

# **Agreement between the Government of the State of Kuwait and the Government of the United Kingdom of Great Britain and Northern Ireland for the Promotion and Reciprocal Protection of Investments**

The Government of the State of Kuwait and the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the "Contracting Parties");

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

Recognizing that the encouragement and mutual protection under an international agreement of such investments will be an incentive to revitalize individual business initiative and increase prosperity in both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(i) "Investment" means all types of assets or rights owned or controlled directly or indirectly, and in particular, but not limited to, the following:

(a) movable and immovable property and any other property rights such as leases, mortgages, liens, or covenants;

(b) company or shares, shares and other forms of equity interest, debentures, debentures and other forms of corporate debt rights, and other debts, loans and securities issued by any investor of a Contracting Party;

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

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

(e) any right established by law, contract, or under any licenses or permits granted by law, including rights to prospect, exploration, extraction or exploitation of natural resources and rights to engage in other economic and commercial activities or to provide services.

Any change in the form in which the assets or rights are invested will not affect its nature as an investment, and the term "investment" includes all investments whether made before or after the date of entry into force of this Agreement.

(2) Investor means:

(a) In relation to the State of Kuwait: a natural person who holds the nationality of the State of Kuwait or one of its citizens in accordance with the applicable laws; Government of the State of Kuwait; and any legal person established and established under the laws and regulations of the Count State, such as foundations, development funds, agencies, endowment institutions, and other bodies and companies;

(b) in relation to the United Kingdom: natural persons whose status is derived from being a subject of the United Kingdom under the law of the United Kingdom; Companies, bodies, and associations established or established under the law in force in any part of the United Kingdom or in any territory to which this Agreement has been extended to include in accordance with the provisions of Article 14 of this Agreement.

(3) "Proceeds" means amounts to be derived from an investment, regardless of the form in which it is paid, and in particular, but is not limited to, including dividends, interest, capital gains, dividends, royalties, fees, management fees, technical support, and other payments and payments in kind.

(4) Territory means:

(a) With regard to the State of Kuwait: The territory of the State of Kuwait, including any area outside the territorial sea, which, in accordance with international law, has been specified or may then, after defining it in accordance with the law of the State of Kuwait as a region in which the State of Kuwait may exercise the rights of sovereignty or jurisdiction.

(b) in the case of the United Kingdom: Great Britain and Northern Ireland, including the territorial waters and maritime space outside the territorial sea of the United Kingdom which was, or may in the future be determined by the national law of the United Kingdom and in accordance with international law as the area in which the United Kingdom may exercise the rights With respect to the seabed, subsoil, natural resources and any territory to which this Agreement is to be extended in accordance with the provisions of Article 14.

(5) "Freely convertible currency" means any currency designated by the International Monetary Fund from period to period as a freely used currency in accordance with the provisions of the IMF Agreement and any amendments thereto.

(6) "Without delay" means such period as would normally be required after completion of the necessary formalities and submission of an application for the transfer of payments, provided that such period shall not, in any case, exceed one month.

## **Article 2. Investment Promotion**

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

(2) Investments made by investors of one Contracting Party in the territory of the Contracting Party shall be accorded complete protection and security in the territory of the other at all times, fair and equitable treatment and enjoyment by the other Contracting Party, in a manner consistent with the recognized principles of international law and the provisions of this Agreement. Neither Contracting Party shall prejudice, in an arbitrary, unacceptable or discriminatory manner, the management, maintenance, use, performance, operations, expansion, enjoyment, or disposal of investments in its territory to investors of the other Contracting Party. Each Contracting Party shall take into account any intention it may have in relation to investments by investors of the other Contracting Party.

(3) The Contracting Parties shall announce or enable investors to be informed of all laws, regulations, judicial decisions, administrative decisions, directives, procedures and guidelines that relate to or directly affect investments in their territories to investors of the other Contracting Party.

(4) The Contracting Parties shall provide effective means of asserting claims and enforcing rights in respect of investments. Each Contracting Party shall guarantee to the investors of the other Contracting Party the right to resort to courts of justice, courts and administrative agencies, and all other bodies exercising judicial power, and the right to appoint persons of their choice qualified in accordance with the laws and regulations applicable for the purpose of asserting claims and enforcing rights in respect of their investments.

## **Article 3. Treatment of Investments**

(1) Neither Contracting Party shall, in its territory, subject the investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to the investments or returns of its own investors or investors of any third country.

(2) Neither Contracting Party shall subject investors of the other Contracting Party in its territory to a treatment which is less favorable than which it grants to its investors or to investors of any third country in connection with the management, maintenance, use, enjoyment or disposal of investments.

(3) For the avoidance of any doubt it is assured that the transaction set forth in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 12 of this Agreement.

## **Article 4. Exceptions**

The provisions of this Agreement, which relate to the granting of treatment less favorable than that which it accords to investors of either Contracting Party or of any third country, shall not be construed as precluding the adoption or implementation of measures necessary by a Contracting Party to protect national security, public security or public order. Nor shall these provisions be construed as obligating a Contracting Party to grant to the investors of the other Party the

advantage of any treatment, preference, or privilege resulting from:-

(a) any customs, economic or monetary union, common market, free trade area, and similar international agreement existing or to be established in the future, to which one of the Contracting Parties is or may be a party, including the advantage of any transaction, preference or concession obligations arising out of any international agreement or arrangement to exchange concessions for that customs, economic or monetary union, common market or free trade area;

(b) any international agreement or arrangement relating wholly or principally to taxation or any domestic legislation wholly or principally relating to taxes;

(c) any requirements arising from the United Kingdom's membership in the European Union including actions to prevent, restrict or restrict the free flow of capital to or from any third country.

## **Article 5. Compensation for Losses**

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses resulting from war or another armed conflict, revolution, national emergency, insurrection, armed insurrection, or riots in the territory of the latter Contracting Party shall be granted treatment by the latter, With regard to the restoration of conditions, restitution of losses, compensation or any other settlement, no less care than that which the last Contracting Party accords to its investors or to the investors of any third country. The resulting payments are freely transferable.

(2) Without prejudice to paragraph (1) of this Article, the investors of one of the contracting parties who suffer a loss as a result of any of the cases referred to in that paragraph in the territory of the other Contracting Party and resulting from:

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

(b) or the destruction of their property, or part thereof, by his forces or authorities, without the cause of hostilities or without being required by the necessity of the situation,

shall be restored to their original status, or they shall be given compensation which shall, in any case, be immediate, adequate, and effective. The resulting payments are freely transferable.

## **Article 6. Expropriation**

(1) Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subject, directly or indirectly, to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation) except for a general purpose related to the internal needs of that Contracting Party on a non-discriminatory basis in accordance with applicable legal procedures and in return for prompt, adequate and effective compensation The value of this compensation shall be the real value of the expropriated investment immediately before the expropriation or before the imminent expropriation became publicly known, whichever is earlier The compensation shall be determined and calculated in accordance with internationally recognized valuation principles and will include interest at a normal commercial rate until the date of payment, shall be paid without delay, physically received and freely transferable. by a judicial or other independent authority of that party to consider its case to evaluate its investment in light of the principles set forth in this paragraph.

(2) For greater emphasis, when a Contracting Party expropriates the assets of a company which has been created or incorporated under the law in force in any part of its territory, in which investors of the other Contracting Party hold shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent permitted to ensure prompt, adequate and effective compensation in respect of the investments of investors of the other Contracting Party who own such shares.

## **Article 7. Transfers of Investment Returns**

(1) Each Contracting Party guarantees, in relation to the investments of investors of the other Party, the unrestricted transfer of their investments and returns, including, without limitation, the transfer of:

(a) the original capital and any additional capital for the maintenance, management and development of the investment;

(b) proceeds;

(c) Payments under contract, including repayment of principal, and accrued interest payments made pursuant to a loan agreement;

- (d) royalties and fees for the rights referred to in Article 1, paragraph (1) (d) of this Agreement;
- (e) funds earned and other remunerations for employees contracted from abroad who are related to the investment;
- (f) compensation payments in accordance with Articles 5 and 6 of this Agreement;
- (g) the payments referred to in Article 10 of this Agreement;
- (h) Payments arising from the settlement of disputes.

(2) Transfers shall be made without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed upon between the investor and the relevant Contracting Party.

Transfers are made at the exchange rate applicable on the date of transfer in accordance with the exchange systems in force unless the investor agrees otherwise.

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

(1) Disputes arising between a Contracting Party and an investor of the other Contracting Party in relation to an investment belonging to the latter in the territory of the first-mentioned party shall be settled according to the desire of the investor, as far as possible, by amicable means.

(2) If it is not possible to settle such disputes within a period of six months from the date of any of the parties to the dispute requesting an amicable settlement by giving written notice to the other party, the dispute shall be subject to resolution, at the option of the investor, the party to the dispute, by one of the following means:

- (a) in accordance with any applicable 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 for settlement to international arbitration, the investor shall also provide his written consent to submit the dispute for settlement by one of the following:

- (a) (i) The International Center for the Settlement of Investment Disputes (the Centre), established pursuant to the Agreement on the Settlement of Investment Disputes between States and Nationals of Other Countries opened for signature in Washington on March 18, 1965 (the Washington Convention) if the Contracting Parties are parties to the Washington Convention the applicability of the Washington Convention to the dispute;
- (ii) the Centre, under the rules governing the Additional Facilities for the Administration of Proceedings by the Secretariat of the Center (the "Additional Facilities 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 these Rules may be 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 arbitration court to be constituted based on the arbitration rules of any arbitral tribunal to be mutually agreed upon between the parties to the dispute.

(4) Notwithstanding any choice that the investor has made or may make pursuant to paragraph (2), the investor may, before or during the commencement of the arbitration proceedings, petition the judicial or administrative courts of the Contracting Party which is a party to the dispute for an interim injunction To preserve his rights and interests, provided that this does not include a request for compensation for any damages.

(5) Each Contracting Party gives its unconditional consent to submit the investment dispute for settlement by binding arbitration at the option of the investor under paragraph 3(a) and (b) or the mutual agreement of the parties to the dispute under paragraph 3(c).

(6) A Contracting Party shall not, as a defense, defend its diplomatic immunity in any judicial, arbitral, or otherwise proceeding or in the enforcement of any decision or judgment in connection with an investment dispute between a Contracting Party and an investor of the other Contracting Party.

(7) No counterclaim or right of set-off may, during any proceedings under this Article, be based 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 alleged damages. By any third party whatsoever, whether public or private, including the

other contracting party and its sub-contracting parties, agencies or agencies.

## **Article 9. Disputes between Contracting Parties**

(1) The Contracting Parties shall endeavor to settle any dispute regarding the interpretation or application of this Agreement, if possible, through diplomatic channels.

(2) If it is not possible to settle the dispute between the two contracting parties in this way, the dispute shall be referred to an arbitral tribunal at the request of either contracting party.

(3) Such a court shall be constituted for each case separately in the following manner: Each of the Contracting Parties shall, within two months of the receipt of the request for arbitration, appoint one member of the tribunal, and these two members shall designate a national of a third country, after being approved by the Contracting States, as President of the tribunal. The appointment of the chairman shall be within two months from the date of the appointment of the other two members.

(4) If the necessary appointments have not been made within the periods specified in paragraph (3) of this Article, either Contracting Party 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 Contracting Parties or is unable to perform the said function, the Vice-President of the International Court of Justice shall be required to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of one of the Contracting Parties, or he is also unable to perform the aforementioned task, the member of the International Court of Justice next in office who is not a national of one of the Contracting Parties shall be asked to make the necessary appointments.

(5) The arbitral tribunal shall take its decision by a majority of votes. This decision shall be taken in accordance with this Agreement and in accordance with the applicable rules of international law, and shall be final and binding on both Contracting Parties. Each of the Contracting Parties shall bear the fees of the member of the arbitration court appointed by him, as well as the fees of his representatives in the arbitration procedures. As for the fees of the President, as well as any other costs related to the arbitration procedures, both Contracting Parties shall bear equally between them. However, the arbitral tribunal may, based on its evaluation, decide that one of the Contracting Parties bears a greater or all of the costs, and this judgment shall be binding on both Contracting Parties. The arbitral tribunal sets its own procedures.

## **Article 10. Subrogation**

(1) If a Contracting Party or its designated agency (the First Contracting Party) makes payments pursuant to an indemnity it has undertaken in connection with an investment in the territory of the other Contracting Party (the Second Contracting Party), the second Contracting Party shall acknowledge that:

(a) waive to the first Contracting Party by law or legal process all rights and claims of the indemnified party;

(b) The right of the first Contracting Party to exercise such rights and implement such claims based on the principle of substitution of the creditor, to the extent permitted by the indemnified party.

(2) The first Contracting Party is entitled, in all circumstances, to the same treatment in respect of:

(a) the rights and claims acquired pursuant to the assignment; and

(b) any payments received pursuant to those rights and claims,

which the Indemnified Party is entitled to receive under this Agreement in respect of the relevant investment and the proceeds connected therewith.

(3) Any payments received by the first Contracting Party in a non-convertible currency in accordance with the rights and claims acquired will be freely available to the first contracting party for the purpose of covering any expenses incurred in the territory of the second Contracting Party.

## **Article 11. More Favourable Provisions**

If the provisions of the law of either Contracting Party or obligations under international law existing now or subsequently arising between the Contracting Parties in addition to this Agreement contain provisions, whether general or specific, to accord investments of investors of the other Contracting Party a treatment more favorable than that provided for in this

Agreement, these provisions shall prevail over this Agreement to the extent that it provides a more favorable treatment.

## **Article 12. Scope of Application**

This Agreement shall apply to all investments, whether existing before or after the date of entry into force of this Agreement, but shall not apply to any investment dispute that arose prior to the entry into force of this Agreement or any investment claim settled prior to the entry into force of this Agreement.

## **Article 13. Diplomatic Relations**

The provisions of this Agreement shall not apply regardless of the existence of diplomatic or consular relations of the Contracting Parties.

## **Article 14. Extension**

At the time this Agreement enters into force, or at any time thereafter, the provisions of this Agreement may be extended to those territories for which the Government of the United Kingdom is responsible for its international relations as may be agreed between the Contracting Parties through the exchange of notifications.

## **Article 15. Entry Into Force**

Each Contracting Party shall notify the other in writing of its fulfillment of the constitutional requirements in its territory necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth (30) day after the date of receipt of the last two notifications.

## **Article 16. Duration**

This Agreement shall be valid for a period of ten (10) years, and shall remain in effect thereafter until the expiration of twelve months from the date of the notification by one of the Contracting Parties to the other in writing of the termination of this Agreement. With regard to investments made during the validity period of this Agreement, the provisions of this Agreement shall remain in effect for such investments for a period of twenty (20) years from the date of its termination without prejudice to the application of general rules of international law.

In witness whereof, the plenipotentiaries of both the undersigned governments have signed this Agreement.

Done in London in two original copies on this nineteenth day of the month of Shawwal A1430- corresponding to the eighth of October 2009, in the Arabic and English languages, both texts being equally authentic.

For the Government of the United Kingdom of Great Britain and Northern Ireland

Mervyn Lord Davis of Obersk

Minister of Trade, Investment and Small Businesses

For the Government of the State of Kuwait

Mustafa Jassim Al-Shamali Minister of Finance