

# **AGREEMENT BETWEEN THE REPUBLIC OF MACEDONIA AND THE STATE OF KUWAIT FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

The State of Kuwait and the Republic of Macedonia (hereinafter collectively referred to as the 'Contracting Parties');

Desiring to create favorable conditions for greater economic cooperation between them, in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal promotion and protection of such investments will stimulate business initiatives and will increase the prosperity in both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this agreement:

1. The term "Investment" means every kind of asset in the territory of a Contracting Party, which is owned or controlled by an investor of the other Contracting Party directly or indirectly. Assets can be comprised or take the form of:

- a. Shares, stocks, bonds, debentures or any form of participation in companies;
- b. Claims to money and to any other assets or performance pursuant to contracts having an economic value, and shall include -not exclusively;
- c. Intellectual property rights including, but not limited to, printing and copy-rights, trademarks, patents, industrial designs and models, technical processes, know-how, trade secrets, trade names, and goodwill;
- d. Any right conferred by law, contract, license or permit granted pursuant to a law, including rights to prospect (excavate), explore, extract or exploit natural resources and the rights undertake other economic and commercial activities;
- e. Any other tangible and intangible, movable and immovable properties and any other property rights in rem such as rent, mortgages, liens and pledges;

The term "investment" also applies to "returns" retained or that result from "liquidation" for the purpose of reinvestment.

Any change to the form in which assets were invested or reinvested will not affect their character as investments.

2. The term "Investor" shall mean for a Contracting Party:

- a. A natural person holding the nationality or citizenship of that Contracting Party in accordance with its applicable laws;
- b. The government of that Contracting Party;
- c. Any juridical person established or incorporated under the national laws and regulations located in the territory of that Contracting Party, such as institutes, companies, projects, public institutions, business associations, organizations, and any other legal entities and authorities;

3. The term "returns" shall mean amounts yielded by an investment, irrespective of the form in which they are paid, and includes, in particular though not exclusively, profits, interest, capital gains, dividends, royalties or other fees.

4. The term "territory" shall mean:

- a. In respect of the State of Kuwait:

Any area outside the territorial sea which, in accordance with international law, has been or may hereafter be designated, under the laws of the State of Kuwait, as an area over which that State of Kuwait may exercise sovereign rights or jurisdiction.

b. With respect to the Republic of Macedonia:

The territory of land, water and airspace, over which the Republic of Macedonia exercises, in accordance with international law, sovereign rights and jurisdiction.

5. The term "freely convertible currency" shall mean any currency that the International Monetary Fund determines, from time to time, as a freely usable currency in accordance with the provisions of the Agreement of the International Monetary Fund and any amendments thereto.

6. The term "without delay" shall mean the period as is normally required for the completion of the necessary formalities for the transfer of payments. The said period shall commence on the day the request for transfer has been submitted and shall in no case exceed two months.

## **Article 2. Admission and Promotion of Investments**

1. Each Contracting Party shall, in accordance with its national laws, admit and promote investments in its territory by investors of the other Contracting Party;

2. Each Contracting Party shall, with regards to the admitted investments in its territory, grant these investments the necessary permits, approvals, licenses and authorizations to the extent possible and based on the terms and conditions stipulated in its laws and regulations;

3. The Contracting Parties may consult with each other in any manner they deem appropriate to encourage and facilitate investment opportunities within their respective territories;

4. Each Contracting Party shall, subject to its laws and regulations related to the entry, residence, and work of natural persons, work in good faith on examining the requests of investors, without taking into account their nationality or citizenship, and those of executive management personnel of technicians and administrators who are employed for the investment in its territory, to enter, temporarily stay and work in the territory of the Contracting Party. Family members of those employees shall be immediately granted the same treatment in terms of their entry and temporary stay in the host Contracting Party.

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

1. Investments by investors of either Contracting Party shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting Party in a manner consistent with its laws, regulations and the provisions of this Agreement. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures, including the use, management, conduct, operation, expansion or sale or any other disposition of investments by investors of other Contracting Party in the interest of the investments of its investors or the investors of a third state.

2. Each Contracting Party shall immediately make public or inform the investors of all laws, regulations, procedures and administrative guidelines for public application as well as international agreements that pertain to or affect the provisions of this agreement or investments in its territory of investors of the other Contracting Party.

3. Each Contracting Party shall provide effective means of asserting claims and enforcing rights with respect to investments. Each Contracting Party shall guarantee to investors of the other Contracting Party the right to access its courts of justice, administrative courts and authorities, and all other bodies exercising adjudicatory authorities, and the right to assign persons of their choice, who qualify under the applicable laws and regulations, for the purpose of the assertion of claims and the enforcement of rights with respect to their investments.

4. Furthermore, investments shall not be subjected to performance requirements in the host Contracting Party, that may be detrimental to their viability or adversely affect their use, management, conduct, operation, expansion, sale or other disposition.

## **Article 4. Treatment of Investments**

1. With respect to the use, management, conduct, operation, expansion and sale or other forms of disposition of investments, conducted in its territory by investors of the other Contracting Party, each Contracting Party shall accord

treatment no less favorable than it accords, in like circumstances, to investments of its own investors or investors of any third state, whichever is the more favorable to those investments.

2. However, the provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- a. Any customs union, economic union, free trade area, monetary union, or any other form of regional economic arrangement or other similar international agreement, to which either Contracting Party is or may become a party;
- b. Any international agreement or arrangement relating wholly or mainly to taxation.

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

1. Except when applying Article 6, when investments made by investors of either Contracting Party suffer losses owing to war, other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, regarding restitution, indemnification, compensation, insurance or other settlement, treatment that is not less favorable than the latter Contracting Party accords to its own investors or investors of any third state, whichever is more favorable to the investor.

2. Without prejudice to Paragraph 1, investors of one Contracting Party who suffer losses as a result of any of the events referred to in that paragraph in the territory of the other Contracting Party resulting from:

- a. Temporary requisitioning of their property or part thereof by its forces or authorities;
- b. Destruction of their property or part thereof by its forces or authorities which was not caused by combat operations or was not required by the necessity of the situation;

Shall be accorded prompt, adequate and effective compensation for the purpose of restitution.

## **Article 6. Expropriation**

1. a. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures having equivalent effect to nationalization, expropriation or dispossession (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for a public benefit of that Contracting Party and against prompt, adequate and effective compensation and on the condition that such measures were taken on a non-discriminatory basis and in accordance with due process of law of general application.

b. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation took place or the impending expropriation became publicly known, whichever is 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 commercial rate determined on a market basis, and shall in no event be less than the prevailing LIBOR rate of interest or its equivalent, from the date of expropriation until the date of payment.

c. Where the above-mentioned fair market value cannot be easily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances such as the invested capital, the nature and duration of the investment, replacement value, appreciation of the investment, current returns, discounted cash flow value, book value and goodwill. The amount of compensation finally determined shall be promptly paid to the investor.

2. In light of the principles set out in Paragraph 1, and without prejudice to the rights of the investor under Article 9 of this Agreement, the affected investor shall have the right to prompt review of his case by a judicial or other competent and independent authority of the Contracting Party that did the expropriation, including the valuation of his investment and the payment of compensation on this investment.

3. For the purpose of this Agreement, the term "expropriation" shall also include any interventions or regulatory measures by a Contracting Party that have the same effect as expropriation, that in fact result in depriving the investor of his ownership, control or substantial benefit of his investment or that may result in loss or damage to the economic value of the investment, such as the freezing or retention of the investment, levy of arbitrary or excessive tax on the investment, compulsory sale of all or part of the investment, or other similar measures.

## **Article 7. Transfer of Payments Related to Investments**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

- a. The initial capital and any additional capital for the maintenance, management and development of the investment;
- b. Returns;
- c. Payments under a contract, including amortization 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 (c);
- e. Proceeds from the partial or full sale or liquidation of the investment;
- f. Earnings and other remuneration of personnel engaged from abroad connected to the investment;
- g. Payments of compensation pursuant to Articles 5 and 6;
- h. Payments referred to in Article 8;
- i. Payments arising out of the settlement of disputes.

2. Transfers of payments under Paragraph 1 shall be completed without delay or restrictions and, except in the case of payments in kind, in a freely convertible currency. In case of delay in completing the required transfers, the investor affected shall be entitled to receive interest for the period of delay.

3. Transfers shall be made at the spot market rate of exchange prevailing in the host Contracting Party on the date of transfer of the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent rate applied on inward investments, or the exchange rate determined in accordance with the regulations of the International Monetary Fund, or the exchange rate for conversion of currencies into Special Drawing Rights, or the United States Dollars, whichever is the more favorable to the investor.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated agency (the "Indemnifying Party"), makes a payment under an indemnity or guarantee it has assumed regarding an investment in the territory of the other Contracting Party (the "Host Country"), the Host Country shall recognize:

- a. The assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an investment;
- b. The right of the Indemnifying Party to exercise all such rights and enforce such claims and to assume all obligations related to the investment by virtue of subrogation.

2. In all circumstances, the Indemnifying Party shall be entitled to the same treatment regarding:

- a. The rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in Paragraph 1 above;
- b. Any payments received in pursuance of those rights and claims.

As the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor**

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party regarding an investment of the latter in the territory of the former shall, as far as possible, be settled amicably.

2. If such disputes cannot be settled within a period of six months from the date on which either party to the dispute requested amicable settlement by delivering a notice in writing to the other party, the dispute shall be submitted for resolution to one of the following at the election of the investor:

- a. Any applicable, previously agreed upon dispute-settlement procedures;
- b. International arbitration in accordance with the following paragraphs of this Article.

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

a. The International Center for Settlement of Investment Disputes ("the Center") established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965 (the "Washington Convention"), if both Contracting Parties are parties to the Washington Convention and the Washington Convention is applicable to the dispute;

The Centre, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre ("Additional Facility 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 those Rules may be modified by the parties to the dispute (the Appointing Authority referred to under Article 7 of the Rules shall be the Secretary General of the Center); or

c. An arbitral tribunal constituted pursuant to the arbitration rules of any arbitration institution mutually agreed upon between the parties to the dispute.

4. Notwithstanding the fact that the investor may have submitted a dispute for binding arbitration under Paragraph 3 above, it may, prior to the commencement of the arbitral proceedings or during the proceedings, seek an interim injunctive for the preservation of its rights and interest from the judicial or administrative tribunals of the Contracting Party that is a party to the dispute, provided it does not include a request for compensation for any damages.

5. Each Contracting Party hereby gives its unconditional consent to the submission of an investment dispute for settlement through binding arbitration in accordance with the choice of the investor under Paragraph 3 (a) or (b) or by mutual agreement of both parties to the dispute under Paragraph 3 (c).

6. (A) The consent given in Paragraph 5, together with the consent given under Paragraph 3, shall satisfy the requirement for a written agreement of the parties to a dispute for the purposes of each of Chapter II of the Washington Convention, the Additional Facility Rules, Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958 (the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(B) Any arbitration under this Article, as may be mutually agreed by the parties to the dispute, must be held in a state that is a party to the New York Convention. Claims submitted for arbitration hereunder shall be considered to have arisen out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(C) Neither Contracting Party shall give diplomatic protection or bring an international claim, regarding any dispute referred for arbitration unless the other Contracting Party fails to abide by and comply with the award rendered in such dispute. Still, diplomatic protection for the purposes of this sub-paragraph shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

7. An arbitral tribunal established under this Article shall decide the subjects of the dispute in accordance with such rules of law as may be agreed upon by the parties to the dispute. In the absence of such an agreement, the law of the Contracting Party party to the dispute shall apply, including its rules on conflict of laws, and such recognized rules of international law as may be applicable, also taking into consideration the provisions of this Agreement.

8. An investor, other than a natural person holding the nationality of a Contracting Party to the dispute on the date of the written consent referred to in Paragraph 6 and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting Party, shall be treated for the purpose of Article 25 (2) (b) of the Washington Convention as a "national of another Contracting Party" and shall for the purpose Article 1 (6) of the Additional Facility Rules be treated as a "national of another State".

9. The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting Party shall promptly carry out any such award and shall take the necessary measures for the effective enforcement of such awards in its territory.

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

1. The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or other diplomatic channels.

2. If the dispute has not been settled within six months from the date on which such consultations or other diplomatic

channels were requested by either Contracting Party, and unless the Contracting Parties have agreed otherwise in writing, either Contracting Party may, by written notice 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 member, and these two members shall agree upon a national of a third state as Chairman of the arbitral tribunal, to be appointed by the two Contracting Parties. The two members shall be appointed within two months and the Chairman within four months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the periods specified in Paragraph 3 above have not been observed, 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 either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with this Agreement and the recognized rules of international law as may be applicable and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedures.

## **Article 11. 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 12. Application of other Provisions**

If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain provision, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such rules shall to the extent that they are more favorable to the investor prevail over this Agreement.

## **Article 13. Scope of Agreement**

This agreement shall apply to all investments, whether existing at or made after the date of its entry into force by investors of either Contracting Party in the territory of the other Contracting Party.

## **Article 14. Validity of the Agreement**

Each Contracting Party shall notify the other in writing when its constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force after the date of receipt of the later notification.

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

1. This Agreement shall remain in force for a period of twenty (20) years and shall continue to be in force thereafter for a similar period or periods, unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this agreement one year before the expiry of the initial or any subsequent periods.

2. Regarding investments made prior to the date when the notice of termination of this agreement becomes effective, the provisions of this agreement shall continue to be effective for a period of twenty (20) years from the date of termination of this agreement.

In witness whereof, the respective plenipotentiaries of both Contracting Parties have signed this agreement.

Done in Skopje on 3rd Rabi-ul-Akhar 1429 H corresponding to 9 April 2008, in two original copies in the Arabic, Macedonian and English languages, all texts being equally authentic. In case of divergence the English text shall prevail.

For the State of Kuwait

Abdullah Al-Duwaikh Kuwait's

Ambassador to Turkey

For the Republic of Macedonia

Nicolas Bobo Visky

Minister of Finance