

Agreement between the French Republic and the State of Kuwait on the encouragement and reciprocal protection of investments

The French Republic and the State of Kuwait, hereinafter referred to as "the Contracting States,

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for investments by investors of one of the Contracting States in the territory of the other Contracting State,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article 1. Definitions

For the purposes of this Agreement

1. The term "investment" means assets such as property, rights and interests of every kind, owned or controlled directly or indirectly by a natural or juridical person, including the Government of a Contracting State, and invested in the territory and maritime zones of the other Contracting State in accordance with the laws and regulations of that State. Without limiting the generality of the foregoing, the term "investment" includes:

(a) Movable and immovable property, as well as any other real rights such as mortgages, liens, usufructs, bonds, and similar rights;

(b) shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the contracting States;

(c) Bonds, debts and rights to any benefits of economic value;

(d) copyrights, intellectual and industrial property rights (such as patents, licenses, trademarks, trade secrets, industrial models and designs, etc.)

(d) Copyrights, intellectual and industrial property rights (such as patents, licenses, trademarks, trade secrets, industrial models and designs), technical processes, registered names and goodwill;

(e) Privileges granted by law or under contract, including privileges relating to the exploration, cultivation, extraction or exploitation of natural resources, including those in adjacent maritime areas over which the contracting States exercise sovereign rights;

(f) Reinvested income.

2. The term "investor" means any national of one of the contracting States or any legal person, including the Government of a contracting State, who invests in the territory of the other contracting State.

3. The term "nationals" means natural persons possessing the nationality of one of the Contracting States.

4. The term "juridical person" means, in relation to each Contracting State, any entity established under the laws of a Contracting State and recognized as a juridical person under those laws, such as an establishment, development fund, enterprise, branch, cooperative, association, company, authority, foundation, society, firm, business organization, business association, or similar entity, whether limited liability or not; as well as any entity established as a legal person outside the jurisdiction of a Contracting State and which that State, one of its nationals or one of its legal persons (established within its jurisdiction in accordance with its laws) directly or indirectly controls.

5. The term "income" means all amounts derived from an investment and includes in particular, but not exclusively, profits,

interest, capital gains, dividends, royalties, management, technical assistance or other fees, and payments in kind.

6. The term "associated activities" includes the organization, control, operation, maintenance and disposal of legal entities, subsidiaries, branches, offices, plants or other facilities for the conduct of business; the acquisition, use, protection and disposal of property in all forms, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of stock and the purchase of foreign currency for import, in accordance with national regulations and customs.

7. The term "maritime zones" means the marine or submarine areas over which the contracting States exercise, according to their own rules and in conformity with international law, sovereignty, sovereign rights or jurisdiction.

Article 2. Implementation

1. It is understood that the said investments have already been made or may be made after the entry into force of this Agreement, in accordance with the legislation of the contracting State in whose territory or maritime zones the investment is made.

2. A change in the form of investment of assets shall not affect their qualification as investment, provided that such change is not contrary to the laws of the State in whose territory or maritime zones the investment is made.

Article 3. Admission and Encouragement of Investments

Each of the Contracting States shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made in its territory and in its maritime zones by investors of the other State.

Article 4. Fair and Equitable Treatment

Each Contracting State undertakes to ensure, in accordance with the principles of international law, fair and equitable treatment of investments made by investors of the other Contracting State in its territory and maritime zones and to ensure that the exercise of the right so recognized is not impeded in law or in fact.

Article 5. Most-favoured-nation Clause and National Treatment

1. Each Contracting State shall, in its territory and maritime zones, apply to investors of the other State, in respect of their investments and related activities, the treatment accorded to its investors, or the treatment accorded to investors of the most favored Nation, if the latter is more advantageous. In this regard, nationals authorized to work in the territory and maritime zones of one of the contracting States shall be provided with appropriate material facilities for the exercise of their professional activities.

2. Subject to the provisions of Article 11, each contracting State shall grant to investors of the other contracting State, on terms and conditions no less favorable than those which it grants, in similar situations, to its own investors or to investors of a third State, whichever is the more favorable, the means of asserting and exercising their rights with respect to investment agreements and authorizations, and to their property and, in particular, the right of access to its courts, administrative tribunals and agencies and to any other institution exercising jurisdictional authority, and the right to employ persons of their choice who are entitled, under the applicable domestic laws and regulations, to assert and exercise rights with respect to their investments.

Article 6. Exceptions

The treatment referred to in Articles 4 and 5 shall not, however, extend to privileges which a Contracting State grants to investors of a third State by virtue of its participation in or association with a free trade area, customs union, common market or other form of regional economic organization, or to privileges resulting from any international, regional or subregional agreement.

Article 7. Nationalization, Expropriation, or Dispossession Measures

1. Investments made by investors of one of the Contracting States shall enjoy full protection and security in the territory and maritime zones of the other Contracting State.

2. The Contracting States shall not take, in their territories and maritime zones, measures of expropriation or nationalization

or any other measures the effect of which is to dispossess, directly or indirectly, the investors of the other State of investments belonging to them, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

3. Such measures of dispossession as may be taken shall be subject to the payment of prompt and adequate compensation. Such compensation shall be calculated and determined in accordance with recognized valuation principles, such as the fair market value of investments prior to any threat of dispossession. Where the market value cannot be clearly established, compensation shall be determined on the basis of equitable principles taking into consideration, among other things, invested capital, depreciation, capital already repatriated, replacement value, appreciation, current income, goodwill and any other relevant factors.

4. This indemnity, its amount and the manner of its payment shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It produces, until the date of payment, interest calculated at the current Libor rate applicable to the currencies concerned.

Article 8. Compensation for Damage and Loss

1. Investors of one of the contracting States whose investments have suffered losses due to war or any other armed conflict, state of national emergency, revolt, insurrection, riot or other similar events occurring in the territory or maritime areas of the other contracting State shall, with respect to restitution, compensation, indemnification or other settlement, be accorded by the latter State treatment no less favorable than that accorded to its own investors or to those of a third State, whichever is more favorable.

2. Subject to the provisions of Article 7 and paragraph 1 of this Article, investors of one of the Contracting States who, in connection with any of the events referred to in that paragraph, have suffered damage or loss in the territory of the other Contracting State as a result of:

(a) The requisition of their property by armed force or by the authorities of that State;

(b) The destruction of their property by the said armed force or by the said authorities which was not caused by fighting or required by the necessity of the situation,

(b) The destruction of their property by the said armed force or by the said authorities, not caused by fighting or required by the necessity of the situation, shall be awarded fair and adequate compensation for damage or loss incurred during the period of requisition or as a result of the destruction of their property. Subsequent payments shall be freely transferable without delay.

Article 9. Transfers

1. Each contracting State, in whose territory or maritime zones investments have been made by investors of the other contracting State, shall guarantee to such investors the free transfer

(a) Of interest, dividends, profits and other current income;

(b) royalties from intangible rights designated in paragraph 1(d) and (e) of Article 1;

(c) Payments made for the repayment of loans regularly contracted;

(d) Proceeds from the total or partial liquidation of the investment, including capital gains;

(e) Compensation for loss or dispossession as provided for in Articles 7 and 8.

2. Nationals of each of the contracting States who have been authorized to work in the territory or maritime areas of the other contracting State in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

3. The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of the transfer.

4. Without restricting the generality of Article 4 of this Agreement, the Contracting States undertake to accord to the transfers referred to in this Article treatment as favorable as that accorded to transfers arising from investments made by investors of a third State.

Article 10. Investment Guarantee

1. To the extent that the regulations of one of the contracting States provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by investors of that State in the territory or maritime zones of the other State.
2. Investments by investors of one of the Contracting States in the territory or maritime zones of the other State may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter State.

Article 11. Settlement of Investment Disputes

1. Any investment dispute between one of the Contracting States and an investor of the other Contracting State shall be settled amicably between the two parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall, at the request of either party, be submitted to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on March 18, 1965 (hereinafter referred to as "the Convention").

2. Each of the Contracting States hereby agrees to submit to the Center any investment dispute for settlement by conciliation or binding arbitration.
3. The Contracting States shall not deal with a case submitted to arbitration through diplomatic channels or contacts until the proceedings have been completed and one of the contracting States has not complied with or implemented the decision rendered by the ICSID, except to the extent that diplomatic contacts will facilitate the settlement of the dispute in respect of the case concerned.
4. In the event that the Agreement is not applicable, the dispute shall be settled by ad hoc arbitration.

Article 12. Subrogation

If one of the Contracting States, by virtue of a guarantee given for an investment made in the territory or maritime zones of the other State, makes payments to one of its investors, it is thereby subrogated to the rights and actions of that investor.

The said payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the ICSID or to pursue the actions brought before it until the proceedings have been completed.

Article 13. Specific Commitments

Investments which have been the subject of a special undertaking by one of the contracting States to investors of the other contracting State shall be governed, without prejudice to the provisions of this Agreement by the terms of that commitment, to the extent that it contains provisions more favorable than those contained in this Agreement.

Article 14. Settlement of Disputes between Contracting States

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.
2. If the dispute is not settled within six months of its being raised by either Contracting State, it shall, at the request of either Contracting State, be submitted to an arbitration tribunal.
3. The said Tribunal shall be constituted for each particular case in the following manner:

Each contracting State shall appoint one member, and the two members shall appoint, by mutual agreement, a third member, who shall be a national of a third State having diplomatic relations with both contracting States, and who shall be appointed by both contracting States as Chairman.

All members shall be appointed within two months of the date on which one of the Contracting States has notified the other Contracting State of its intention to submit the dispute to arbitration.

4. If the time limits set forth in paragraph 3 above have not been observed either Contracting State, in the absence of any applicable agreement shall invite the Secretary-General of the United Nations to make the necessary appointments. If the

Secretary-General is a national of either Contracting State or is otherwise unable to perform this function, the most senior Deputy Secretary-General who is not a national of either Contracting State shall make the necessary appointments.

5. The Arbitration Tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting States.

6. The Tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting State. Unless the Tribunal decides otherwise, taking into account special circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting States.

Article 15. Relationship between Governments

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

Article 16. Entry Into Force

Each of the Member States shall notify the other of the completion of the constitutional procedures required in respect of it for the entry into force of this Agreement, which shall take effect one month after the date of the last notification.

Article 17. Duration and Termination

1. This Agreement shall be in force for a period of twenty years and shall remain in force thereafter for one or more equal periods unless, one year before the initial or any subsequent expiration, either State notifies the other Contracting State of its intention to denounce the Agreement.

Such notification shall take effect one year after its receipt by the other contracting State.

2. Upon the expiration of this Agreement, its provisions shall continue to apply, for a period of twenty years, to investments made before the date on which the notification of denunciation takes effect.

Done at Paris, this 27th day of September 1989, 27 Safar 1410 A.H., in two originals, each in the French and Arabic languages, both texts being equally authentic.

For the French Republic:

MICHEL CHARASSE

For the State of Kuwait:

JASSEM AL KHORAFI

PROTOCOL

In signing the Agreement between the French Republic and the State of Kuwait, concerning the Reciprocal Encouragement and Protection of Investments, the undersigned Plenipotentiaries have further agreed that the interpretation of the Agreement is as follows

1. With respect to Article 4:

(a) It is understood that the contracting States regard as de jure or de facto impediments to fair and equitable treatment any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect.

b) The contracting States shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to reside, work and travel submitted by nationals of a contracting State in connection with an investment in the territory of the other contracting State.

2. With respect to Article 7:

The provisions of Article 7 shall apply to any direct or indirect measure of expropriation, nationalization or any other measure of dispossession, such as the freezing or blocking of assets, the forced sale of all or part of the investment or any other similar measure of equivalent effect.

3. With respect to Article 11:

With respect to arbitration under Article 11(4), the ad hoc Arbitration Tribunal shall be constituted as follows:

(a) The Arbitration Tribunal shall consist of three arbitrators. Each party shall choose one arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman, who shall be a national of a third State having diplomatic relations with both contracting States. The arbitrators shall be appointed within two months from the date on which one of the parties to the dispute has notified the other party of its intention to submit the dispute to arbitration.

If the appointments are not made within the time limits mentioned above, either party shall invite the President of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments within two months.

(b) The Tribunal, which normally sits and makes its award in Sweden, may also hear witnesses and meet at any other place it deems appropriate.

(c) The Arbitration Tribunal shall take its decisions by majority vote. Its award shall be final and binding on both parties to the dispute, who shall apply it.

(d) Arbitration decisions shall be made in accordance with the domestic law, including the private international law of the contracting state accepting the investment, the provisions of this Agreement, and the generally recognized principles of international law.

(e) Each party to the dispute shall bear the expenses of its own arbitrator and counsel in the arbitration proceedings. Unless the Tribunal otherwise provides, the fees of the Chairman, together with the balance of the costs of the proceedings, shall be shared equally by the parties to the dispute.

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For the French Republic:

MICHEL CHARASSE

For the State of Kuwait

JASSEM AL KHORAFI