the laws, regulations and administrative procedures of that Contracting Party. Any alteration in the form in which assets are invested shall not affect their classification as investments. The term "Investment" shall include particularly, but not exclusively:

(a) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights.

(b) Shares, stocks and debentures of companies or any other rights or interests in such companies, in addition to loans and bonds issued by a Contracting Party or any of its natural or legal persons, and returns retained for the purpose of re-investment.

(c) Claims to money or anything having a monetary value associated with an investment.

(d) Copyrights, trademarks, patents, industrial designs and other industrial property rights, know-how, trade secrets, trade names and goodwill.

(e) Any rights conferred by law, contract, licenses or permits issued pursuant to a law, including the rights to explore, extract and exploit natural resources.

2. The term "Host Country" shall mean every Contracting Party wherein capital is invested in a legal manner, or where an investor is allowed to invest capital.

Any alteration in the form in which assets are invested shall not affect their classification as an investment.

3. The term "Investor" shall mean the government of a Contracting Party or any of its natural or legal persons who invest in the territory of the other Contracting Party.

4. The term "Natural Person" shall mean, in the case of either Contracting Party, an individual possessing the nationality of that Contracting Party in accordance with its laws.

5. The term "Legal person" shall mean, with respect to either Contracting Party, any entity established in accordance with,

and recognized as a legal person by, the law of the country, such as public and private companies, institutions, commercial unions, authorities, sole proprietorships, associations, enterprises, public institutions, agencies, development funds, commercial projects, cooperatives, organizations or other similar entities irrespective of whether their liabilities are limited or not.

The said term also means any entity established outside the territory of a Contracting Party as a legal person, in which that Contracting Party or any of its nationals retain ownership, or any legal person established within its territory and wherein it has controlling interest, in accordance with the legislation of both Contracting Parties.

6. The term "Returns" shall mean amounts yielded by an investment and includes in particular profits, interest, capital gains, share dividends, royalties, fees and payments in kind.

7. The term "Territory" shall mean:

(a) For the United Arab Emirates, all land and sea areas and islands within the territory of the United Arab Emirates, which include the territorial sea, continental shelf, economic zone and airspace.

(b) For the Arab Republic of Egypt, all land areas belonging to the Arab Republic of Egypt, its international borders, regional seawaters and the airspace above it.

8. "Associated Activities" include the organization, control, operation, maintenance and disposition of legal persons, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares and the purchase of foreign exchange for imports.

9. The term "Freely Usable Currency" means the United States Dollar, Sterling Pound, German Mark, French Franc, Swiss Franc, Japanese Yen, or any other commonly used currency for cash fulfillment in international transactions or for which there are available buyers in the main international exchange markets.

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

1. Each Contracting Party shall permit, encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and shall accept such investments and its related activities in accordance with the authority conferred by its laws, regulations and administrative procedures.

2. Established investments shall enjoy full protection and security in accordance with international law. In the case of reinvestment, returns shall enjoy the same protection and security as the investments.

3. Each Contracting Party shall, at all times, ensure fair and equitable treatment to investments of investors of the other Contracting Party. Neither Contracting Party shall in any way interfere using random, unreasonable or discriminatory measures that would disrupt the management, maintenance, use, enjoyment, acquisition or disposal of investments or rights related to investments and its associated activities of investors of the other Contracting Party.

4.

(a) Each Contracting Party shall endeavor to undertake all necessary measures and legislation to provide the necessary facilities, benefits and other forms of appropriate promotion for investments made by investors of the other Contracting Party.

(b) Investors from either Contracting Party shall have the right to request for facilities, incentives and other forms of appropriate promotion from the competent authorities in the host country. The host country must provide them with all the assistance, approvals, acceptances, licenses and permits to the extent permitted by the terms and conditions determined from time to time by the laws and regulations of the host country.

5. With respect to its tax policies, each Contracting Party shall strive to accord fair and equitable treatment to investments of investors of the other Contracting Party, in accordance with investment laws in the Contracting Parties, any amendments thereto and the Agreement on the Encouragement of Movement of Arab Capital, whichever is more favorable.

6. Both Contracting Parties shall strive to provide various incentives and facilities to attract capital and encourage its investment in their territories, such as commercial, customs, financial, taxation and monetary incentives especially during the initial years of the investment projects, in accordance with the laws and regulations of the host country.

7. Investors from either Contracting Party shall be permitted to employ managerial personnel of their choice, regardless of

nationality, to the extent permitted by the laws of the host country. Each Contracting Party shall grant all the necessary facilities including issuing residency permits to such managerial personnel and their families in accordance with the applicable laws, regulations and administrative procedures of the host country.

8. Each Contracting Party shall seek, as far as possible, to avoid performance requirements as a condition for the establishment, expansion or maintenance of investments. These are requirements that necessitate the export of goods produced, require the purchase of goods or services locally, or which impose any other similar requirements.

9. Each Contracting Party is to provide the effective means to confirm claims and ensure the implementation of rights under investment agreements, permits and investment properties.

10. Each Contracting Party is to publish all its laws, regulations, procedures and administrative steps relating to or affecting investments.

11. Each Contracting Party is to observe any obligation it may have entered into with regards to investments of nationals or companies of the other Contracting Party.

### **Article 3. Most-favoured-nation Clause**

1. Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment not less favorable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favorable.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other associated activities, treatment not less favorable than that which it accords to its own investors or to investors of any third State, whichever is more favorable.

### **Article 4. Exceptions**

The provisions of this Agreement relating to the granting of treatment not less favorable than that accorded to a Contracting Party's own investors or the investors of any third state 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 existing or future customs or economic union, free trade area, common external tariff area, monetary union, a similar international agreement or other forms of regional or semi-regional economic arrangements, to which any Contracting Party is a current or future party, or

(b) The adoption of an agreement whose purpose is to lead to the creation or expansion of such unions or areas during a reasonable period of time, or

(c) Any other international, regional or semi-regional agreement or arrangement relating wholly or mainly to taxation, the movement of capital, or any domestic legislation relating wholly or mainly to taxation.

(d) Notwithstanding the provisions of Article (4) of this agreement, benefits or preferential treatment resulting from the Arab League Agreement and the Council of Economic Unity shall be granted.

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

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable, provided that such payment shall be freely transferable.

2. Without prejudice to the provision of Paragraph (1) of this Article, investors of a Contracting Party who suffer damages or losses in any of the events referred to in that paragraph in the territory of the other Contracting Party as a result of:

(a) The temporary expropriation of their investments or assets by its forces or authorities.

(b) The damaging of their investments or assets by its forces or authorities without that being the result of armed conflict or without being necessary for the situation, shall provide immediate and sufficient compensation for the damage or loss suffered during the expropriation period or due to the damaging of the assets. These amounts shall be in a freely useable

and convertible currency.

## **Article 6. Nationalization or Expropriation**

1.

(a) Investments of either Contracting Party or its natural or legal persons shall not be subject to nationalization, expropriation, or any similar measures except by a decision from the relevant court based on the applicable laws.

(b) Neither Contracting Party, as itself or through one of its agencies or local institutions, shall take or authorize any action if this action can, directly or indirectly, affect the ownership of the investment, fully or partially deprive the investor of some of his core rights, prohibit the investor from exercising his power over the asset or the ownership or use of his capital, or from exercising control over the investment, its management, accessing its benefits, making its profits or guaranteeing its growth and prosperity.

(c) Neither Contracting Party shall nationalize, expropriate, freeze, or directly or indirectly subject investments of either Contracting Party or any of its natural or legal persons to measures having equivalent effect to nationalization or expropriation in the territory of the other Contracting Party, including levying of taxes and the forced sale of all or part of an investment.

All the measures mentioned in Paragraphs (b) and (c) are referred to as "expropriation", unless the expropriation is:

(a) For a public purpose

(b) Is carried out under the law and in accordance with the constitution of the host country

(c) Nondiscriminatory

(d) Based on a decision by the relevant legal authorities

(e) The legal or administrative bodies in the host country shall grant the right of prompt review to the investor to assess whether the expropriation has taken place and if it was done in accordance with its legal regulations.

(f) The investor shall have the right to appeal the expropriation or any interim measures in front of the relevant court in the other Contracting Party who executed these procedures.

(g) The expropriation shall be accompanied by adequate, effective and fair compensation.

(h) Such compensation shall be calculated on the basis of the fair market value of the investment immediately prior to the moment in which the nationalization or expropriation decision was announced or became publicly known, and shall be determined in accordance with the recognized principles of valuation such as the market value. Where the market value cannot be readily ascertained, the compensation shall be determined based on equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors.

In case of delay in the payment of compensation, a compensation amount shall be paid which is to place the investor in a position no less favorable than the position he would have been in had the compensation been paid immediately on the date of expropriation or nationalization. To achieve this goal, the compensation is to include additional compensation reflecting the current market interest rate, in the currency of the investment, from the date of the expropriation or nationalization and until the date of payment.

a Where a Contracting Party nationalizes or expropriates the investment of a legal person that is established or licensed under the law in force in its territory and in which the other Contracting Party or any of its investors own shares, stocks, debentures or other rights or interests, it shall ensure that prompt, adequate and effective compensation is paid and allowed to be repatriated. Such compensation shall be determined and paid in accordance with the provisions of Paragraph (h) of this Article.

2 The provisions of Paragraph (1) of this Article shall also apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation. A Contracting Party who expropriates a company established in the other Contracting Party and in which persons own stock, shares or any relevant rights, shall be obliged to compensate such persons in accordance with Paragraph (h) of this Article.

## **Article 7. Repatriation of Capital and Returns**

1. Each Contracting State shall allow, without delay, the transfer out of its territory in any freely usable currency of:

(a) The net profits, dividends, royalties, technical assistance and in-kind service fees, interest and other due returns, accruing from any investment made by an investor of the other Contracting Party, provided that the investor shall not be subject to any discriminatory banking, administrative or legal restrictions, and no taxes or fees shall be applicable on the transfer process (this is not applicable to banking service fees).

(b) The proceeds accruing from the total or partial sale or liquidation of any investment made by an investor of the other Contracting Party.

(c) Funds paid in settlement of loans.

(d) The earnings of nationals of the other Contracting Party who are authorized to work in a field related to the investment made in its territory.

(e) Amounts spent on the management of the investment in the territory of the Contracting Party or a third country.

(f) Additional funds required for the maintenance of the investment.

(g) Funds required to obtain raw, auxiliary, manufactured and semi-manufactured materials.

(h) Funds required to novate capital assets for the protection and continuation of the investment.

2. Subject to Article (3) of this agreement, the Contracting Parties undertake to accord the transfers referred to in Paragraph (1) of this Article treatment that is equally favorable to that accorded to transfers originating from investments made by investors of a third country.

3. The host country shall guarantee to the investor the free disposal of their capital whether through full or partial sale, liquidation, assignment, donation or in any other way.

4. The exchange rates applicable to transfers mentioned in Paragraph (1) of this Article shall be the same as the exchange rates prevailing at the date of transfer, and in accordance with the exchange rates allotted by the International Monetary Fund in case of multiple exchange rates in the host country.

## **Article 8. Subrogation**

1. If a Contracting Party (or its designated agency) makes payments to its investors as compensation, a warrantee it has granted in respect of an investment or any part thereof in the territory of the host country, or has otherwise become subrogated to any of the rights of such investors with respect to such investments, the host country shall recognize:

(a) The right of the other Contracting Party (or its designated agency) arising from the assignment, compensation or other subrogation, whether under the law or pursuant to a legal agreement.

(b) That the other Contracting Party (or its designated agency) is entitled- by virtue of subrogation- to enforce such a right.

2. If such other Contracting Party acquires any amounts in a manner such as mentioned above, where such amounts arose from investment activities or other related activities similar to those practiced by the compensated party, it shall be accorded in this respect treatment not less favorable than that accorded to the funds of investors of the host country or of any third party whichever is more favorable.

3. Without prejudice to the provisions of the previous paragraphs of this Article, subrogation is possible after obtaining the pre-approval of the concerned country and only for payments taking place after the entry into force of this agreement.

## **Article 9. Compensation for Noncompliance with Guarantees Granted to an Investor**

1. An investor has a right to compensation for damage suffered as a result of either Contracting Parties, or any of their public or domestic authorities or institutions, carrying out the following:

(a) Compromising any of the rights and guarantees afforded to the investor in this agreement.

(b) Breach of any international obligation or commitment imposed on the Contracting Party resulting from this agreement in favor of the investor of the other Contracting Party, or failure to do the necessary to ensure compliance therewith, whether on purpose or due to negligence.

2. Failure to implement an enforceable court order directly related to the investment.

3. The value of compensation shall be equivalent to the amount of damage suffered by the investor while taking into

account the type and magnitude of the damage.

4. The compensation shall be monetary if it is not possible to return the investment to the state it was in before the damage.
5. The value of monetary compensation is to be determined within three months from the day the damage occurred, and is payable within six months from the date of agreement on the amount of compensation.

## **Article 10. Settlement of Disputes between an Investor and a Contracting Party**

1. Each Contracting Party consents to amicably settle any dispute resulting from an investment or any of its related activities in its territory by an investor of the other Contracting Party, in accordance with the provisions of this Article.

2. Each Contracting Party commits to allow the investor the right of recourse to its national courts to complain against action taken by its authorities towards the investor, or to appeal the conformity of the action with the applicable domestic laws and regulations in its territory, or to complain that the Contracting Party failed to take certain action- which was a duty of the Contracting Party- in the investor's favor, irrespective if the complaint is related or unrelated to the applicability of the provisions of this agreement to the relationship between the investor and the host country.

3. If the dispute cannot be satisfactorily resolved through national courts, both Contracting Parties consent to submit the dispute between that Contracting Party and an investor of the other Contracting Party to the Center for Settlement of Investment Disputes (ICSID) for conciliation or arbitration, in accordance with the Convention on Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965 (the Convention) with regards to:

(a) A commitment made by that Contracting Party towards an investor of the other Contracting Party regarding an investment or any of its related activities made by that investor.

(b) An alleged breach regarding any right provided or created by this agreement concerning an investment or any of its related activities made by that investor.

4. In case of a legal person registered or established in accordance with the applicable laws in the territory of a Contracting Party, wherein an investor of the other Contracting Party owns a majority of shares before the dispute arose, it shall be treated for the purpose of this agreement as an investor of the other Contracting Party in accordance with Article (25) (2) (b) of this agreement.

5. (a) In case a dispute of the kind mentioned in Paragraph (2) arises, the Contracting Party and the concerned investor shall endeavor to resolve the dispute through consultations and negotiations.

(b) If the dispute cannot be resolved in this way within three months, and after the concerned investor consents in writing to submit the dispute to ICSID, either Contracting Party that is a party to the dispute shall have the right to begin the procedure by submitting a request in this regard to the Secretary-General of ICSID, in accordance with Articles 28 and 36 of the Convention, provided that the concerned investor has not referred the dispute to the legal or administrative courts or the relevant bodies of the Contracting Party party to the dispute.

6. Neither Contracting Party shall pursue any dispute referred to ICSID through diplomatic channels unless:

(a) The Secretary-General, conciliation committee, or the arbitration committee composed by ICSID have decided that the dispute does not fall within ICSID's jurisdiction.

(b) The other Contracting Party has failed to commit to or abide by any decision issued by the arbitration committee.

7. Recourse to the Regional Centre for Commercial Arbitration in Cairo, where an agreement was signed between the Arab Republic of Egypt and the Asian-African Legal Committee on 28/01/1979, is permissible if both the parties to the dispute so agree.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. If a dispute concerning the interpretation or application of this agreement arises, governments of both Contracting Parties shall seek to resolve the dispute through negotiations.

2. If the dispute cannot be settled in that way, the dispute shall be referred, upon the request of any of the Contracting Parties, to a temporary arbitration tribunal in accordance with the provisions of this Article.

3. The arbitration tribunal shall be constituted in the following manner:

Within two months from receiving a request for arbitration, each party shall appoint one arbitrator. The two arbitrators shall then appoint a citizen from a third country to be Chairman (hereinafter referred to as 'the Chairman'), upon the approval of both Contracting Parties. The Chairman shall be appointed within two months from the date of appointment of the other two arbitrators.

4. If either Contracting Party does not appoint an arbitrator, or if the arbitrators fail to agree on choosing a chairman within the period specified in Paragraph (3) of this Article, a request may be submitted to the International Chamber of Commerce in Paris to make the appointment. If he happens to be a national of either Contracting Parties, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting Parties or is prevented from discharging the said function, then a member from the International Chamber of Commerce next in seniority who is not a national of either Contracting Party shall be invited to make the appointment.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and counsel in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

## **Article 12. Application of the Agreement to Investments**

The provisions of this agreement shall apply to investments made before and after the signing of this agreement.

## **Article 13. Application of other Rules and Special Commitments**

1. Where a subject is simultaneously governed by both this agreement and other agreements to which both the Contracting Parties are parties, or is governed by general legal principles recognized by both Contracting Parties, or a domestic law of the host country, nothing in this agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of any rules that are more favorable to their case.

2. Investments subject to special contracts or commitments undertaken by one Contracting Party with respect to investors of the other Contracting Party shall be governed- notwithstanding the provisions of this agreement- by the terms of those contracts and commitments insofar as their provisions are more favorable than those provided by this agreement.

3. Both Contracting Parties shall respect any commitments made in investment approval documents, or approved investment contracts of investors of the other Contracting Party.

## **Article 14. Entry Into Force**

This agreement shall enter into force thirty days after the date of the last notice, by both Contracting Parties, stating that the constitutional requirements necessary for the entry into force of this agreement have been completed.

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

1. This agreement shall remain in force for a period of Fifteen (15) years, and shall continue to remain in force for a similar period/s unless either Contracting Party informs the other party, in writing, of its desire to terminate the agreement a year before the end of the initial period, or any following period. The notice of termination shall be effective a year after the other Contracting Party receives it.

2. The provisions of this agreement shall remain in force for a period of 20 years from the date of expiration of this agreement with regards to investments made before the date on which the notice of termination becomes effective.

This agreement was done in Abu Dhabi in two original copies on 3 Muharam 1418 H, corresponding to 11 May 1997, in the Arabic language.

For the Government of the United Arab Emirates

(Sign / Seal)

Dr. Mohamed Khalfan Bin Khirbash

Minister of State for Financial and Industrial Affairs

For the Government of the Arab Republic of Egypt

(Sign / Seal)

Dr. Nawal Abdulmonim Al Tatawi

Minister of Economy and International Cooperation