

# **Agreement between the Government of the State of Kuwait and the Government of the Lao People's Democratic Republic for the encouragement and reciprocal protection of investments**

The Government of the State of Kuwait and the Government of the Lao People's Democratic Republic (hereinafter referred to as the "Contracting States");

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

Recognizing that the encouragement and reciprocal protection of such investments will be an incentive to revitalize commercial initiative and to increase prosperity in both Contracting States;

Recognizing that encouraging the future development of national economies is essential and global sustainable development, in addition to pursuing future development of national and global sustainable development goals;

And in the future, that the encouragement of such investments requires cooperation efforts by the investors, the host government, national governments and host governments.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means all kinds of assets situated in the territory of a Contracting State which are owned or controlled, directly or indirectly, by an investor of the other Contracting State and includes assets or rights consisting of or taking the form of:

(a) the ownership of company stock, shares and other forms of equity interest, debentures, debentures and other forms of debt rights in a company, and other debts, loans and securities issued by any investor of a Contracting State;

(b) claims to money and claims to any other assets or performance under a contract of economic value;

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

(d) any right established by law, contract or under any licenses or permits granted illusory by law, including rights to prospect, explore, extract or exploit natural resources and rights to engage in other economic and commercial activities or to provide services;

(e) tangible and intangible, movable and immovable property and any related property rights such as rents, liens, debt liens and encumbrances.

The term "investment" also applies to "proceeds" held for the purpose of reinvestment, resulting from "liquidation" as these terms are defined herein.

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

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

(a) the government of that Contracting State;

(b) a natural person who has the nationality of that Contracting State in accordance with its applicable laws;

(c) any legal person legally established under the laws and regulations of that Contracting State, such as institutes, development funds, agencies, charitable foundations, and other legal, governmental, and corporate entities.

3. The term "company" means any legal entity, whether or not established for the purpose of making a financial profit, and whether it is owned or managed privately or governmentally, duly organized in accordance with the applicable law of a Contracting State, or is actually owned or managed by investors in a Contracting State, and includes corporations General, trust, partnership companies, one-man companies, branch, joint venture, unions or other similar organizations.

4. The term "returns" means amounts generated by an investment, regardless of the form in which they are paid, and includes, in particular, but not limited to, dividends, interest, capital gains, dividends, royalties, management fees, technical assistance or other payments or fees and payments in kind, of any kind.

5. The term "liquidation" means any disposition carried out for the purpose of total or partial termination of the investment.

6. The term "territory" means the territory of a Contracting State, including any area outside the territorial sea d which, in accordance with international law, has been determined, or may hereafter be determined, under the laws of a Contracting State, as an area in which a Contracting State may exercise the rights of sovereignty or jurisdiction.

7. The term "freely convertible currency" means any currency which the International Monetary Fund has designated from one period to another as a currency that will operate freely in accordance with the provisions of the IMF Agreement and any amendments thereto.

8. "Without delay" means such a period of time normally required to complete the necessary formalities to transfer payments. The aforementioned period starts from the day on which the transfer request is submitted, provided that it does not, in any case, exceed one month.

## **Article 2. Investment Promotion**

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

2. Investments made by investors of a Contracting State in the territory of the other Contracting State shall be accorded just and equitable treatment and enjoy full protection and security, in conformity with the recognized principles of international law and the provisions of this Agreement. The principle of fair and equitable treatment is in accordance with recognized international law for the minimum standard of treatment. Neither Contracting State shall in any way take arbitrary or discriminatory measures to prejudice the management, maintenance, use, enjoyment, or disposal of investments in the territory of investors of the other Contracting State. Each Contracting State shall observe any obligation or undertaking to which it is a party in relation to investments by investors of the other Contracting State.

3. The investments of the investors of either Contracting State, upon incorporation, shall not be subject to additional performance requirements that may hinder or restrict their use, management, disposal, operation, expansion, sale, or any other disposal.

4. Each Contracting State shall observe any obligation it has assumed in respect of investments in its territory by investors of the other Contracting State, against disputes which may arise out of those obligations and whose dispute has only been resolved under the terms of the contracts specifying the obligations.

## **Article 3. Investment Treatment**

1. With regard to the use, management, disposal, operation, expansion, sale, or other forms of disposal of investments made in its territory by investors of the other Contracting State, each Contracting State shall accord treatment no less favorable than that which it accords in similar cases to investments of its own investors or investors of any third State, whichever is more favorable to those investments.

2 - Notwithstanding this, the provisions of this Article shall not be construed as obligating a Contracting State to offer to investors of the other Contracting State the advantage of any treatment, preference or privilege that results from:

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

(b) any international or regional agreement, bilateral agreement, or other similar arrangements, and any domestic legislation relating wholly or principally to taxation.

## **Article 4. Compensation for Losses**

1. Except in the application of Article 6, investors of one Contracting State whose investments in the territory of the other Contracting State suffer damage or loss due to war, any other armed conflict, a state of national emergency, revolution, disturbance, acts of war or other similar events shall be granted by the other Contracting State, as regards restitution, compensation or any other settlement, is not less favorable than that which the latter Contracting State accords to its own investors or to the investors of any third State, whichever is more favourable.

2. Without prejudice to paragraph 1, investors of one of the Contracting States who suffer a loss as a result of any of the events referred to in that paragraph in the territory of the other Contracting State resulting from:

(a) the temporary seizure of their property or part of it by its forces or authorities;

(b) the destruction of their property, or part of it, by its forces or authorities, which was not caused by hostilities or was not required by the necessity of the situation;

shall be granted prompt, adequate and effective compensation for the damage or loss suffered by them.

## **Article 5. Expropriation**

1. (a) investments made by investors of either Contracting State in the territory of the other Contracting State shall not be nationalized, expropriated, dispossessed or subject, directly or indirectly, to measures of an effect equivalent to nationalization, expropriation or dispossession (together referred to as (hereinafter due to expropriation) by the other Contracting State except for a general purpose in the national interest of that Contracting State and in return for prompt, adequate and effective compensation, provided that all such measures have been taken on a non-discriminatory basis and in accordance with generally applicable legal procedures.

(b) the amount of such compensation shall be the actual value of the expropriated investment, determined and computed in accordance with internationally recognized valuation principles on the basis of the fair market value of the expropriated investment at the time immediately before the expropriation took place or the imminent expropriation became publicly known; 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 on the valuation date and includes interest at a commercial rate determined on a market basis, provided that it is not in any case less than the prevailing interbank rate of London interbank (LIBOR) or its equivalent, from the date of expropriation until the date of payment.

2. For greater clarity, expropriation includes cases in which a Contracting State expropriates the assets of a company or enterprise established or established under the laws in force in its territory in which an investor of the other Contracting State has an investment, in addition to through the ownership of shares, shares, debentures or rights or other interests.

3. For the purposes of this Agreement, the term "expropriation" also includes any two interventions or regulatory actions by a Contracting State that have the same effect as the expropriation and that result in the investor being de facto deprived of ownership, control, or substantial interests in his investment, or the economic value of the investment, such as a freeze or seizure that it may result in loss or damage to the investment, the imposition of an arbitrary or excessive tax on the investment, the compulsory sale of all or part of the investment, or other similar actions.

## **Article 6. Investments Related Transfers**

1. Each of the Contracting States guarantees to investors of the other Contracting State the free transfer of investments and the proceeds related thereto within and outside its territory.

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

## **Article 7. Subrogation**

1. If a Contracting State or its relevant agency (the "Guarantor Party") makes a payment under an indemnity or guarantee it has pledged in respect of an investment in the territory of the other Contracting State (the "Hosting State"), then the Host State shall recognize:

- (a) to assign to the guarantor by law or legal agreement all rights and claims arising from such investment;
- (b) The right of the guarantor party to exercise such rights, implement such claims, and undertake all the obligations related to the investment, based on the principle of substituting for the creditor.

In all circumstances, the guarantor has the right to:

- (a) the same treatment of rights and claims acquired and obligations assumed under the assignment referred to in paragraph 1 above;
- (b) any payments received pursuant to such rights and claims, as the original investor was entitled to receive under this Agreement in connection with the relevant investment.

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

1. Disputes arising between a Contracting State and an investor of the other Contracting State in relation to an investment belonging to the latter in the territory of the first-mentioned State shall, as far as possible, be settled amicably.
2. If it is not possible to settle those disputes within six months from the date of either of the two parties to the dispute requesting an amicable settlement by delivering a written notification to the other party, then the dispute shall be presented for resolution, by choosing the investor as a party to the dispute by one of the following means:
  - (a) in accordance with any appropriate dispute settlement procedures agreed upon in advance;
  - (b) international arbitration in accordance with the following paragraphs of this Article.
3. In the event that the investor chooses to submit the dispute to international arbitration, the investor must also submit his written consent to submit the dispute for settlement through one of the following bodies:
  - (a) (i) The International Center for Settlement of Investment Disputes (the "Center"), established pursuant to the Agreement on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on March 18, 1965 (the "Washington Convention"), in the event the Contracting States being parties to the Washington Convention and the applicability of the Washington Convention to the dispute;
  - (ii) the Centre, under the Rules Governing Additional Facilities for the Administration of Proceedings by the Secretary of the Center ("Additional Facilities Rules"), if the Contracting State of the investor or the Contracting State party to the dispute, but not both, is a party to the Washington Convention;
  - (b) an arbitral tribunal establishing under the Arbitration Rules ("the Rules") of the United Nations Commission on International Trade Law (UNCITRAL), as these Rules are modified by the parties to the dispute (the appointing body referred to in Article 7 of the Rules is the Secretary-General of the Centre);
  - (c) an arbitral tribunal It is established based on the arbitration rules of any arbitral tribunal to be mutually agreed upon between the parties to the dispute.
4. Notwithstanding that the investor has submitted the dispute to binding arbitration under paragraph 3, 4 it may, before or during the commencement of the arbitral proceedings, petition the judicial or administrative courts of the Contracting State which is a party to the dispute for an interim injunction to maintain his rights and interests, provided that this does not include a request for compensation for any damages.
5. A Contracting State shall not exercise its immunity in any judicial, arbitral or otherwise proceeding or in the enforcement of any decision or judgment relating to an investment dispute between a Contracting State and an investor of the other Contracting State. Nor may any counter-claim or right of set-off be established on the fact that the concerned investor has received or will receive, based on an insurance contract, compensation for damage or any other compensation for all or part of the damages claimed by any third party whatsoever, whether general or private, including that other Contracting State and its subdivisions, agencies or organs.

## **Article 9. Disputes between 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 from the date on which such consultations or other diplomatic channels were requested by either Contracting State, and unless the Contracting States agree otherwise in writing, either Contracting

State may, by written notification to the other Contracting State, submit the dispute. An arbitral tribunal shall convene for this purpose in accordance with the following provisions of this Article.

3. The arbitration court shall be constituted as follows: Each Contracting State appoints one member and these two members agree on a national of a third country to be their president, who shall be appointed by the two Contracting States. These two members shall be appointed within two months, and the president within four months from the date on which either of the two Contracting States notifies the other Contracting State of its intention to submit the dispute to an arbitration court.

4. If the periods specified in paragraph 3 above are not observed, 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 national of one of the two Contracting States, or if he finds an impediment preventing him from performing the said task, 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 national of one of the Contracting States or finds an impediment to perform the said task, the member of the International Court of Justice next in seniority and who is not a national of one of the Contracting States shall be required to make the necessary appointments.

5. The arbitral tribunal takes its decision by a majority vote. This decision shall be taken in accordance with the provisions of this Agreement and the recognized rules of international law, as applicable, and shall be final and binding on both contracting states. Each Contracting State shall bear the fees of the arbitration member appointed by that Contracting State as well as the fees of its representative in the arbitral proceedings.

6. As for the fees of the President, as well as any other costs, they shall be borne equally by both Contracting States. The arbitration court may, at its discretion, decide to assign one of the two contracting states a proportion greater than or all of the aforementioned costs. The arbitral tribunal sets its own procedure in respect of all other matters.

## **Article 10. Diplomatic Relations**

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

## **Article 11. Most Favourable Provisions**

if the legislation of either Contracting State or obligations under international law now existing or which may subsequently be agreed between the two Contracting States in addition to this Agreement, contain provisions, whether general or specific, granting to investments of investors of the other Contracting State treatment more favourable than that set forth in this Agreement, these provisions shall prevail over this Agreement to the extent that it provides a more favorable treatment.

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

This Agreement shall apply to all investments, whether existing on the date of entry into force of this Agreement or made after that date by investors of either Contracting State in the territory of the other Contracting State.

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

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

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

1. This Agreement shall remain in force for a period of thirty (30) years. It shall thereafter remain in force for a period or similar periods, unless either Contracting State notifies the other Contracting State in writing, one year before the expiry of the first term or any subsequent period, of its intention to terminate the Agreement.

2. With regard to investments made prior to the effective date of the notice of termination of this agreement, the provisions of this agreement shall remain in effect for twenty (20) years from the date of termination of this agreement.

In witness whereof, the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done in Vientiane on this fourth day of the month of Sha'ban 1429 AH corresponding to the fifth day of August 2008, in two original copies in Arabic, Laotian and English, each of the two copies being equally authentic. In case of disagreement, the English text shall prevail.

For the Government of the Lao People's Democratic Republic

Bassem Ru Solifong Dallafong

Minister of Planning and Investment

For the Government of the State of Kuwait

Mustafa Jassim Al-Shamali

Minister of Finance