

# AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE STATE OF KUWAIT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Agreement between the Kingdom of Spain and the State of Kuwait for the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Spain and the Government of the State of Kuwait (hereinafter referred to as the contracting parties);

Desiring to create favourable conditions for the development of economic cooperation between them and in particular for investments by investors of one Contracting Party in the territory of the other contracting party;

And

Recognizing that the reciprocal promotion and protection of such investments will stimulate business initiative and will increase prosperity in both contracting parties;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means every kind of assets or rights in the territory of a Contracting Party that is owned or controlled directly or indirectly by investors of the other contracting party, including in particular, though not exclusively, the following:

- a) Ownership of movable and immovable property as well as other rights in rem, such as mortgages, liens, pledges and similar rights;
- b) Corporations or shares, stocks or any other form of participation, and bonds and debentures and any other form of participation in a company;
- c) The right to money or to any other provision under a contract having an economic value associated with an investment; and
- d) Intellectual Property Rights, including but not limited to, copyrights, trademarks, patents, industrial designs or models, technical know-how, processes, trade secrets and know-how, trade names and goodwill;
- e) Any right conferred by law, by contract or by virtue of any licenses or permits granted in accordance with the law, including the rights to prospecting, exploration, extraction or use of natural resources, rights and to undertake other economic or commercial activities or provide services.

The term "investment" shall also apply to the rental "" retained for the purpose of reinvestment and the proceeds from the liquidation "", according to the definition of such terms below.

Any change in the form in which assets are invested or reinvested shall not affect their character as investments.

2. "investor" means:

- a) Any natural person who, in accordance with the legislation of one Contracting Party, shall be a national of the same.
- b) Any legal person or any legal entity or otherwise constituted duly organized under the applicable law of a Contracting Party and having its registered office in the territory of that same Contracting Party, including companies, partnerships or business associations.

c) The Government of the State of Kuwait and all its legal persons constituted under the laws and regulations of the State of Kuwait, as institutions, development agencies, funds, foundations and other statutory authorities and institutions and societies.

3. "Income" means the amounts yielded by an investment and shall include in particular, though not exclusively, profits, dividends, interests, capital gains, royalties, fees and payments in kind.

4. "liquidation" shall mean any disposal effected to withdraw all or part of an investment.

5. "territory" means the land territory, internal waters and the territorial sea and the airspace of each Contracting Party as well as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties and on which they have or are likely to have jurisdiction or sovereign rights under international law.

6. "without delay" means the period normally required for the fulfilment of the necessary financial arrangements for the transfer of payments. the said period shall commence on the day on which the request for transfer has been submitted and shall in no case exceed one month.

## **Article 2. Promotion and Admit Investments**

1. Each Contracting Party shall promote in its territory, as far as possible investments by investors of the other contracting party. each Contracting Party shall admit such investments in accordance with its laws and regulations.

2. If a Contracting Party has admitted an investment in its territory, it shall grant, in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance. each Contracting Party shall endeavour, in accordance with its laws and regulations, to issue the necessary authorizations concerning the activities of consultants and other qualified persons, including the entry and residence of their close relatives, regardless of nationality.

3. The Contracting Parties shall consult mutua-mente under as they deem appropriate to promote and facilitate opportunities to invest in their respective territories.

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

1. Shall be accorded fair and equitable treatment and full protection and security to investments made by investors of one Contracting Party in the territory of the other contracting party. in no case shall such investments to a contracting party treatment less favourable than that required by international law.

2. Neither Contracting Party shall in any way by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. each Contracting Party shall observe any written obligation it has assumed with regard to investments of investors of the other contracting party.

3. Each Party shall promptly publish or make available to the public of their laws, regulations, procedures, directives, guidelines, administrative judicial rulings and decisions of public application as well as international agreements.

## **Article 4. National and Most-favoured-nation Treatment**

1. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party A treatment no less favourable than that accorded to investments made by its own investors to investors or of any third State, whichever is more favourable to the investor concerned.

2. Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded to its own investors to investors or of any third State, whichever is more favourable to the investor concerned.

3. The treatment granted under paragraphs 1 and 2 of this article shall not be construed as to oblige one contracting party to extend to the investors of the other contracting party and their investments the benefit of any treatment, preference or privilege resulting from: paragraphs 1 and 2 of this article shall not be construed as to oblige one contracting party to extend to the investors of the other contracting party and their investments the benefit of any treatment, preference or privilege resulting from:

a) Its membership or association with a free trade area, customs union, economic or monetary union or other similar international agreements, existing or future, including other forms of regional economic organization, or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to direct or indirect measures such as the freezing or blocking of investments, having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") by the other contracting party except for a public purpose and against payment of prompt, effective and adequate compensation and on condition that such measures are taken on a non-discriminatory basis and under due process of law of general application.

2. Such compensation shall correspond to the real value of the expropriated investment and shall be determined and calculated in accordance with internationally recognized principles of valuation, under the fair market value of the expropriated investment immediately before the expropriation was taken or the impending expropriation become public knowledge earlier (hereinafter referred to as the valuation date). such compensation shall be calculated in a freely convertible currency on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at a rate established commercial market on a basis for the valuation of currency from the date of expropriation until the date of payment.

3. If the fair market value cannot be readily referred to above, the compensation shall be based on equitable principles taking into account, inter alia, the capital invested, replacement value judgement, depreciation, the current incomes, goodwill and other relevant factors. the amount of compensation to be determined final-mente shall promptly to the investor in a freely convertible currency and shall allow the free transfer without delay.

4. The Investor affected shall have a right under the law of the contracting party making the expropriation, by a judicial authority or another competent and independent authority of that Contracting Party to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the principles set out in this article.

5. When a Contracting Party shall expropriate assets of a corporation incorporated under the laws in force in any part of its own territory, and in which investors have participation of the other Contracting Party, shall ensure the application of the provisions of this article to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

## **Article 6. 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, revolution, state of national emergency, revolt, insurrection, civil disturbance or other similar events shall be accorded by the latter Contracting Party, by way of restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which that Contracting Party accords to its own investors to investors or of any third State, whichever is more favourable to the investor concerned.

2. Notwithstanding paragraph 1, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from: (1), investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

a) The requisitioning of its investment or part thereof by the authorities or forces of the latter; or

b) The destruction of its investment or part thereof by the authorities or forces of the latter, without requiring the necessity of the situation, the latter Contracting Party 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 to investors of the other Contracting Party the free transfer of all payments relating to their investments to or in its territory. such transfers shall include in particular, though not exclusively:

a) The initial capital and additional amounts to maintain or expand the investment management;

b) The income;

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

agreement;

d) The compensation under articles 5 and 6; articles 5 and 6;

e) The proceeds from the sale or the total or partial liquidation of an investment;

f) Other earnings and remuneration of personnel engaged from abroad in connection with an investment;

g) The payments referred to in article 9; article 9;

h) Payments arising from the settlement of disputes.

2. Transfers of payments under paragraph 1 shall be effected without delay or restrictions except and in the case of payments in kind in a convertible currency. Paragraph 1 shall be effected without delay or restrictions except and in the case of payments in kind in a convertible currency.

3. Transfers shall be made at the market exchange rate applicable on the spot host Contracting Party on the date of transfer to the currency.

## **Article 8. Other Provisions**

1. If the legislation of either Contracting Party or existing obligations under international law or subsequently arise between the Contracting Parties in addition to this Agreement contain rules (whether general or specific), which is to be granted to investments made by investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

2. More favourable terms than those of this Agreement which one of the Contracting Parties has agreed to investors of the other Contracting Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect the provisions set out in the international agreements relating to intellectual and industrial property rights in force on the date of its signature.

## **Article 9. Subrogation**

1. If a Contracting Party or its designated agency (the "compensating party") made a payment under an indemnity or guarantee given in respect of an investment in the territory of the other contracting party (the host contracting party), it shall:

(a) The assignment to the compensating party by law or by legal transaction of all the rights and claims resulting from such an investment;

(b) The right of compensating the Party to exercise such rights and enforce such claims and to assume all obligations related to the investment by virtue of subrogation.

2. The compensating party shall be entitled in all circumstances to the same treatment in respect of:

(a) The acquired rights and claims and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above; paragraph 1;

(b) Any payments received in pursuance of those rights and claims which the original investor was entitled to receive under this Agreement in respect of the investment.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. If the dispute is not settled within six months from the date on which either Contracting Party requested such consultations or other diplomatic channels and unless the contracting parties otherwise agree in writing, a Contracting Party may, after this was communicated in writing to the other Contracting Party submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a president who is a national of a third country. The arbitrators shall be appointed within three months and

the Chairman within five months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute to an arbitral tribunal.

4. If the necessary appointments have been made within the periods specified in paragraph 3 of this article, a Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or unable to perform this function for other purposes, it shall ask the Vice-President to make the necessary appointments. If the Vice-President is a national of one of the contracting parties or nor to perform this function would be encouraged to make the necessary appointments to the member of the International Court of Justice to continue in seniority who is not a national of either of the Contracting Parties and which has no impediment to perform such función. apartado 3 of this article, a Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or unable to perform this function for other purposes, it shall ask the Vice-President to make the necessary appointments. If the Vice-President is a national of one of the contracting parties or nor to perform this function would be encouraged to make the necessary appointments to the member of the International Court of Justice to continue in seniority who is not a national of either of the Contracting Parties and which has no impediment to perform that function.

5. The arbitral tribunal shall render its decision on the basis of the provisions of this Agreement and the universally accepted principles of international law.

6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall determine its own procedure.

7. The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both contracting parties.

8. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The other expenses, including the President, shall be borne in equal parts by the two contracting parties. However, the arbitral tribunal may, at its discretion or decide that a higher proportion of all such costs be paid by one of the Contracting Parties. In all other respects, the tribunal shall determine its own procedure.

## **Article 11. Disputes between Investors and a Contracting Party of the other Contracting Party**

1. Any dispute which may arise between a Contracting Party and an investor of the other contracting party concerning an obligation under this Agreement with respect to an investment of the latter in the territory of the former shall be settled amicably, as far as possible.

2. If these disputes cannot be settled within a period of six months from the date on which each party to the dispute by amicable settlement requested a written notification to the other party, the dispute shall be submitted for resolution, at the choice of the investor Party to the dispute, through one of the following means:

(a) In accordance with any applicable dispute settlement procedures agreed previa-mente

(b) The competent court of the Contracting Party in whose territory the investment has been made; or

(c) To international arbitration in accordance with the following paragraphs of this article.

3. In the event that an investor chooses to submit the dispute to international arbitration, the investor further provide its consent in writing for the dispute to be submitted to one of the following bodies:

a) To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

b) The International Centre for International Settlement Centre for Settlement of Investment Disputes) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, in case both contracting parties become Parties to this Convention. If a Contracting Party which is party in the dispute has not become a Contracting State to the Convention mentioned above, shall decide the dispute according to the rules of the additional facility for the administration of conciliation or arbitration proceedings and fact-finding ICSID.

c) An arbitral tribunal established under the arbitration rules of arbitral institution any mutually agreed 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 seek during the proceeding before the judicial or administrative tribunals of the Contracting Party which is a party to the dispute an interim injunction for the preservation of its rights and interests, provided it does not include request for payment of damages and perjuicios. apartado 3 May, prior to the institution of the arbitral proceeding or seek during the proceeding before the judicial or administrative tribunals of the Contracting Party which is a party to the dispute an interim injunction for the preservation of its rights and interests, provided it does not include request for payment of damages.

5. The arbitration decisions shall be final and binding on the parties to the dispute. each Contracting Party shall promptly judgments and shall provide for the enforcement of such judgements in its territory.

6. In all procedures, judicial, arbitral or other, or in the implementation of the decisions or rulings concerning an investment dispute between a Contracting Party and an investor of the other contracting party, the latter Contracting Party, as an exception, its sovereign immunity. the contracting party disclaiming as an exception that the investor has received or will receive indemnification or other compensation for all or part of the alleged damage under a guarantee or a contract of insurance.

## **Article 12. Relations between the Contracting Parties**

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

## **Article 13. Scope**

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party in the territory of the other contracting party. however, this Agreement shall not apply to claims or disputes arising out of events which occurred or claims or disputes settled before its Entry into Force.

## **Article 14. Entry Into Force**

Each Contracting Party shall notify in writing the other contracting party to the fulfilment of constitutional requirements for Entry into Force and the Agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

## **Article 15. Duration and Termination**

1. This Agreement shall remain in force for an initial period of fifteen (15) years and shall continue in force thereafter for a similar period or periods, unless one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other in writing of its decision to terminate this Agreement.

2. With respect to investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 13 shall remain in force for a further period of fifteen (15) years from the date of termination of this acuerdo. artículos 1 to 11 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

Done in duplicate at Madrid on 8 September 2005, corresponding to 4 of shabban 1426H in English, Arabic and English languages, all texts being equally authentic. in case of divergence, the English text shall prevail.

For the Kingdom of Spain,

José Montilla Aguilera,

Minister of Industry, Tourism and Trade

The State of Kuwait

Bader meshari al-humaidhi,

Ministry of Finance