

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the United Arab Emirates and the Government of the Kingdom of Sweden (hereinafter referred to as the Contracting States);

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting State in the territory of the other Contracting State;

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting States and stimulate investment initiatives;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "Investment" means any kind of asset, invested by an investor of one Contracting State in the territory of the other Contracting State, provided that the investment has been made in accordance with the laws and regulations of the other Contracting State, and shall include in particular, though not exclusively: movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights including property under a leasing agreement; shares, stocks and debentures of companies or other rights or interests in such companies, loans related to investments and bonds issued by a Contracting State or any of its natural or legal persons and returns retained for the purpose of re-investment; liquid assets, deposits and claims to money or to any performance under contract having economic value associated with an investment; intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights; business concessions conferred by law, administrative decisions or rights under contract, including concessions to search for, develop, extract or exploit natural resources.(a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights including property under a leasing agreement;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans related to investments and bonds issued by a Contracting State or any of its natural or legal persons and returns retained for the purpose of re-investment;

(c) Liquid assets, deposits and claims to money or to any performance under contract having economic value associated with an investment;

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

(e) Business concessions conferred by law, administrative decisions or rights under contract, including concessions to search for, develop, extract or exploit natural resources.

(2) Any alteration of the form in which assets are invested shall not affect their qualification as investments.

(3) The term "Returns" means the amount yielded by an investment, and in particular, though not exclusively, shall include capital gains, profits, interests, dividends, license royalties, fees or other current incomes.

(4) The term 'Associated activities' includes the organization, control, operation, maintenance and disposal of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business; making, performance and enforcement of contract; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and borrowing of funds, the purchase and issuance of equity shares and the purchase of foreign

exchange for imports.

(5) The term "Investor" means: the Government of the Contracting State and any other legal person, such as public or private companies, financial institutions and investment authorities, having its seat in the territory of either Contracting State or with a predominant interest of investors of either Contracting State. any natural person possessing the nationality of either Contracting State in accordance with its laws.(a) The Government of the Contracting State and any other legal person, such as public or private companies, financial institutions and investment authorities, having its seat in the territory of either Contracting State or with a predominant interest of investors of either Contracting State.

(b) Any natural person possessing the nationality of either Contracting State in accordance with its laws.

(6) The term "Territory" means the territory of either Contracting States as well as those maritime areas, including islands, internal water, the territorial sea, the exclusive economic zone, the continental shelf, the seabed and the sub-soil adjacent to the outer limit of the territorial sea of either of the above territories over which the State concerned exercises sovereign rights in accordance with its domestic laws and international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting State shall, subject to its general policy in the field of foreign investments, promote in its territory investments by investors of the other Contracting State and shall admit such investments in accordance with its legislation.

(2) Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities to such managerial personnel in accordance with its laws and regulations.

(3) The investments made in accordance with the laws and regulations of the Contracting State in whose territory they are undertaken, enjoy the full protection and security in a manner consistent with international law.

Article 3. Treatment of Investments

(1) Each Contracting State shall apply to investments made in its territory by investors of the other Contracting State a treatment which is no less favourable than that accorded to investments made by its own investors or investors of any third State, whichever is most favourable for the investor.

(2) Each Contracting State shall in its territory accord investors of the other Contracting State, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments or any other activity associated therewith, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is the most favourable for the investor.

(3) Each Contracting State shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting State and shall not impair the management, maintenance, use, enjoyment or disposal thereof as well as the acquisition of goods and services and the sale of their production, through unreasonable or discriminatory measures.

Article 4. Exceptions

(1) Notwithstanding the provisions of Articles 3, a Contracting State which has concluded an agreement regarding the formation of a free-trade area, a customs union or a common market shall be free to grant more favourable treatment to investments by investors of the State or states which are also parties to such an agreement, or by investors of some of these States.

(2) The provisions of Article 3 shall not be construed so as to oblige one Contracting State to extend to investors of the other Contracting State the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation or Nationalization

(1) Investments by the investors of either Contracting State shall not be subject to sequestration, confiscation, or any similar measure in violation of international law and shall enjoy full and complete protection and safety in the territory of the other Contracting State.

(2) Neither Contracting State shall take any measure of expropriation or nationalization or freezing of assets, or any other

measure having the same effect or subject the investment to any measures direct or indirect tantamount to expropriation including the levying of unreasonable taxes, the compulsory sale of all or part of an investment or the impairment or deprivation of its management or control unless the following conditions are complied with:

(a) Measures are taken for a public interest related to real internal needs under due process of law and in accordance with the domestic constitution and general principles of international law;

(b) Measures are not discriminatory;

(c) Measures are accompanied by prompt, adequate and effective compensation.

(3) The investor shall have the right of review of the legality of any such measures referred to in Paragraphs (1) and (2) of this Article and the amount of compensation by the competent court of the Contracting State which has taken such measures.

(4) Compensation in cases referred to in Paragraphs (1) and (2) of this Article shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation or decision thereof became publicly known. Where the market value cannot be readily ascertained the compensation shall be determined taking into account the capital invested, depreciation, replacement value, goodwill and other relevant factors. The compensation shall include interest at the prevailing commercial rate from the date of expropriation or loss until the date of payment.

Article 6. Compensation for Losses

(1) Investors of each Contracting State whose investments in the territory of the other Contracting State suffer losses owing to any armed conflict, including war, a state of national emergency or civil disturbance or other similar events in the territory of the other Contracting State shall be accorded by the other Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, which is the most favourable of that which the other Contracting State accords to its own investors or the investors of any third State.

(2) Without prejudice to Paragraph (1) of this Article investors of each Contracting State who, in any of the situations referred to in that Paragraph, suffer losses in the territory of the other Contracting State resulting from requisitioning or destruction of their property by forces or authorities of the other Contracting State, shall be accorded restitution or prompt, adequate, and effective compensation.

Article 7. Transfer of Payments

(1) Each Contracting State shall in respect of investments by investors of the other Contracting State in its territory allow transfers related to these investments into and out of its territory. The freedom of transfer shall include in particular, but not exclusively:

(a) The initial capital plus any additional capital for the maintenance and development of an investment;

(b) Returns;

(c) Payments arising out of the settlement of a dispute;

(d) Payments under a contract, as well as amortization of principal and accrued interest pursuant to a loan agreement;

(e) Compensation pursuant to Article 5 and 6;

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

(g) Earnings and other remuneration of personnel engaged from abroad in connection with an investment.

(2) Transfers under Paragraph (1) of this Article shall be effected without delay and in a freely convertible currency,

(3) Transfers shall be made at the prevailing market rate of exchange on the date of transfer.

Article 8. Subrogation

(1) If a Contracting State or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting State, the latter Contracting State shall, without prejudice to the rights of the former Contracting State under Article 10, upon approval for subrogation, recognize the transfer of any right or title of such an investor to the former Contracting State or its designated agency and the subrogation

of the former Contracting State or its designated agency and the subrogation of the former Contracting State or its designated agency to any such right or title with regard to investments made after the entry into force of this Agreement.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, the principle of subrogation shall be applied only to investments that are made after the entry into force of this Agreement provided that such subrogation has received prior consent of the Contracting State in whose territory the investment is made.

Article 9. Disputes between an Investor and the Contracting State

(1) Any dispute arising between one Contracting State and an investor of the other Contracting State concerning an investment by an investor of the latter in the territory of the former shall be settled amicably between the disputing parties.

(2) If such a dispute is not solved amicably within six months following the date on which the dispute has been raised by either party, the Contracting States consent to submit the dispute to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States. If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(3) For the purpose of this Article, any legal person which is constituted in accordance with the legislation of one Contracting State and in which before a dispute arises the majority of shares are owned by investors of the other Contracting State shall be treated, in accordance with Article 25 (2) (b) of the said Washington Convention, as a legal person of the other Contracting State.

Article 10. Disputes between the Contracting States

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting States.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting State, it shall at the request of either Contracting State be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting State appointing one member. These two members shall then agree upon a national of a third State with whom both Contracting States have diplomatic relations, as their chairman, to be appointed by the Governments of the two Contracting States. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting State has advised the other Contracting State of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting State may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting State, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting State, the most senior member of the Court who is not incapacitated or a national of either Contracting State shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting States. Each Contracting State shall bear the cost of its member at the arbitration tribunal as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting States. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting States. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 11. Application of the Agreement

(1) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting State enjoys in the territory of the other Contracting State under national or international law.

(2) Investments subject to special contracts or commitments undertaken by one Contracting State, with respect to the investors of the other Contracting State shall be governed, notwithstanding the provisions of this Agreement, by the terms

of these contracts and commitments in so far as their provisions are more favourable for the investor than those provided by this Agreement.

(3) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before the entry into force of this Agreement.

Article 12. Entry Into Force

(1) This Agreement shall enter into force thirty days after the date of receipt of the latter of the two notifications by which either Contracting State shall inform the other that its constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 13. Duration and Termination

(1) This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting State in writing notifies the other Contracting State of its decisions to terminate this Agreement.

(2) In respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 11 shall remain in force for a further period of twenty years from that date.

In witness whereof the undersigned, duly authorized to this effect by their respective Governments, have signed this Agreement.

Signed in two originals in the United Arab Emirates, this 10 day of November 1999, corresponding to 2nd Shaban, 1420H.

In the English, Arabic and Swedish languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

On the occasion of signing the Agreement between the Government of the United Arab Emirates and the Government of the Kingdom of Sweden concerning the Promotion and Reciprocal Protection of Investments, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement.

1. With respect to Article 2

Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of a Contracting State, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting State for the purpose of carrying out activities associated with investments in the territory of the latter Contracting State.

2. With respect to Article 3

a) Matters related to taxes will be settled pursuant to an Agreement on the Avoidance of Double Taxation on Income after negotiations between the two Contracting States.

b) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State will grant them all assistance, consents, approvals, licenses and authorizations to such an extent and on such terms and conditions as may, from time to time, be determined by the laws and regulations of the host State.

Signed in two originals in the United Arab Emirates, this 10 day of November 1999, corresponding to 2nd Shaban, 1420H.

In the English, Arabic and Swedish languages, all texts being equally authentic. In case of divergency, the English text shall prevail.