

AGREEMENT BETWEEN THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Hashemite Kingdom of Jordan and the Government of the Italian Republic (hereafter referred to as the Contracting Parties)

Desiring to establish favourable conditions for improved economic cooperation between the two countries, and especially in relation to capital investment by investors of one Contracting Party in the territory of the other contracting Party.

And

Acknowledging that offering encouragement and mutual protection to such investment, based on international agreements, will contribute to stimulate business ventures, which foster the prosperity of both Contracting Parties.

Hereby agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall be construed to mean any kind of property invested, before or, after the entry into force of this Agreement, by a natural or legal person of a Contracting Party in the territory of the other Contracting Party in conformity with the laws and regulations of that Party, irrespective of the legal form chosen, as well as of the legal framework. Any modification in the form of the investment does not imply a change in the nature thereof in accordance with the laws and regulations of the Contracting Party on whose territory the investment has taken place.

Without limiting the generality of the foregoing, the term "investment" comprises in particular but not exclusively:

- a) Movable and immovable property and any ownership right "in rem", including real guarantee rights on property of a Third Party to the extent that it can be invested:
- b) Shares, debentures, equity holdings or any other instruments of credit, as well as Government and public securities in general:
- c) Credits for sums of money or any service right having an economic value connected with an investment, as well as reinvested income and capital gains:
- d) Copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill.
- e) Any economic rights accruing by law or by contract and any licence and franchise granted in accordance with the provisions in force on economic activities, including the right to prospect for, extract and exploit natural resources;
- f) Any increases in value of the original investment.

2- The term "investor" shall be construed to mean any natural or legal person of one Contracting Party investing in the territory of the other Contracting Party as well as the foreign subsidiaries, affiliates and branches having headquarter in the territory of one of the Contracting Parties and controlled in anyway by the above natural and legal persons.

3- The term "natural person", in reference to either Contracting Party, shall be construed to mean any natural person holding the nationality of that state in accordance with its laws.

4- The term "legal person" in reference to either Contracting Party, shall be construed to mean any entity having its

headquarter in the territory of one of the Contracting Parties and recognized by it.

5- The term "income" shall be construed to mean the money accruing to an investment, including in particular profits or interests, interest, income, capital gains, dividends, royalties or payments for assistance, technical services and other forms of payment connected to the investment.

6- The term "territory" shall be construed to mean, in addition to the zones contained within the land boundaries, the "maritime zones". The latter also comprise the marine and submarine zones over which the Contracting Parties exercise sovereignty, and sovereign or jurisdictional rights, under international law.

7- The term "activities connected with an investment" shall include, "inter alia", the organization, control operation, maintenance and disposal of companies, branches, agencies, offices or other organizations for the conduct of business; the receipt of registrations, licenses, permits and other approvals necessary for the conduct of commercial activity; the acquisition, use and disposal of property of all kinds, including intellectual property, as well as the protection thereof; the access to the financial market, in particular the borrowing of funds, the purchase, sale and issue of shares and other securities and the purchase of foreign exchange for imports necessary for the conduct of business affairs; the marketing of goods and services; the procurement, sale and transport of raw and processed materials, energy, fuels and production means; the dissemination of commercial information.

8- "Investment agreement" means an agreement between a Contracting Party (or its Agencies or Instrumentalities) and an investor of the other Contracting Party concerning an investment.

9- "Non-discriminatory treatment" means treatment that is at least as favourable as the better of national treatment or most-favoured nation treatment.

10- "Right of access" means the right to be admitted to carry out investment in the territory of the other Contracting Party, according to the laws and regulations of the Contracting Party on whose territory the investment has taken place.

Article 2. Promotion and Protection of Investments

1- Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory.

2- Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party at conditions that are not less favourable than that enjoyed by investors of third states.

3- Both Contracting Parties shall at all times ensure just and fair treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments effected in their territory by investors of the other Contracting Party, as well as companies and enterprises in which these investments have been effected, shall in no way be subject to unjustified or discriminatory measures.

4- Each Contracting Party shall create and maintain in its territory a legal framework apt to guarantee to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

5- Each Contracting Party or its designated Agency may stipulate with an investor of the other contracting Party an investment agreement which will govern the specific legal relationship related to the investment of the investor concerned.

6- Each Contracting Party shall, in accordance with its legislation, permit investors of the other contracting party who have made investments in its territory to employ top managerial personnel regardless of their nationality.

7- The nationals of one Contracting Party who are authorized to work in the territory of the other Contracting Party in connection with investments subject to this Agreement shall enjoy appropriate conditions under which to perform their professional activities in accordance with the legislation of the latter.

8- Each Contracting Party shall, in accordance with its legislation (and its international obligations) relating to the entry and stay of foreigners, permit the nationals of the other Contracting Party, working in connection with an investment under this agreement, as well as members of their families, to enter into, remain and leave its territory.

9- Neither of the Contracting Parties will set any conditions for the creation, the expansion or the continuation of investments, which may imply the taking over or the imposing of any limitation to the sale of the production on domestic and international markets, or which specifies that goods must be procured locally, or similar conditions.

Article 3. National Treatment and Most Favoured Nation Clause

1- Both Contracting Parties, within the bounds of their own territory, shall grant investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States.

2- In case, from the legislation of one of the Contracting Parties, or from the international obligations in force or that may come into force for the future for one of the Contracting Parties, should come out a legal framework according to which the investors of the other Contracting Party would be granted a more favourable treatment than the one foreseen in this Agreement, the treatment granted to the investors of such other Parties will apply also for outstanding relationships.

3- The provisions under points 1 and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to investors of Third States by virtue of their membership of a Customs or Economic Union, of a Common Market, of a Free Trade Area, of a regional or sub regional Agreement, of an international multilateral economic Agreement or under Agreements signed in order to prevent double taxation, or to facilitate cross border trade.

4- All the activities relating to the procurement, sale and transport of raw and processed materials, energy, fuels and production means shall be accorded, in the territory of each Contracting Party, no less favourable treatment than the one accorded to similar activities taken by investors of the host Contracting Party or investors of Third States.

The provisions of this article shall also apply to the activities connected with an investment.

Article 4. Compensation for Damages or Losses

Should investors of one of the Contracting Parties incur losses or damages on their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected, in respect of compensation for such losses or damages, irrespective whether such losses or damages have been caused by governmental forces or other subjects, shall offer the investors concerned the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable than that of investors of Third States. Any compensation payable shall be freely transferable without undue delay.

Article 5. Nationalization or Expropriation

1- The investments to which this Agreement relates shall not be subject to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, unless specifically provided by current national or local legislation or regulations and orders handed down by Courts or Tribunals having jurisdiction.

2- Investments of investors of one of the Contracting Parties shall not be "de Jure" or "de facto", directly or indirectly, totally or partially, nationalized, expropriated, requisitioned or subjected to any measures having an equivalent effect in the territory of the other Contracting Party, except for public purposes or national interest and in exchange for immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3- The just compensation shall be established on the basis of the real international market value immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public.

In the absence of an understanding between the host Contracting Party and the investor during the nationalization or expropriation procedure, compensation shall be based on the same reference parameters and exchange rates taken into account in the documents for the constitution of the investment. The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the nationalization or the expropriation has been announced or made public.

4- Without restricting the scope of the above paragraph, in case that the object of nationalization, expropriation or similar, is a company with foreign capital, the evaluation of the share of the investor will be in the currency of the investment not lower than the starting value, increased by capital increases and revaluation of capital, undistributed profits and reserve funds and diminished by the value of capital reductions and losses.

5- Compensation will be considered as actual if it will be paid in the same currency in which the investment has been made by the foreign investor, in as much as such currency is - or remains convertible, or, otherwise, in any other currency accepted by the investor.

6- Compensation will be considered as timely if it takes place without undue delay and, in any case, within three months from the date on which the application for payment has been submitted.

7- Compensation shall include interest calculated on a six months LIBOR basis from the date of the application for payment to the date of payment and will be freely transferable.

8- A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation thereof, conforms to the principles of international law, and to decide all other matters relating thereto.

9- In the absence of an agreement between the investor and the responsible authority, the amount of compensation will be established according to the procedures for disputes resolution as per Article 9 of this Agreement.

10- The provisions of paragraph 2 of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

11- If, after the dispossession, the good concerned has not been utilized, wholly or partially, for that purpose, the owner or his assignees are entitled to the repurchasing of the good at the market price.

Article 6. Repatriation of Capital, Profits and Income

1- Each of the Contracting Parties shall guarantee that the investors of the other Contracting Party may transfer the following abroad, without undue delay, in any convertible currency:

- a) Capital and additional capital, including reinvested income, used to maintain and increase investment;
- b) The net income, dividends, royalties, payments for assistance and technical services, interests and other profits;
- c) Income deriving from the total or partial sale or the total or partial liquidation of an investment;
- d) Funds to repay loans connected to an investment and payment of the related interests;
- e) Remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner prescribed by the national legislation and regulations in force.

2- Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article the same favourable treatment that is accorded to investments effected by investors of Third States, in case it is more favourable.

Article 7. Subrogation

In the event that one Contracting Party or an Institution thereof has provided a guarantee in respect of non-commercial risks for the investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to said investor on the basis of that guarantee, the other Contracting Party shall recognize the assignment of the rights of the investor to the first-named Contracting Party. Such assignment should be subject to prior written consent of the first Contracting Party.

In relation to the transfer of payments to the Contracting Party or its Institution by virtue of this assignment, the provisions of articles 4, 5 and 6 of this Agreement shall apply.

Article 8. Transfer Procedures

1- Transfers referred to in articles 4, 5, 6 and 7 shall be effected without undue delay and, at all events, within six months after all fiscal obligations have been met, and shall be made in a convertible currency. All transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under point 3 of Article 5 concerning the exchange rate applicable in case of nationalization or expropriation.

2- Fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1- Any disputes which may arise between one of the Contracting Parties and the investors of the other Contracting Party on

investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.

2- In case the investor and an entity of the Contracting Parties have stipulated an investment Agreement, the procedure foreseen in such investment Agreement shall apply.

3- In the event that such dispute cannot be settled amicably within six months from the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

a) The Contracting Party's court having territorial -jurisdiction:

b) To The International Center For The Settlement of Investment Disputes (the Center).

4- Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedure underway until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the Center or the Court of Law within the period envisaged by the ruling, - or else within the period which can be determined on the basis of the international or domestic law provisions which can be applied to the case.

Article 10. Settlement of Disputes between the Contracting Parties

1- Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2- In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an "ad hoc" Arbitration Tribunal as provided in this Article.

3- The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The two members shall nominate a President who shall be a national of a Third State. The President shall be appointed within three months from the date on which the other two members are appointed.

4- If, within the period specified in paragraph 3 of this Article, appointments have not been made, each of the two Contracting Parties can, in default of other arrangements, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice President of the Court. If the Vice President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5- The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitration and of their representative at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties.

The Arbitration Tribunal shall lay down its own procedures.

Article 11. Application of other Provisions

1- If a matter is governed both by this Agreement and another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and to their investors.

2- Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party according to its laws and regulations or other provisions or specific contract or investment authorizations or agreements, is more favourable than that provided under this Agreement, the most favourable treatment shall apply.

In case the host Contracting Party has not applied such treatment, in conformity with the above, and the investor suffers a damage as a consequence thereof, the investors shall be entitled to a compensation of such damages in conformity with Article 4.

3- Whenever, after the date when the investment has been made, a modification should take place in laws, regulations, acts or measures of economic policies governing directly or indirectly the investment, the same treatment will apply upon request of the investor that was applicable to it at the moment when the investment had been carried out.

Article 12. Entry Into Force

This Agreement shall become effective as from the date in which the two Contracting Parties notify each other that their respective constitutional procedures have been completed.

Article 13. Duration and Expiry

1- This Agreement shall remain effective for a period of 10 years from the date of notification under Article 12 and shall remain in force for a further period of 5 years thereafter, unless one of two Contracting Parties withdraws in writing not later than one year before its expiry date.

2- In case of investments effected prior to the expiry dates, as provided under paragraph 1 of this Article, the provisions of Articles 1 to 12 shall remain effective for a further period of five years after the afore mentioned dates.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE IN Amman on July 21st, one thousand nine hundred and ninety six in two originals, in the Arabic, English and Italian Languages, all texts being equally authentic.

In case of any divergence on the interpretation of this Agreement the English text shall prevail.

FOR THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN

Ali Abu Al-Ragheb Minister of Industry and Trade

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

Francesco Cerulli The Italian Ambassador to Jordan