

AGREEMENT between the Government of the United Arab Emirates and the Government of the Republic of Azerbaijan on the Promotion and Reciprocal Protection of Investments

The Government of the United Arab Emirates and the Government of the Republic of Azerbaijan (hereinafter collectively referred to as the "Contracting Parties" and each referred to as a "Contracting Party"),

Desiring to intensify economic co-operation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of investments on the basis of this Agreement will stimulate business initiatives,

Have agreed as follows:

Article 1. Definition

For the purpose of this Agreement:

1. The term "Investment" means every kind of asset established or invested by juridical and natural persons and Government of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party including, in particular, though not exclusively: (a) Movable and immovable property or any property rights such as mortgages, liens, pledges, leases, usufruct and similar rights;

(b) Shares, stocks, debentures or other form of participation in a company;

(c) Titles or claims to money or rights to performance having an economic value which are directly connected with the investment;

(d) Intellectual property rights, such as patents, copyrights, technical processes, trade marks, industrial designs, business names, know-how and goodwill;

Notwithstanding the provisions of this Agreement, concessions conferred by law, by administrative act or under a contract by a competent authority, local government, including concessions to search for, develop, extract or exploit natural resources shall be subjected only to the laws and regulations of the Contracting Party in whose territory the investment is made including the terms and conditions of the contract.

"Notwithstanding the provisions of the preceding sentence, the provisions of this Agreement shall not cover the hydrocarbons and natural resources.

Any alteration of the form in which assets are invested or reinvested does not affect their character as investments, provided that such alteration is done in accordance with the domestic law of the Contracting Party in whose territory the investment is made.

2. The term "Returns" means the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, capital gains or any payments in kind related to an investment.

Returns shall enjoy the same treatment as the original investment.

3. The term "Investor" means: (a) The Government of the Contracting Party, its political subdivisions or local governments and local authorities;

(b) Any natural person who is a national of the either Contracting Party in accordance with its laws; or

(c) Any legal person such as company, corporation, firm, business association, institution or other entity constituted in accordance with the laws and regulations of the Contracting Party and having its seat within the territory of that Contracting Party.

4. The term "Territory" means in respect to: (a) The United Arab Emirates, the area in which the territory is under its sovereignty as well as the territorial sea, air space and submarine areas over which the United Arab Emirates exercises, in conformity with international law and the law of the United Arab Emirates sovereign rights, including the mainland and islands under its jurisdiction in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources.

(b) The Republic of Azerbaijan, the territory of the Republic of Azerbaijan, including the Caspian Sea (Lake) sector belonging to the Republic of Azerbaijan, the air space above the Republic of Azerbaijan, within which the sovereign rights and jurisdiction of the Republic of Azerbaijan is implemented in respect to subsoil, sea bed and natural resources and any other area which has been or may hereinafter be determined in accordance with international law and legislation of the Republic of Azerbaijan.

5. The term "usable currency" means the United States Dollar, Pound Sterling, Euro, Japanese Yen or other currency that is widely used to make payments for International transactions and for which there are ready buyers in the principal exchange markets.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investments by investors of the other Contracting Party and in exercise of powers conferred by its laws and regulations shall admit such investments.

2. Each Contracting Party shall at all times accord in its territory to investments of investors of the other Contracting Party fair and equitable treatment and full protection and security in consistence with the international law.

3. Each Contracting Party shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, obtaining or disposal of investments in its territory of investors of the other Contracting Party.

4. Each Contracting Party shall not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products internally and abroad or similar orders having unreasonable or discriminatory effects.

5. Each Contracting Party shall, as far as possible, within the framework of its laws and regulations, give a sympathetic consideration to applications for necessary permits in connection with the investments in its territory, including authorizations for engaging executives, managers, specialists and technical personnel of the investor's choice.

Article 3. Transparency

Each Contracting Party shall, as far as possible, ensure that, its laws, regulations, procedures, administrative rulings and judicial decisions of general application, as well as international agreements after their entry into force, to the extent that may affect the investments of investors of the other Contracting Party in its territory, are made available.

Article 4. Treatment of Investments

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 not less favourable than the host Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the most favourable to the investor.

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 not less favourable than the latter Contracting Party accords its own investors or investors of any third Party, whichever is the most favourable to the investor.

3. The provisions of paragraphs 1 and 2 shall not apply to any procedural or judicial matter.

Article 5. Exceptions

The provisions of this Agreement 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 regional labour market agreement to which one of the Contracting Parties is or may become a party,
- (b) Any international agreement or arrangement relating wholly or mainly to taxation, or any domestic legislation relating to taxation, or
- (c) Any multilateral convention or treaty relating to investments, of which one of the Contracting Parties is or may become a party.

Article 6. Expropriation

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized, blocked or frozen or subjected to any other measures having the effect, either directly or indirectly, equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") except for a public interest, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
2. Such compensation shall be computed on the basis of the fair market value of the investment immediately prior to the point of time when the decision for nationalization or expropriation was announced or become publicly known and shall be determined in accordance with recognized principles of valuation such as market value where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account the capital invested depreciation, capital already repatriated, replacement value, goodwill and other relevant factors.
3. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency at the moment referred to in paragraph 2 of this Article. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.
4. Where a Contracting State nationalizes or expropriates the investment of a juridical person which is established or licensed under the law in force in its territory and in which the other Contracting Party or any of its investors owns shares, stocks, debentures or other rights of interest, it shall ensure that prompt, adequate and effective compensation is received and allowed to be repatriated. Such compensation shall be determined and paid in accordance with the provisions of paragraph (2) of this Article.
5. The provisions of paragraph (1) of this Article shall also apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.
6. The investor, whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of the host Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 7. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is the most favourable to the investor. Resulting payments shall be effectively available, freely convertible and immediately transferable.
2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:
 - (a) Requisitioning of its investment or a part thereof by the latter's armed forces or authorities, or
 - (b) Destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of situation,

Shall be accorded prompt, adequate and effective restitution or compensation.

Article 8. Free Transfer

1. Each Contracting Party shall within the framework of its legislation ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of payments in connection with an investment. Such payments shall include in particular, though not exclusively:

- (a) The principal and additional amounts to maintain, develop or increase the investment;
- (b) Returns;
- (c) Proceeds obtained from the total or partial sale or disposal of an investment;
- (d) The amounts required for payment of expenses which arise from the operation of the investment, such as payment of royalties and license fees or other similar expenses;
- (e) Compensation payable pursuant to Articles 6 and 7;
- (f) Payments in respect of management fees;
- (g) Payments arising out of the settlement of a dispute as agreed by the two Contracting Parties;
- (h) Payments in connection with contracts, including loan agreements;
- (i) Net earnings and other remuneration of personnel engaged from abroad working in connection with an investment.

2. Transfers referred to in paragraph 1 of this Article shall be made promptly without any restriction or delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer in the currency to be transferred. If a market rate is unavailable the applicable rate of exchange shall be the most recent rate of exchange for conversion of currencies into Special Drawing Rights as arranged by International Monetary Fund (IMF).

Article 9. Subrogation

Where a Contracting Party or its designated agency (guarantor) makes a payment under a guarantee it has accorded in respect of non-commercial risks of an investment in the territory of the other Contracting Party, the host Contracting Party shall recognize the assignment to the guarantor of all the rights and claims resulting from such an investment, and shall recognize that the guarantor is entitled to exercise such rights and enforce such claims to the same extent as the original investor.

Notwithstanding the provisions of the preceding paragraph subrogation can take place only after the approval of the host Contracting Party.

Article 10. Consultations

The Contracting Parties agree to consult promptly, on the request of either, to resolve any dispute in connection with this Agreement, or to review any matter relating to the implementation or application of this Agreement or to study any other issue that may arise from this Agreement including mutual settlement of investment dispute. Such consultations shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

Article 11. Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment in the territory of the latter Contracting Party shall be settled amicably.
2. If the dispute cannot be settled amicably within six months from the date of request for amicable settlement, the investor shall follow the following means:
 - (a) The competent courts of the Contracting Party in whose territory the investment is made; if after fifteen months from the date of submitting the case to the local court the dispute is not solved then:
 - (b) An ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The Contracting Parties give their irrevocable consent in respect of the fact, that all disputes relating to investments are submitted to the local court or other local tribunal procedure. 3. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on

account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.

4. Such award shall be final and binding for the parties to the dispute and shall be executed according to the national legislation.

5. At any stage during the hearing of the investment dispute both Contracting Parties shall have the right to withdraw the case prior to the court or arbitration final decision for amicable settlement.

Article 12. Disputes between the Contracting Parties

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

2. If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to a Joint Committee that shall be formed by concerned authorities and businessmen of both Contracting Parties.

Article 13. 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 a regulation, 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 provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

Article 14. Application of the Agreement

This Agreement shall apply to investments existing at the time of entry into force of this Agreement as well as to those established or obtained thereafter, but shall not apply to disputes concerning an investment, which arose before its entry into force.

Article 15. Denial of Benefits

"Subject to consultations a Contracting Party may deny the benefit of this Agreement to the investors and the investments of the other Contracting Party if such State or investors have no substantial business activities in the territory of the other Contracting Party.

Article 16. Special Provision

"Nothing in this Agreement shall prevent a Contracting Party from applying measures according to its laws and regulations in order to protect public order, public interest, environment and security."

Article 17. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other when the internal procedures necessary for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of ten years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in twelve months.

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 till the completion of executing these investments.

In witness wherefore, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done at Abu Dhabi on this 20 day of November 2006 in two originals each in the Arabic, Azerbaijani and English languages,

all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the United Arab Emirates For the Government of the Republic of Azerbaijan