

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA AND THE GOVERNMENT OF THE STATE OF KUWAIT ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Slovenia and the Government of the State of Kuwait, hereinafter referred to as the "Contracting Parties",

Desiring to intensify the economic co-operation between the two Contracting Parties,

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the promotion and reciprocal protection of investments on the basis of this Agreement will stimulate business initiative,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

1. The term "investment" shall mean every kind of assets or rights owned or controlled directly or indirectly by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

(a) Tangible and intangible and movable and immovable property and any other related property rights, such as mortgages, liens, pledges and similar rights;

(b) Shares, stocks, bonds, debentures, any other form of participation in a company and loans;

(c) Claims to money or to any performance having an economic value and associated with an investment;

(d) Intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and patterns and technical processes, know-how, trade secrets, trade names and goodwill;

(e) Rights conferred by law, either under a contract or an administrative act, by a competent state authority including concessions for prospecting, exploration and exploitation of natural resources.

The term "investment" shall also apply to "returns" retained for the purpose of re-investment and to proceeds from "liquidation".

Any alteration of the form in which assets or rights are invested or reinvested shall not affect their character as investments, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, capital gains, dividends, interests, royalties or other forms of income related to the investments, managements fees and payments in kind.

3. The term "investor" shall mean:

(a) Natural persons having the nationality of either Contracting Party, in accordance with its applicable laws,

(b) Any legal person constituted or incorporated under the laws and regulations of that Contracting Party, such as institutions, development funds, agencies, foundations, authorities, and companies,

(c) Legal persons not established or constituted under the law of a Contracting Party:

(1) In which more than 50 per cent of the equity interest is beneficially owned by persons of that Contracting Party;

(2) In relation to which persons of that Contracting Party have the power to name a majority of its directors or otherwise legally direct its actions.

(d) The Government of that Contracting Party.

4. The term "territory" shall mean:

(a) With respect to the Republic of Slovenia the territory under its sovereignty, including air space and maritime areas, over which the Republic of Slovenia exercises its sovereignty or jurisdiction, in accordance with internal and international law;

(b) With respect to the State of Kuwait the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated under the laws of the State of Kuwait, as an area over which the State of Kuwait may exercise sovereign rights or jurisdiction.

5. The term "freely convertible currency" shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

6. The term "without delay" shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

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

1. Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.

2. Each Contracting Party shall, in respect of investments admitted in its territory, grant such investments all necessary permits, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as may be determined by its laws and regulations.

3. Contracting Parties may consult with each other in any manner they may deem appropriate to encourage and facilitate investment opportunities within their respective territories.

4. Each Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality or citizenship to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporary and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

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

1. Each Contracting Party shall accord at all times fair and equitable treatment to investments of investors of the other Contracting Party. Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, expansion or disposal of investments in its territory of investors of the other Contracting Party.

2. Each Contracting Party shall ensure to investors of the other Contracting Party, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to mandate persons of their choice, who qualify under applicable laws and regulations for the purpose of the assertion of claims and the enforcement of rights with respect to their investments.

3. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures, directives, guidelines and administrative rulings and judicial decisions of public application as well as international agreements which pertain to or may affect the operation of the provisions of this Agreement or investments in its territory of investors of the other Contracting Party.

4. Investments shall not be subjected in the host Contracting Party to performance requirements, which are inconsistent

with the obligations that the host Contracting Party has assumed with respect to the agreements concluded under the auspices of the World Trade Organization.

5. Investments by investors of either Contracting Party shall not be subjected in the host Contracting Party to sequestration, confiscation or any other similar measures except under due process of law and in conformity with applicable principles of international law and other relevant provisions of this Agreement.

## **Article 4. National and Most Favoured Nation Treatment**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to the investments and returns of its own investors or to investors of any third State.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to its own investors or to investors of any third State.

3. The provisions of this Article 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 by virtue of:

(a) Any existing or future free trade area, customs union, common market or other similar international agreements including other forms of regional economic co-operation and international agreements to facilitate frontier trade to which either of the Contracting Parties is or may become a Party,

(b) Any international including regional agreement relating wholly or mainly to taxation.

## **Article 5. Expropriation**

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public purpose related to the internal needs, on a non-discriminatory basis, under due process of law and against prompt, effective and adequate compensation.

2. Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date"). Such compensation shall be calculated in a freely convertible currency to be chosen by the investor, on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at a commercial rate established on a market basis, however, in no event less than the prevailing LIBOR — rate of interest, from the date of expropriation until the date of payment.

3. The investor whose investments are expropriated, shall have the right under the law of expropriating Contracting Party to prompt review by a judicial or other competent and independent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

4. Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, appreciation, current returns, discounted cash flow value, book value and goodwill. The amount of compensation finally determined shall be promptly paid to the investor.

5. For further certainty, expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise that is incorporated or established under the laws in force in its own territory in which an investor of the other Contracting Party has an investment, including through the ownership of shares, stocks, debentures or other rights or interests.

6. For the purposes of this Agreement, the term "expropriation" shall also include interventions or regulatory measures by a Contracting Party that have a de facto expropriatory effect, in that their effect results in depriving the investor in fact from his ownership, control or substantial benefits over his investment or which may result in loss or damage to the economic value of the investment, such as the freezing or blocking of the investment, levying of arbitrary or excessive taxes on the investment, compulsory sale of all or part of the investment, or other comparable measures.

## **Article 6. Compensation for Losses**

1. Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards measures it adopts in relation to such losses, including compensation, indemnification and restitution, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third state.

2. Without prejudice to paragraph 1, investor of one Contracting Party who in any of the events referred to in that paragraph suffers a loss in the territory of the other Contracting Party resulting from: paragraph 1, investor of one Contracting Party who in any of the events referred to in that paragraph suffers a loss in the territory of the other Contracting Party resulting from:

(a) Requisitioning of its investments or part thereof by its forces or authorities;

(b) Destruction of its investments or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

## **Article 7. Transfers**

1. Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of funds related to their investments and in particular, though not exclusively:

(a) Initial capital and additional contributions for the maintenance or development of the investments;

(b) Returns;

(c) Payments under a contract and funds in repayment of loan agreements and their interest related to an investment;

(d) Proceeds from the sale or liquidation of all or part of an investment;

(e) Any compensation or other payment referred to in Articles 5 and 6 of this Agreement;

(f) Earnings and other remuneration of nationals engaged from abroad in connection with the investment;

(g) Payments referred to in Article 8;

(h) Payments arising out of the settlement of disputes.

2. The transfers referred to in this Article shall be made without restriction or delay, except in the case of payments in kind, at the exchange rate applicable on the date of transfer and shall be made in a freely convertible currency. In case of such delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay.

3. Transfers shall be made at the spot market rate of exchange prevailing in the host Contracting Party on the date of transfer for the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent rate applied to inward investments or the exchange rate determined in accordance with the regulations of the International Monetary Fund or the exchange rate for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is the most favourable to the investor.

## **Article 8. Subrogation**

If a Contracting Party or its designated agency makes a payment to its investor under an indemnity or guarantee given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the first Contracting Party of all rights and claims of the investor. The subrogated right or claim shall not be greater than the original right or claim of the investor.

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

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through consultations or through diplomatic channels.

2. If the Contracting Parties fail to reach a settlement within six (6) months after the beginning of such negotiations or consultations, the dispute shall, upon the request of either Contracting Party, in written notice be submitted to an arbitral tribunal, in accordance with the provisions of this Article.
3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third state who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The Arbitral Tribunal shall rule according to majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall be responsible for the costs of its own member and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding costs. In all other respects, the Tribunal court shall define its own rules of procedure.

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

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment of the latter in the territory of the former shall, as far as possible, be settled amicably.
2. If such disputes cannot be settled within a period of six months from the date at which either party to the dispute requested amicable settlement by delivering a notice in writing to the other party, the dispute shall be submitted for resolution, at the election of the investor party to the dispute, through one of the following means:
  - (a) In accordance with any applicable, previously agreed dispute-settlement procedures;
  - (b) The competent court of jurisdiction of the Contracting Party party to the dispute.
  - (c) To international arbitration in accordance with the following paragraphs of this Article.
3. In the event that an investor elects to submit the dispute for resolution to international arbitration, the investor shall further provide its consent in writing for the dispute to be submitted to one of the following bodies:
  - (a)
    - (1) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (the "Washington Convention"), if both Contracting Parties are parties to the Washington Convention and the Washington Convention is applicable to the dispute;
    - (2) The Centre, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (the "Additional Facility Rules"), if the Contracting Party of the investor or the Contracting Party to the dispute, but not both, is a party to the Washington Convention;
  - (b) An arbitral tribunal established under the Arbitration Rules (the "Rules") of the United Nations Commission on International Trade Law (UNCITRAL), as those Rules may be modified by the parties to the dispute (the Appointing Authority referred to under Article 7 of the Rules shall be the Secretary General of the Centre);
  - (c) An arbitral tribunal constituted pursuant to the arbitration rules of any arbitral institution mutually agreed upon between the parties to the dispute.
4. . Notwithstanding the fact that the investor may have submitted a dispute to binding arbitration under paragraph 3, it may, prior to the institution of the arbitral proceeding or during the proceeding, seek before the judicial or administrative

tribunals of the Contracting Party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interests, provided it does not include request for payment of any damages.

5. Each Contracting Party hereby gives its unconditional consent to the submission of an investment dispute for settlement by binding arbitration in accordance with the choice of the investor under paragraph 3(a) and (b) or the mutual agreement of both parties to the dispute under paragraph 3(c).

6.

(a) The consent given in paragraph 5, together with the consent given under paragraph 3, shall satisfy the requirement for written agreement of the parties to a dispute for the purposes of each of, Chapter II of the Washington Convention, the Additional Facility Rules, Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article, as may be mutually agreed by the parties to the dispute, must be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(c) Neither Contracting Party shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting Party shall have failed to abide by and comply with the award rendered in such dispute. However, diplomatic protection for the purposes of this sub-paragraph shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

7. An arbitral tribunal established under this Article shall decide the issues in dispute in accordance with such rules of law as may be agreed by the parties to the dispute. In the absence of such agreement, it shall apply the law of the Contracting Party party to the dispute, including its rules on conflict of laws, and such recognized rules of international law as may be applicable, taking into consideration also the relevant provisions of this Agreement.

8. . For the purpose of Article 25(2)(b) of the Washington Convention, an investor, other than a natural person, which has the nationality of a Contracting Party party to the dispute on the date of the consent in writing referred to in paragraph (6) and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting Party, shall be treated as a "national of another Contracting Party" and for the purpose of Article 1(6) of the Additional Facility Rules shall be treated as a "national of another State".

9. The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out promptly any such award and shall make provision for the effective enforcement in its territory of such awards.

10. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment dispute between a Contracting Party and an investor of the other Contracting Party, a Contracting Party shall not assert, as a defense, its sovereign immunity. Any counterclaim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whomsoever, whether public or private, including such other Contracting Party and its subdivisions, agencies or instrumentalities.

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

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain rules, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

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

This Agreement shall apply to all investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations existing at or made after its entry into force.

## **Article 13. Relations between Contracting Parties**

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

## **Article 14. Consultations**

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held, on the proposal of either Contracting Party, at a place and a time to be agreed upon through diplomatic channels.

## **Article 15. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the thirtieth day after the latter written notification with which the Contracting Parties notify each other that their respective internal legal procedures have been fulfilled.
2. This Agreement shall remain in force initially for a period of twenty five (25) years and shall be considered as renewed on the same terms for a period of five years and so forth, unless twelve (12) months before its expiration of the initial or any subsequent period either Contracting Party notifies the other in writing of its intention to terminate the Agreement.
3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 14 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

Done at Ljubljana on this 26th day of April 2002 corresponding to 13 day of Safar 1423 H in two originals in the Slovene, Arabic and English languages, all texts being equally authentic. In case of any divergency, the English text shall prevail.

For the Government of the Republic of Slovenia

Tea Petrin, (s)

For the Government of the State of Kuwait

Nabeela Abdulla Al-Moulla, (s)