

# Agreement for promotion and protection of investments between the Council of Ministers of the Republic of Albania and the Government of Kuwait

The Government of the State of Kuwait and the Council of Ministers of the Republic of Albania, (hereinafter the "Contracting States");

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

Recognizing that the encouragement and mutual protection of such investments will be an incentive to stimulate commercial initiatives and increase prosperity in both Contracting States,

They have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all types of assets located in the territory of a Contracting State and that are owned or controlled by an investor of the other Contracting State in a direct or indirect manner and includes the assets or rights consisting of or in the form of:

(A) Company shares, stocks, and other forms of shareholding, bonds, debt securities, and other forms of debt rights in a company, other debts and loans and securities issued by any investor of a Contracting State;

(B) Claims to money and claims for any other assets or performance in accordance with a contract of economic value;

(C) intellectual property rights, including without limitation, copyright, trademarks, patents, industrial designs and models, technical processes, expertise, trade secrets, trade names and goodwill;

(D) Any right granted by law, contract or pursuant to any licenses or permits granted in accordance with the law including the rights to prospecting, exploration, extraction or exploitation of natural resources and the rights to engage in other economic and commercial activities or to provide services;

(E) tangible and intangible property, movable and immovable, and any related property rights such as rents, mortgages, debt concessions, and possession mortgages.

The term "investment" also applies to "returns" held for the purpose of reinvestment, resulting from "liquidation" as defined later by these terms.

Any change in the form in which the assets are invested or reinvested will not affect its nature as an investment.

2. The term "investor" in relation to a Contracting State means:

(A) A natural person possessing the nationality of that Contracting State in accordance with its laws in force;

(B) The government of that Contracting State;

(C) Any legal person or any other entity legally established under the laws and regulations of that Contracting State, such as institutes, trust funds, charitable and scientific agencies and institutions, legal facilities, and companies and corporations.

3. The term "company" means any legal entity, whether established or not, with the aim of achieving financial profit, whether it is owned or dominated by a private or government, organized according to the law applicable to the contracting state or is owned or actually managed by the investors of one of the Contracting States and, it includes public institutions,

trust, solidarity companies, single-person companies, branch, joint venture, and unions or other similar organizations.

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

5. The term "liquidation" means any action taken for the purpose of total or partial termination.

6. The term "Territory" means the territory of the Contracting State, including any area outside the territorial sea which, according to international law, has been determined or is to be determined subsequently in accordance with the law of the Contracting State, as a region in which the Contracting State may exercise the rights of sovereignty or jurisdiction.

7. The term "freely convertible currency" is any currency prescribed by the International Monetary Fund from time to time as a currency freely used in accordance with the provisions of the International Monetary Fund Agreement and any amendments thereto.

8. The term "without delay" means the period that is usually required to complete the formalities necessary to transfer the payments. The aforementioned period shall begin on the day on which the transfer request is submitted, provided that in no case shall it exceed one month.

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

1. Each of the Contracting States shall encourage and create more favorable conditions for the investments made by the investors of the other Contracting State in its territory, and in accordance with the rights conferred by the force of its laws and legislation it shall accept such investments.

2. Investments made by investors from a Contracting State in the territory of the other Contracting State shall be accorded fair and equitable treatment and shall be accorded full protection and security, in a manner consistent with recognized principles of international law and the provisions of this Convention. Neither Contracting State will in any way take arbitrary or discriminatory measures that will harm the administration, maintenance, use, enjoyment, or disposition of investments in the territory of the investors of the other Contracting State. Each of the two Contracting States shall take into account any obligation to which it may be a party in respect of investments of investors of the other Contracting State.

3. The investors of any of the contracting parties on the establishment shall not be subject to additional performance requirements that may hinder or restrict their use, management, disposal, operation, expansion, sale or any other behavior.

## **Article 3. Investment Treatment**

1. With regard to the use, management, disposal, operation, expansion, sale or other dispositions of investments made in its territory by investors of the other Contracting State, each Contracting State shall grant treatment no less favorable than that granted in similar cases to investments, particularly its investors or the investors of any third country, whichever is most favorable to these investments.

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

(A) any customs union, economic union, free trade zone, monetary union or any other form of regional economic arrangement or any other similar international agreement to which either of the Contracting States is a party or may become a party;

(B) any international or regional agreement, bilateral agreement, or any other similar arrangement, and any domestic legislation, wholly or mainly related to taxation.

## **Article 4. Compensation for Damage or Loss**

1- Except where Article (5) applies, the investors of one of the two Contracting States whose investment in the territory of the other Contracting State is exposed to damages or losses due to the war or any other armed conflict, or a national emergency or a period of disturbances, riots, or other similar events, shall be granted from the another Contracting State, with regard to restoring conditions to what they were, restoring losses, compensation or any other settlement, a treatment no less favorable than that granted by the last Contracting State to its investors or to the investors of any third country, whichever is more favorable.

2- Without prejudice to Paragraph 1, the investors belonging to one of the two Contracting States who suffer a loss as a result of any of the events referred to are in the preceding paragraph in the territory of the other Contracting State resulting from:

(A) Temporary seizure of their property or part thereof by its forces or authorities;

(B) the destruction of their property or part by its forces or authorities without it being due to combat operations or without being required by the necessity of the situation;

They shall be provided with immediate, adequate and effective compensation or to be reinstated to the previous status.

## **Article 5. Expropriation**

1. (a) Investments made by investors from either of the two Contracting States in the territory of the other Contracting State will not be nationalized, expropriated, dispossessed, or subject directly or indirectly, to procedures having an effect equivalent to nationalization, expropriation, or dispossession (hereinafter collectively referred as "expropriation") by the other Contracting State, except for a general purpose related to the national interest of that Contracting State 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 shall be the actual value of the expropriated investment, and it shall be 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 proceeding or in which the imminent expropriation has become publicly exposed, 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 valuation date and includes interest at a commercial price that is determined on the basis of the market, provided that not less in any case the prevailing interest rate between banks in London (LIBOR) or its equivalent, from the date of expropriation until the date of payment.

(C) If the above fair market value cannot be easily ascertained, the compensation is determined based on fair principles taking into account all factors and conditions related to it such as invested capital, the nature and period of the investment, the value of the replacement, the increase in the value of the investment and the stubborn dues, the value of the calculated cash flow, the book value and the goodwill. The amount of the final compensation is to be paid to an investor.

2. In light of the principles set forth in paragraph 1, and without prejudice to the investor's rights contained in Article 8 of this agreement, the affected investor has the right to an immediate review, by a judicial or other independent competent authority of that Contracting State, of his case including evaluation of his investment and compensation payments for this investment.

3. For further clarification, expropriation includes cases in which a Contracting State expropriates the assets of a company or project that has been established or established under the laws in force in its territory in which an investor of the other Contracting State has an investment in it through ownership of shares, shares, debt securities, or rights or other interests.

4. For the purposes of this agreement, the term "expropriation" also includes any interference or regulatory procedures by a Contracting State that have the same effect of expropriation that results in the investor being in fact deprived of his ownership or domination of his or her core interests from his investment or that may result in a loss or damage to the economic value of the investment, such as freezing or reserving the investment, imposing an arbitrary or excessive tax on the investment, the forced sale of all or part of the investment, or other similar measures.

5. Claiming compensation for damages in accordance with the principles and provisions of this article also is possible when the investment is actually threatened as a result of the Contracting State's interference in any company in which the investment of investors of the other Contracting State, is in the essence of the investment.

## **Article 6. Transfer of Payments Related to Investments**

1. Each of the Contracting States guarantees the investors of the other Contracting State 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 of the investment;

(B) Returns;

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

agreement:

(D) Royalties and fees for the rights referred to in Article 1, paragraph 1 (c);

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

(F) Earned funds and other compensation for employees contracted from abroad who have an investment relationship;

(G) compensation payments according to Articles 4 and 5;

(H) Payments referred to in Article 7;

(I) Payments for dispute settlement.

2. The transfer of payments is carried out under paragraph (1) without delay or restrictions, except in the case of payments in kind, and in a freely convertible currency, in the event of delay in making the required transfers, the affected investor is entitled to receive interest for the delay period.

3. Transfers are made at the spot exchange rate prevailing in the host Contracting Party at the date of the transfer in relation to the spot transactions of the currency to be transferred. In the absence of the foreign exchange market, the rate applied is the most recent rate applied to investment in, the exchange rate specified in accordance with the regulations of the International Monetary Fund or the exchange rate established for the exchange of special drawing rights or the United States dollar, whichever is the most favorable to the investor.

## **Article 7. Subrogation**

1. If a Contracting State or its concerned agency (the "Guarantor Party") makes a payment under compensation or security in connection with an investment in the territory of the other Contracting State ("the host country"), the host country must recognize:

(A) a waiver of the guarantor party under the law or a legal agreement on all rights and claims resulting from such investment;

(B) The guarantor party has the right to exercise the rights of these rights and implement those investment-related claims and obligations based on the principle of substitution of the creditor.

2- The guarantor party is entitled, in all circumstances, to the same treatment in respect of:

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

(B) Any payments received on the basis of those rights and claims the original investor shall have the right to receive under this agreement in relation to the investment in question.

## **Article 8. Settlement of Disputes between a Contracting State and an Investor of a Contracting State**

1- Disputes arising between a Contracting State and an investor affiliated with the other Contracting State with respect to an investment located in the territory of the aforementioned State shall be settled as amicably as possible.

2- If it is not possible to settle these disputes within six months from the date of either party requesting amicable settlement by submitting a written notice to the other party, the dispute may be submitted for settlement at the choice of the investor who is the party to the dispute by one of the following means:

(A) In accordance with any appropriate pre-agreed dispute settlement procedures;

(B) international arbitration in accordance with the following paragraphs of this article.

3- In the event that the investor chooses to submit the dispute for settlement to international arbitration, the investor must also submit his written consent to the dispute for settlement by one of the following:

(A) (1) The International Center for Settlement of Investment Disputes ("the Center"), which was established on the basis of an agreement to settle investment disputes between countries and citizens of other countries opened for signature in Washington on March 18, 1965 (the "Washington Convention") in the event that the two states that are Contracting Parties are parties to the Washington Convention and the applicability of the Washington Convention to the dispute;

(2) The Center, under the rules governing additional facilities for the administration of procedures by the Center's Secretary ("the Additional Facilities Rules"), if the investor's Contracting State or the Contracting State is party to, but not both, a party to the Washington Convention;

(B) An arbitration court established under the Arbitration Rules (the "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 arbitration tribunal to be appointed based on the arbitration rules of any arbitration arbitration that is mutually agreed upon between the parties to the dispute.

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

5. Each of the two Contracting States 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 two parties to the dispute according to paragraph 3 (c).

6- (a) The approval contained in paragraph 5, together with the approval contained in paragraph 3, fulfills the requirement for written consent of the parties to the dispute for the purposes of each of Chapter Two of the Washington Convention and the rules of additional facilities, and Article Two of the United Nations Convention on the Recognition and Implementation of Foreign Arbitration Provisions, signed on New York at 10 June 1958 ("The New York Convention"), Article 1 of the UNCITRAL Arbitration Rules.

(B) Any arbitration pursuant to this Article, and as the mutually agreed agreement between the two parties must takes place, and claims brought before a party that is a party to the New York Convention.

(C) Neither Contracting State shall grant diplomatic protection or make an international claim relating to any dispute referred to arbitration unless the other Contracting State fails to comply with or apply the judgment issued in respect of that dispute. However, diplomatic protection for the purposes of this subparagraph does not include exchanging informal diplomatic notes for the purpose of facilitating dispute settlement.

7. The Arbitral Tribunal that is established under this period shall decide the issues related to the dispute in accordance with those rules of the 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. For the purposes of Article 25 (2) (b) of the Washington Convention, the investor, who is a natural person, who holds the nationality of the Contracting State that is a party to the dispute, as of the date of the written consent referred to in Paragraph (6), which was dominant before the emergence of a dispute between him and that Contracting State, that are investors belonging to the other Contracting State, shall be treated as "a citizen of the other Contracting State", and for the purpose of Article 1 (6) of the additional facilities rules shall be treated as "a citizen of another State."

9- Arbitration decisions, which may include granting interest, are final and binding for both parties to the dispute, and each of the Contracting States will immediately implements any such decision, and takes the necessary measures to effectively implement its provisions in its territory.

10. A Contracting State must not use its immunity in any judicial, arbitral or other proceeding, or in the implementation of any decision or ruling regarding an investment dispute between a Contracting State and an investor of another Contracting State. Likewise, it is not permissible to establish any counterclaim or set-off right on the fact that the investor in question has received or will receive, based on an insurance contract, compensation for any damage or any other compensation for all or part of the damages claimed by any third party, whether public or private Including that other contracting party and its subdivisions, agencies or agencies.

## **Article 9. Settlement of Disputes between the Contracting States**

1. The Contracting States shall, as far as possible, settle any dispute relating to the interpretation or application of this Agreement through consultations or other diplomatic channels.

2. If the dispute is not settled within six months of the wind of other diplomatic channels by either Contracting State, and unless the Contracting States agree in writing to the contrary, then either Contracting State may by means of written

notification to the other Contracting State, submit the dispute to an Arbitral Tribunal established for this purpose in accordance with the following provisions of this article.

3. The Arbitral Tribunal shall be constituted as follows: Each of the two Contracting States shall appoint one member. These two members shall agree on a citizen of a third country to be President of the Arbitral Tribunal, to be appointed by the two Contracting States. These two members are appointed within two months, and the President within four months from the date of notification to either of the two Contracting States of the other Contracting State of its intention to submit the dispute to an Arbitral Tribunal.

4. If the periods specified in paragraph 3 above are not observed, then either Contracting State 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 States or finds an impediment to his performance of the said mission, 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 States or finds an impediment to his performance of the aforementioned task, then the next International Court of Justice member who is not a citizen of one of the Contracting States 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, according to their application, and it shall be final and binding for each of the two contracting countries. Each of the Contracting States shall bear the fees of a member of the Arbitral Tribunal appointed by that Contracting State, as well as the fees of its representative in the arbitration proceedings. As for the president's fees, as well as any other costs, they shall be borne equally by both Contracting States. The Arbitral Tribunal may, at its discretion, decide to assign one of the two contracting states a percentage greater than or the full of the mentioned costs. The Arbitral Tribunal shall determine its procedures in relation to all other matters.

## **Article 10. Relations between the Contracting States**

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

## **Article 11. Application of other Provisions**

If the legislation of either Contracting State or obligations under existing international law or that may arise at a later time between the two Contracting States in addition to this agreement includes provisions, whether public or private, investments or made by the investors of the other Contracting State are granted a more favorable treatment of those stipulated in this agreement, this provision shall prevail over this agreement to the extent that it provides more caring treatment.

## **Article 12. Scope of the Agreement**

This agreement applies to all investments, whether existing on the date of the entry into force of this agreement or that were made after that date by the investors of any of the two Contracting States in the territory of the other Contracting State.

## **Article 13. Entry Into Force of the Agreement**

Each Contracting State shall notify the other in writing of its fulfillment of the constitutional requirements necessary for the entry into force of this Agreement, and the Agreement shall enter into force on the thirty day after the date of receipt of the last notification.

## **Article 14. Duration and Termination**

1. This Agreement shall remain in effect for a period of thirty (30) years, and thereafter shall continue in force for a similar period or periods, unless any of the Contracting States notifies the other Contracting State 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 that were made before the effective date of the notice of termination of this agreement, the provisions of this agreement remain in effect for a period of twenty (20) years from the date of termination of this agreement.

In witness to this, the respective representatives of both Contracting States have signed this Agreement.

Done in the city of Tirana on Wednesday, 2 Dhu al-Hijjah 1428 AH corresponding to 2 December 2007, in two original copies in the Arabic, Albanian and English languages, and each of them is equally authentic. In case of disagreement the English text shall prevail.

For the Council of Ministers of the Republic of Albania

For the Government of Kuwait

Mustafa Jassim Al-Shamali

Minister of Finance