

Agreement between Kuwait and the Russian Federation to encourage mutual investment protection

The State of Kuwait and the Russian Federation (hereinafter referred to as the Contracting Parties)

Desiring to create favorable conditions for the development of economic cooperation between them and in particular for investments by investors of a Contracting Party in the territory of the other Contracting.

Recognizing that the encouragement and reciprocal protection of such investments will be a catalyst for the revitalization of business initiative and to increase prosperity in both Contracting Parties.

They have agreed as follows

## **Article 1. Definitions**

For the purposes of this Convention:

1) "Investment" means all types of assets owned or controlled by an investor of a Contracting Party that is being invested in the territory of the other contracting party, in accordance with the legislation of that Contracting Party. This term includes, in particular:

A) movable and immovable property as well as any other proprietary rights such as mortgages

B) equity shares and debt securities and other securities as well as shares and any other forms of interests in the company or project.

C) debt and claims for money or any performance under a loan agreement or under another contract that has economic value and is associated with investment.

D) intellectual property rights, including in particular, copyrights, patents, trademarks, industrial designs and trade names, as well as technical expertise and trade secrets and trade fame.

E) rights conferred by law or under contract to carry out an economic activity or under any permits and licenses in accordance with the law, including the rights of the search for the reclamation and the extraction and exploitation of natural resources.

Any change in the form in which the assets are invested or reinvested will not affect the nature of the investment

2) - The term "investor" for each of the contracting parties shall mean:

A) any natural person who holds a nationality or citizenship of that Contracting Party, according to its legislation.

B) Any legal entity established in accordance with the applicable in the territory of that Contracting Party, including corporations, companies, unions and solidarity projects and companies or other organizations laws regardless of whether they have limited liability or otherwise.

Provided that such natural person or legal entity is qualified under the laws of that Contracting Party to invest in the territory of the other Contracting Party.

3) The term "proceeds" means the amounts earned by the investment and in particular, profits, interest, capital gains, dividends, management fees and assistance, technical and other fees, as well as in-kind revenues

4) The term "country" means the federal territory of Russia or the territory of the State of Kuwait, as well as the maritime areas, such as maritime exclusive area and the continental shelf bordering the outer limits of the territorial sea of the State concerned and where the State exercise in accordance with international law, sovereign rights and jurisdiction for the purpose of exploring and exploiting, conserving natural resources.

5) The term "activities related to investment" includes, in particular, organization and regulation, operation, maintenance and disposition of companies, branches, agencies, offices or other organizations for the purpose of business management,

ownership, use, protection and disposition of the property of all kinds including intellectual property and borrow money and buy and sell and the issuance of equity securities and the purchase of other foreign currencies for the purpose of import.

6) The term "without delay" means the period normally required to complete the required procedures for the transfer of payments, and the period beginning on the day on which the transfer request is made, and not to exceed three months.

7) The term "investment agreement" means an agreement between a Contracting Party and an investor of the other Contracting Party regarding investments.

## **Article 2. Encouragement and Mutual Protection of Investments**

1) Each Contracting Party shall in its territory encourage investments by investors of the other Contracting Party and accept such investments according to its legislation.

2) Grant investments made by investors of a Contracting Party in the territory of another contracting party, fair and equitable treatment and enjoy full protection and security. Each of the contracting parties shall not take any arbitrary or mandatory measures, or discriminatory practices that may cause damage to the management, maintenance, use, or disposal of existing investments in its territory and belonging to investors of the other contracting party.

3) A Contracting Party shall, in accordance with the legislation, allow investors of the other contracting party who have investments in its territory, to appoint senior management, staff and technicians, according to their choice and without considering nationality.

A Contracting Party shall, within the framework of its legislation relating to the entry and residence of foreigners, consider the application of foreigners who work in the field of the investment for an investor of the other Contracting Party, as well as their family members, to enter, stay in, and leave its territory.

4) Where the transfer of related goods or persons is connected to an investment is permitted, each Contracting Party will allow it, to the extent permitted in accordance with the laws and regulations concerned.

5) Each of the contracting parties will take all the appropriate legal actions to publish all laws, regulations and procedural legislation that directly affects the existing investments in its territory and belonging to investors of the other contracting party.

6) In the case of re-investing any revenues, such investments and revenues enjoy the same protection and treatment as the initial investment, and grant such protection and treatment also to the revenues resulting from the liquidation of investment.

7) Investments belonging to investors of either Contracting Party shall not be subject to expropriation, confiscation or any other similar actions except in accordance with legal procedures.

8) Each Contracting Party shall provide effective means to confirm and enforce the claims of investment rights for licenses and related investment agreements.

9) Each Contracting Party shall not impose any additional requirements as a condition for the expansion or maintenance of investments, which require the export of goods produced obligations, or that determine the necessity of purchasing goods or services locally, or which impose any other similar additional requirements.

## **Article 3. Treatment of Investments**

1) Each Contracting Party shall grant to investments made in its territory by investors of the other Contracting Party, a treatment no less favorable than those that may be granted to investments of its own investors or investors of any third country, whichever is the most favourable.

2) Each Contracting Party shall grant to the investors of the other contracting party with respect to their activity related to investments, a treatment no less favorable than those that may be granted to its own investors or investors of any third country, whichever is the most favourable.

3) Each Contracting Party reserves the right to retain or provide for in its legislation, limited exceptions to the national treatment granted according to paragraphs 1 and 2 of this article, and any new exceptions shall not apply to investments made in its territory by investors of the other contracting party prior to the entry into force of such exceptions, only if the exception concerns the preservation of national defense or security, public order or the protection of the environment or public morality or public health.

4) The MFN treatment granted according to paragraphs 1 and 2 of this Article shall not apply to advantages and privileges granted or that may be granted by one contracting party:

A) With respect to his participation in a free trade area or customs union, economic or similar international agreements.

B) Under the agreements concluded in the field of economic cooperation between the Russian Federation and the countries that had made up the former Union of Soviet Socialist Republics.

C) under the Unified Economic Agreement between the GCC and which the State of Kuwait is a party.

#### **Article 4. Compensation for Damage or Loss**

The investors of one of the contracting parties whose investments in the territory of the other contracting are affected due to war or other armed conflict or a state of national emergency or internal disturbances or any other similar events, shall be treated by the other contracting party, with regards to restitution, indemnification, compensation or other settlement, no less favorable than those granted by the latter contracting party to its own investors or investors of any third state. whichever is the most favourable.

#### **Article 5. Expropriation**

1) Investments held by investors of one of the contracting parties in the other territory of a contracting party, shall not be subject to expropriation or nationalization or any other measures with similar effect to expropriation or nationalization, including actions resulting in loss of ownership (hereinafter referred to as the "ownership dispute") except in cases of public interest and in accordance with legal procedures and on a non-discriminatory basis and against a compensation, immediate, complete and effective.

2) The compensation referred to in paragraph 1 of this article shall be equivalent to the market value of the expropriated investment immediately before the expropriation decision is taken or when the decision to expropriate becomes public, whichever occurs first, and compensation shall be paid without delay and includes interest from the date of expropriation and until the date of payment at the commercial rate determined on a market basis.

3) In accordance with the provisions of Article 9 of this agreement, the investor who claims to have been expropriated of the ownership of his or her investments, has the right under the law of the Contracting Party to a review before a judicial authority or any other independent authority of that Contracting to consider his or her case and assess under the contracting party's legislation the amount of compensation in accordance with the principles set forth in this Article.

#### **Article 6. Transfer of Payments**

1) Each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of payments related to investment and in particular:

A) the initial capital and additional amounts to maintain or to increase investment.

B) the proceeds.

C) payments under a contract, including the amount of the loan repayment.

D) proceeds from the sale or liquidation of all or any part of the investment.

E) Compensation in accordance with Articles 4 and his of this Agreement.

F) payments as a result of the settlement of the dispute.

G) wages and other bonuses unspent for nationals of other Contracting gained from their work and services related to an investment.

2) The transfer of payments provided for in paragraph 1 of this Article shall be effected without delay in freely convertible currency and at the market exchange rate applicable at the date of transfer, according to the exchange regulations in force and effect of the Contracting Party, in which the investment has been made.

#### **Article 7. Subrogation**

1) If any Contracting Party or its designated agency makes payments to any of its investors under a guarantee granted in

respect of an investment in the territory of the other Contracting Party, the latter shall recognize the waiver of the investment repaid, its rights and claims to the first Contracting Party or its designated agency under law or in accordance with a legal agreement, the first contracting party or its designated agency shall exercise these rights and enforce the claims on the basis of the principle of priority of the creditor to the same extent as the investor who has been compensated, excluding the duplicate rights of the investor under Article 9 of this Agreement.

2) The first Contracting Party, or its designated agency grants under all circumstances shall be granted with respect to the rights and claims received by it based on the principle of subrogation of the creditor, as well as with respect to any payments received in accordance with those rights and claims, the same treatment that were granted to the investor under this Agreement with respect to the investment concerned.

3) The provisions of articles 5 and 6 of this Agreement shall apply to payments made under the principle of subrogation of the creditor.

## **Article 8. Consultations**

The Contracting Parties shall, if necessary, hold consultations on any matter relating to the interpretation or application of this Agreement.

## **Article 9. Dispute Settlement between a Contracting Party and an Investor of the other Contracting Party**

1) Disputes between the Contracting Party and an investor of the other Contracting Party relating to the latter's investment in the first Contracting party shall be settled, as far as possible, in a friendly manner.

2) If such dispute cannot be settled within six months from the date of the request of one party to the dispute amicable settlement, it shall be referred by one of the parties to the dispute for settlement:

A) in accordance with any dispute settlement procedures agreed in advance, or;

B) by a special arbitral tribunal constituted for that purpose in accordance with the special Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), and insofar as the Rules are amended by the parties to the dispute, the appointing authority referred to in those Rules is the Secretary General of the International Center for Settlement of Investment Disputes.

3) The award shall be final and binding on both parties to the dispute.

## **Article 10. Dispute Settlement between Contracting Parties**

1) The Contracting Parties shall seek to settle any dispute between them over the interpretation or application of this Agreement through negotiations.

2) If the dispute is not settled within six months after the date of the request for such negotiations by any of the contracting parties, and the contracting parties have not agreed in writing through it, any Contracting Party may, by written notification to the other Contracting Party, refer the dispute to a special arbitral tribunal especially constituted for this purpose in accordance with the following provisions:

A) The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member in the tribunal, and these two members shall agree in the appointment of a citizen of a third country as president of the Arbitral Tribunal as appointed by both Contracting parties.

The first two members of the tribunal shall be appointed within two months, and the president of the tribunal within four months from the date of either Contracting Party shall notify the other contracting party of its intention to refer the dispute to an arbitral tribunal.

B) if the above periods are not observed, either Contracting Party shall, in the absence of other arrangements, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice does not make the necessary appointments, or if the President of the International Court of Justice is a national of either Contracting Party or finds any reason not to do so, the Vice President of the international Court of Justice will be asked to make the necessary appointments. If the Vice President of the international Court of Justice is a national of any the contracting parties or finds reason not to perform such task, he shall request the member of the International Court of Justice who is a senior citizen and not a national of the Contracting Parties to make the required appointments .

C) The arbitral tribunal shall decide by a majority of the votes. This decision shall apply the rules of international law and be binding for both contracting parties. Each Contracting Party shall pay the fees of the member of the arbitral tribunal appointed by it and the fees of its representatives in the arbitral proceedings. The President of the arbitral tribunal's fees as well as with respect to other matters, the costs shall borne by each of the contracting parties equally.

## **Article 11. Application of other Rules**

1) If, in accordance with the legislation of one of the Contracting Parties or an international agreement to which both Contracting Parties are parties, the investment of investors of the other Contracting Party or activities in connection with such investments is granted a regime more favorable than the regime accorded under this Agreement, then a more favorable regime is applied.

2) Each of the Contracting Parties shall comply with any obligation that it may incur in respect of the investments of the investor of the other Contracting Party.

## **Article 12. Application of the Agreement**

1) The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party as from January 1, 1987.

2) The provisions of this Agreement shall not apply to taxation matters.

1) Each of the Contracting Parties shall notify the other Contracting Party in writing of the fulfillment of the constitutional procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last of the two notifications.

2) This Agreement is concluded for a period of fifteen years. It is automatically extended for another fifteen-year period unless one of the Contracting Parties notifies the other Contracting Party in writing at least twelve months before the expiration of the initial or any subsequent period of its intention to terminate this Agreement.

3) With respect to investments made prior to the date of termination of this Agreement, its provisions shall remain in force for a further fifteen years after this date.

4) The Protocol to this Agreement is an integral part of the this Agreement.

DONE at Kuwait City on the 21st of November 1994, which corresponds to the 18th day of Jumada P, 1415 AH, in duplicate, each in the Russian, Arabic and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall be used.

For the State of Kuwait

For Russia

Protocol to the agreement between the State of Kuwait and the Russian Federation for the promotion and reciprocal protection of investments

When signing the Agreement between the Russian Federation and the State of Kuwait on the promotion and mutual protection of investments, the Contracting Parties also agreed on the following provisions:

### **1. With Respect to Paragraph I of Article 1:**

The term "investment" covers investments that are directly controlled by investors of the Contracting Party, as well as investments that are indirectly controlled by such investors through an investor of a third state. This also applies to the "possession" of an investment in the sense of Article I, paragraph I of the Agreement.

The Contracting Parties also recognize that the decision on whether control exists will depend on the actual circumstances of each particular case. To this end, consideration should be given, inter alia, to whether there is:

- A) A substantial interest in the investment, taking into account the extent of equity or other forms of financial interest;
  - B) The ability to exercise substantial influence over the management and operation of the investment
  - C) the ability to exercise significant influence over the composition of the Board of Directors or over the composition of any other management body
- 2) The provisions of this paragraph shall be applicable by the Contracting Parties after the expiration of five years from the date of entry into force of this Agreement.

Done in duplicate at Kuwait on this 21st day of November corresponding to 18th day of Jamada II 1415 H in the Arabic, Russian and English languages, all texts being equally authentic, in the case of divergence of interpretation, the English text shall be used.

For the State of Kuwait

For Russia