

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Sweden and the Government of the Kingdom of Saudi Arabia (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation between both States, intending to create favourable conditions for investments by investors of either State in the territory of the other State, recognizing that the encouragement and reciprocal protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations, have agreed as follows:

## **Article 1.**

For the purposes of this Agreement;

1. The term "investment" means every kind of asset, owned or controlled, with due regard to the provisions of the Protocol attached to this Agreement, by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation, provided that the investment has been made in accordance with that Party's legislation, and in particular, but not exclusively, includes:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, leases, liens and pledges, usufructs and similar rights, including property under a leasing agreement;
- b) Shares, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;
- c) Claims to money such as loans or to any performance having an economic value, associated with an investment;
- d) Intellectual property rights, including but not limited to copyrights, patents, industrial designs, know-how, trademarks, trade and business secrets, trade names and good-will;
- e) Any right conferred by law or under public contract or any licenses, permits or concessions issued according to law.

Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alteration is not in conflict with the legislation of the Contracting Party in the territory of which the investment is made.

2. The term "returns" means the amounts yielded by an investment in particular but not exclusively, profits, capital gains, dividends, royalties or any similar fees or payments.

3. The term "investor" means:

a) In respect of the Kingdom of Saudi Arabia:

- i. Natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;
- ii. Any entity having or having no legal personality and constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;

iii. The Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in Saudi Arabia.

b) In respect of the Kingdom of Sweden:

i. Any natural person who is a national of the Kingdom of Sweden in accordance with its law.

ii. Any legal person or other entity organized in accordance with the law applicable in the Kingdom of Sweden,

4. The term "territory" means the territory of a Contracting Party as well as the maritime areas beyond the territorial sea with respect to which a Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

## **Article 2.**

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation.

2. Each Contracting Party shall at all times accord such investments fair and equitable treatment. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments, or the acquisition of goods and services or the sale of their production in its territory of investors of the other Contracting Party.

3. Within the framework of their internal legislation, the Contracting Parties shall favourably examine requests for entry and authorization to sojourn, work and travel made by the persons of one Contracting Party in relation to an investment made in the territory of the other Contracting Party.

4. Investments by investors of either Contracting Party and investment returns shall enjoy full protection and security in the territory of the other Contracting Party.

## **Article 3.**

1. Each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third State.

2. In accordance with its laws and regulations, each Contracting Party shall, grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its own investors.

3. Each Contracting Party shall accord the investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with any other activity associated thereto in its territory, treatment not less favourable than the treatment it accords to its own investors or to the investors of a third State, whichever is more favourable.

4. The provisions in paragraphs (1), (2) and (3) of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third State by virtue of its membership of, or association with, a customs union, an economic union, a common market or a free trade area.

5. The provisions of this Article shall not apply to tax matters.

## **Article 4.**

1. Investments by investors of either Contracting Party and investment returns shall not be expropriated, nationalized, or subjected to any other measure, the effects of which would be tantamount to expropriation or nationalization by the other Contracting Party except for the public benefit of that Contracting Party and against prompt, adequate and effective compensation, provided that these measures are not discriminatory and in accordance with domestic laws of general application. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the prevailing market rate of return from the date of the expropriation until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such

expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review in accordance with due process of law.

2. Investors of either Contracting Party whose investments suffer losses in connection with their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of general emergency, or revolt, shall be accorded treatment not less favourable by such other Contracting Party than that accorded by the latter Contracting Party to its own investors or to the investors of a third State as regards restitution, indemnification or compensation. Such payments shall be freely transferable.

## **Article 5.**

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with investments and investment returns they hold in the territory of the other Contracting Party, in particular but not exclusively:

- a) The principal and additional amounts to maintain or increase the investment;
- b) The returns;
- c) The repayment of loans;
- d) The proceeds from the liquidation or the sale of the whole or any part of the investment;
- e) The compensation provided for in Article 4;
- f) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment and which are derived from his employment with the investment.

## **Article 6.**

1. Transfers under Articles 4 and 5 shall be made without delay in a freely convertible currency at the prevailing rate of exchange on the date of transfer.

2. In the absence of the prevailing market rate of exchange, the rate of exchange shall correspond to the latest cross-rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment conversions of the currencies concerned into Special Drawing Rights.

## **Article 7.**

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or title to the same extent as its predecessor in title.

## **Article 8.**

1. 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 a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement in this context.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

## **Article 9.**

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

## **Article 10.**

1. Disputes between the Contracting Parties concerning the interpretation or application of the Agreement shall as far as possible be settled amicably through negotiations between the Governments of the two Contracting Parties.
2. If a dispute cannot thus be settled within six months following the date on which such negotiation was requested by either Contracting Party, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.
3. Such arbitration tribunal shall be constituted on an ad hoc basis as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state as their Chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration 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 is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting Party shall make the necessary appointments.
5. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counselling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning cost. In all other respects, the arbitration tribunal shall determine its own procedure.

## **Article 11.**

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party shall be amicably settled as far as possible.
2. If the dispute cannot thus be settled, the investor may choose to submit it for resolution either:
  - a) To any competent court or administrative tribunal of the Contracting Party, party to the dispute; or
  - b) In accordance with any applicable, previously agreed dispute settlement procedure; or
  - c) To international arbitration as follows:
    - i) To the International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, D.C. on 18 March 1965 (the Washington Convention), or
    - ii) To an ad hoc tribunal set up under the current Arbitration Rules of the United Nations Commission on International Trade Law (the UNCITRAL Rules). The appointing authority under the said rules shall be the Secretary-General of ICSID.
3. The dispute shall not be submitted to international arbitration until six months have elapsed from the date on which the Contracting Party received written notification of the investor's intent to do so. Moreover, a dispute shall not be submitted to international arbitration if the investor has submitted the same dispute to a local court of that Contracting Party.
4. If the investor chooses to submit the dispute to arbitration according to the preceding paragraphs, the Contracting Party agrees not to request the exhaustion of its local remedies. Each Contracting Party hereby consents to the submission of such dispute to international arbitration in accordance with the provisions of this Article.
5. Any arbitration under the UNCITRAL Arbitration Rules shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention)
6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.
7. The arbitration award shall be final and binding on both parties to the dispute. The award shall be enforceable under applicable domestic laws and international agreements.

## Article 12.

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

## Article 13.

1. The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.
2. This Agreement shall remain in force for a period of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.
3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 shall remain in force for a further period of twenty years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Riyadh on 3 Rabi'l 1429 corresponding to 11th March 2008, in duplicate in the Swedish, Arabic and English languages, all text being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Sweden

Dr. Ewa Björling

Minister for Trade

For the Government of the Kingdom of Saudi Arabia

Dr. Ibrahim A. Al-Assaf

Minister of Finance

On signing the Agreement between the Government of the Kingdom of Sweden and the Government of the Kingdom of Saudi Arabia concerning the Encouragement and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as the integral part of the said Agreement:

For greater clarity as to whether an investment made in the territory of one Contracting Party is controlled by an investor of the other Contracting Party, control of an investment means control in fact, determined after an examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the investor's:

- a) Financial interest, including equity interest, in the investment;
- b) Ability to exercise substantial influence over the management operation and use of the investment; and
- c) Ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Done at Riyadh on 3 Rabi'l 1429, corresponding to 11th March 2008 in duplicate in the Swedish, Arabic and English languages, all texts being equally authentic. In case of divergence the English text shall prevail.

For the Government of the Kingdom of Sweden

Dr. Ewa Björling

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Dr. Ibrahim A. Al-Assaf

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