

AGREEMENT ON PROMOTION, GUARANTEE AND PROTECTION OF INVESTMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

PREAMBLE

The Government of the Republic of Kenya and the Great Socialist People's Libyan Arab Jamahiriya (hereafter referred to as "the parties").

Desirous to create enabling conditions for the purpose of developing their economic relations particularly through investments carried out by investors from either party in the territory of the other party;

Recognizing the fact that mutual promotion, guarantee and protection of such investments would serve to deepen economic co-operation between the two countries;

Convinced of the need to conclude an agreement on promotion, guarantee and protection of investment between the two countries:

Have agreed as follows:

Article 1. Definitions

For purposes of this agreement the following expressions shall have the meanings assigned to them as hereunder;

1. Investment: — Means all kinds of funds owned by an investor from either of the contracting party invested in the territory of the other parties in accordance with laws, rules and regulations of such party and shall include but not limited to the following:

(a) Movable and immovable property, such as mortgages, concessions, obligations or leases;

(b) Shares, debentures stock, money and share stocks.

(c) Credits, claims or any obligation under loan agreement or under another contract of economical value and relates to an investment,

(d) Industry and patents rights, including copyrights, invention patents, trademarks, trade names, secrets, commercial reputation, design, industrial processes and know-how.

(e) Any rights resulted from granting licenses and authorization or under a contract, in accordance with law including rights for exploration, extraction and exploitation of natural resources.

Any change in form of which the funds are invested or re-invested shall not affect its nature when such funds are appropriated for the investment.

2. Investor Means:

(i) Any natural person holding the nationality of either contracting parties.

(ii) Any legal person incorporated or established under applicable regulations in the territory of either contracting parties.

3. Territory: Means the whole territory which is under the jurisdiction of either of the contracting parties and includes the exclusive economic zone Including, sea bed and sub-sea and air areas, in which the party exercise its jurisdiction under international law.

4. **Return:** Means — Net payment resulting from the investments and include profits, interests, dividends, fees, and otherwise.

5. **Convertible currency:** Means — Any convertible currency and valid for cash fulfilling in international commercial transactions and is used in main international stock markets.

Article 2. Promotion and Protection of Investments

For purposes of achieving goals of this agreement:

1. Both contracting parties shall strengthen and intensify the cooperation between themselves in fields of promotion, guarantee and protection of the investment, which are established in the territory of one party, by the investors of the other contracting party.

2. Each contracting party shall create convenient conditions for investors of the other contracting party, to carry out investments in its territory legally.

3. The two parties shall accord priority to the fields of Agriculture, Tourism, Livestock, Information and Communications. In this regard, the two parties shall facilitate in each other's country, the acquisition of land, licenses and necessary approval.

4. Investment of each contracting party shall be treated fairly at all times.

5. The investments shall enjoy proper and sufficient protection and guarantee in each territory in accordance with regulations and either of them shall be obliged not to take coercive actions that may lead to damage in management, maintenance, utilization, or disposal in investments of another contracting party.

Article 3. Treatment of More Favoured Country

1. Each contracting party shall provide investors of the other contracting party, treatment of more favoured country which shall not be less favourable than those allowed to investors of a third party, under similar arrangements.

2. Each of the contracting party shall provide to investors of the other contracting party in its territory, in respect of management, maintenance, utilization and enjoyment and disposal of their investment, a treatment not less favourable than that it gives to its investors or investors of third party, whichever is more favourable.

3. The provisions of this agreement, which relate to treatment of more favourable country that is offered to investors of either contracting party or of third party shall not oblige the contracting party to offer investors of the other contracting party any favourable treatment, advantage or favour under the following cases:

(a) If it is involved in any economic, customs, free zone area, common market or in any similar international agreement or any form of regional economic entity, that either of the contracting parties is a member or shall be a member in the future.

(b) If it is involved in any agreement or any international agreement, related in whole or partially with the tax system.

Article 4. Special International Agreements and Contracts

The investments created between both contracting parties under special international agreements and contracts, shall be subject to that agreement or contract as long as it provides better conditions than those provided for in the provisions of this agreement.

Article 5. Indemnity and Reparation

Each contracting party shall offer investors of the other contracting party whose investments in its territory, is affected by losses resulting from a war, civil war, state of emergency, rebellion, civil disorders, riots or any similar events; a guarantee to restore it to its previous situation, indemnifying or another settlement shall not be less, in magnitude and size than that the contracting party offers to its investors, or investors of third party in accordance with the prevailing laws and regulations.

Article 6. Freedom of Transfer

1. Each contracting party shall guarantee investors of the other party freedom to transfer freely payments abroad related to its investments in the same currency or in any convertible currency without any delay in regard to:

- a. Original investing capital, profits and any related payments.
 - b. Returns, including income resulting from investment.
 - c. Due payments, resulting from sale, or partial or whole liquidation of the investments.
 - d. Funds appropriated for credits and loans.
 - e. Due compensation under provision stated in Article (5) of this agreement.
 - f. Reasonable amount of income and gains of the citizen of either contracting party employed and authorized to work in relation to the investment.
2. The transfer of the payments provided in paragraph (1) shall be implemented in common exchange rate on the date of the transfer, in accordance with effective exchange transfer of the contracting party that the investment is running in its territory.

Article 7. Nationalisation and Expropriation

1. Under this agreement, investment of either contracting parties or of its investors, established in the territory of the other contracting party, shall not be subject to any actions of limiting its right of property, concession, management or utilization of such investment either temporary or permanently except under limit of effective regulations or by sentence of pertinent courts.
2. Nationalisation or expropriation, directly or indirectly shall not be allowed for investments of each contracting parties or investment of any of its investors in the territory of the other contracting party, except for public interest for that country on non discriminatory basis.
3. The compensation shall be calculated on the basis of fair market value of the investment for the day preceding the day of taking the arrangement or its declaring and it shall be payable totally and transferred freely outside the territory of the contracting party.
4. If the subject of expropriation, is a joint project established in the territory of either of contracting parties, the due compensation value, payable to the investor from another contracting party, shall be calculated on the basis of his share in the joint project.

In case, no agreement has been reached between the investor and the hosting party of investment it shall be referred to procedures of settlement of investment disputes in accordance with Article (9) of this Agreement.

Article 8. Subrogation

1. Where compensation has been paid to an investor of either of the contracting parties under guarantee offered to him, for the investment established in the territory of the other contracting party under this Agreement, the other contracting party shall acknowledge receipt of the compensation for the investor, and shall renounce all his rights and claims in full or partial as the case may be under law or legal agreement, and the beneficiary or whoever acting on his behalf in the exercise of such rights, and in the execution of such claims, under the principle of subrogation as entitled to the investor being compensated.
2. Any dispute between one of contracting party and insurer of investment of another contracting party, shall be settled in accordance to provisions of Article (9) of this agreement.

Article 9. Dispute Settlement between Either Party or Contracting Investors of the other Party

1. Any dispute in respect of the investment, resulting between a contracting party and an investor of the other contracting party, shall be settled amicably.
2. If the dispute, cannot be settled amicably, within six months from the date of its reporting in writing, the dispute shall be referred for arbitration upon the request of the investor of the other party in accordance with the provisions of Article (10) Para (3, 7) of this agreement. If both parties fail to reach a settlement and without further arrangements, he shall submit an application to the Head of Arbitration Court in Paris for purposes of arbitration in accordance with the provision of international laws.

The arbitration shall take its decisions in accordance with the provisions of this agreement under any special agreements concluded in respect of investment and in accordance with provisions of international law.

The decisions of the arbitration shall be final and binding to both sides of the dispute and each party shall undertake to implement it.

Article 10. Settlement of Dispute between Two Contracting Parties

1. As may be possible, the settlement of disputes resulting between two contracting parties in relation to interpretation or implementation of this agreement shall be by amicable ways.
2. If the resolution becomes difficult, within six months from date of reporting in writing, by one contracting party, the dispute shall be referred to arbitration upon request of one of the contracting parties.
3. The arbitration shall be set up as follows:
 - Each party shall appoint one arbitrator. Both arbitrators shall elect a third arbitrator a citizen of another country as president of arbitration within three months and the President shall be appointed within fifteen days from date of reporting by one of contracting parties, wishing to refer the dispute to the arbitration.
4. If the terms provided in the paragraph (3) of this article, are not regarded, either of contracting parties shall call the President of International Court of Justice and if he holds the nationality of one of contracting parties or if there is cause to prevent him from practicing his function, his deputy shall conduct the necessary appointment. If the deputy holds nationality of one of contracting party or there is cause to prevent him from practicing his function, a more senior member of the International Court of Justice, if he is not a citizen of any contracting parties, shall conduct the said appointments.
5. The arbitration tribunal shall take its decisions in accordance with the provisions of this Agreement principles, and bases of international law. Majority shall take the decisions. In addition, the decision shall be final and binding to the contracting parties.
6. The members of arbitration shall specify rules and regulations and methods of its functions.
7. Each contracting party shall bear the fees for the court and its representative in the proceedings, but the fees for the President and other expenses shall be borne equally between the two contracting parties.

Article 11. Amendment

1. Either party may propose amendment to this Agreement.
2. Such proposal shall be in writing and shall be conveyed to the other through diplomatic channels and shall enter into force upon consent by the other party.

Article 12.

1. This Agreement is subject to approval in accordance with applicable legal procedures in both countries and it shall enter into force on the date of exchanging the approval documents.
2. This agreement shall be valid for ten years from the date of entry into force and thereafter it shall be renewable automatically for similar periods unless either party notifies the other party in writing of its intention to terminate or amend it one year prior to expiry.

In Witness Whereof the undersigned being duly authorized by their respective Governments have signed this Agreement.

Done at Sirte, Libya this 5th day of June 2007, in Arabic and English languages both texts - being equally authentic.

For:

The Government of the Republic of Kenya

(signature)

Hon. Mukhisa Kituyi, EGH, M.P.

Minister for Trade and Industry

For:

The Great Socialist People's Libyan Arab Jamahiriya

(signature)

Dr. Ali A. Elisaue

Secretary of the General People's Committee for Economy, Trade and Investment