

# **Agreement between the Government of the People's Democratic Republic of Algeria and the Government of the State of Kuwait concerning the encouragement and reciprocal protection of investments**

The Government of the People's Democratic Republic of Algeria and the Government of the State of Kuwait, hereinafter referred to as the "Contracting Parties";

Desiring to create favourable conditions for the development of economic cooperation between them and in particular the investments made by investors of one Contracting Party in the territory of the other contracting party;

Recognising that the encouragement and reciprocal protection of such investments will stimulate the activity of the business initiative and will increase prosperity in both contracting parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Convention, unless the context otherwise requires:

1. The term "investment" means all assets in one Contracting Party owned or controlled directly or indirectly by an investor of the other Contracting Party, either directly or indirectly through subsidiaries of enterprises or annexes, irrespective of their location in a Contracting Party or a third State, and includes in particular but not exclusively:

- a) property in cash and in kind, movable and immovable property and all other related property rights, such as leasing, leases, rights of use and mortgages, liens on debts, pledges, usufruct and others analogous rights;
- b) corporations, commercial projects or joint projects, shares or stocks and other forms of participation in the ownership, securities, assets and debt securities and other forms of claim rights in a company or commercial project or joint project, other receivables, borrowings, loans, debts and financial bonds issued by an investor of a Contracting Party;
- c) monetary claims and claims to any other assets or benefits under a contract having an economic value;
- d) intellectual and industrial property rights, including but not limited to copyrights, trademarks, patents, processes and industrial designs, technical processes, trade secrets and reputation;
- e) any right conferred by law, by contract or by virtue of any authorization or permits given in accordance with a law including rights of prospect and explore, extract or exploit natural resources, the rights to manufacture and to use and sell of products, rights to engage in other economic and commercial activities or provision of services.

Any alteration of the form in which assets have been invested or reinvested shall not affect their character as investments.

The term "investment" also applies to "returns" retained for the purpose of being reinvested and the proceeds from the "liquidation", according to the definition given in both terms below.

2. The term "investor" means a Contracting Party:

- a) A natural person possessing the nationality of that Contracting Party in accordance with its laws in force;
- b) The Government of that Contracting Party and its organs and institutions;
- c) Any legal person or any other entity established in a lawful manner, in accordance with the laws and regulations of that Contracting Party, such as development fund, regardless of their nature and form trade unions, or similar entities, and any other entity established outside the authority of the Contracting Party as a juridical person that is owned or controlled by

that Contracting Party or by a national of that State or entity established under its authority.

3. The term "returns" means the amounts yielded by an investment, irrespective of the form in which they are to be paid and in particular though not exclusively, includes interests, capital, profits, dividends, royalties, fees for the administration and technical assistance or regulations and payments in kind regardless of their nature.

4. The term "liquidation" refers to any act carried out with the aim of terminating the investment in whole or in part.

5. The term "territory" means:

For the People's Democratic Republic of Algeria and in the sense of the territory of Algeria, including the maritime area, the river bed, the of the sea and its subsoil overlying the Algerian territorial sea, on which Algeria exercises its sovereign rights and jurisdiction, in accordance with its national legislation and international law.

For the State of Kuwait: the territory of the State of Kuwait and includes any area outside the territorial sea of the State of Kuwait and which, in accordance with international law has been or may be determined in accordance with the law of the State of Kuwait, as an area over which the State of Kuwait may exercise sovereign rights or jurisdiction.

6. The term "related activities" means activities related to investment and which is carried out in accordance with the laws of the Contracting Party where investment, and includes, but not exclusively, activities such as:

a) the establishment and maintenance of control branches or offices and agencies and other facilities for the administration of the work;

b) the organization of companies or acquisition of companies or interests in companies or their properties in control and management, maintenance, use, enjoyment, extension and sale or liquidation or other disposition of companies established or acquired;

c) the conclusion, implementation and enforcement of contracts relating to investments;

d) the possession, ownership, use and disposal of assets irrespective of their nature by any legal means, including intellectual property and its protection;

e) borrowing from local financial institutions, as well as the purchase, sale and issue of shares and other financial obligations on local financial markets, and the purchase of foreign currency for the realization of investments.

7. The term "freely convertible currency" means any currency in force with the International Monetary Fund from one period to another as a freely used currency in accordance with the provisions of the International Monetary Fund Convention and any amendments thereto.

8. The term "without delay" shall mean such period as is usually required to complete the formalities necessary for the transfer of payments. the said period shall commence on the day on which the request for transfer. However, this period shall in no case exceed one month (1).

## **Article 2. Acceptance and Encouragement of Investments**

1. Each Contracting Party accepts and encourage in its territory in accordance with its laws and regulations in force, investments by investors of the other Contracting Party.

2. With respect to investments accepted in its territory, each Contracting Party shall accord to such investments and associated activities relating thereto, the agreements, licences and permits and authorizations acceptances necessary to the extent allowed and in accordance with the principles and under the conditions laid down by its laws and regulations.

3. The two Contracting Parties may consult, by any means as they deem appropriate to encourage and facilitate investment opportunities within the territory of each party.

4. Each Contracting Party shall, in accordance with its laws and regulations relating to the entry, residence and employment of natural persons, and in good faith, consider requests from investors of the other Contracting Party and requests from senior management officials, such as technicians and administrators designated for investment, for entry and temporary residence in its territory. The same treatment shall be accorded to direct family members with respect to entry and temporary residence in the host Contracting Party.

Each Contracting Party shall permit, in accordance with its laws and regulations, investors of the other Contracting Party with investments in its territory to employ any principal person selected by the investor during the period that such principal

person has been permitted to enter, reside and work in the territory of the first-mentioned Contracting Party.

5. Where the transport of goods or persons connected with an investment is carried out, each Contracting Party shall permit, in the territory of the first-mentioned Contracting Party, the entry, residence and work of the principal person. the limit authorized by its laws and regulations, the realization of the transport operation through the projects of the other party contractor.

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

1. Investments of investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party, in accordance with recognized principles of international law and the provisions of this Convention.

Neither Contracting Party shall in any way, take any unreasonable or discriminatory procedures affecting such investment or related activities including the use, enjoyment in the management, development, maintenance and expansion of investments.

2. Each Contracting Party shall notify all laws, regulations, procedures and provisions which pertain to or which directly affect investments or related activities within its territory and subject investors of the other Contracting Party.

3. Each Contracting Party shall establish effective means to confirm the requirements and the enforcement of rights relating to investment. Each Contracting Party shall guarantee to investors of the other contracting party, the right of appeal to the courts and administrative organizations and all other bodies exercising a judicial authority, as well as the right to appoint competent persons of their choice, in accordance with the laws and regulations in force in order to confirm the requirements and the enforcement of rights with respect to their investments and activities associated therewith.

4. It is permitted to any contracting party to impose, investors of the other Contracting Party, mandatory measures that may request or impede the purchase of products, energy and fuel or of means of production or operation of any kind or restrict the marketing of products inside or outside the territory of the host contracting party or any measure that have a discriminatory effect against investments made by investors of the other Contracting Party the benefit of investors or investments made by investors of any third State.

5. Investments shall not be subject in the host Party delivery contracting requirements on acceptance of which may be detrimental to their development or having a negative effect on their use, enjoyment or expansion, management, maintenance or other related activities, unless such requirements are deemed vital for reasons of public order, public health or environment and that they are applied under a legal instrument which is of general application.

6. Investments made by investors of either Contracting Party shall not be subject in the host contracting party to seizure or confiscation or any other similar procedures, except in accordance with legal procedures and in conformity with the relevant principles of international law and other relevant provisions of this Convention.

7. Each Contracting Party shall take into consideration any commitments or obligations to which it may be a party in respect of investments and related activities in its territory by investors of the other Contracting Party.

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

1. Each Contracting Party guarantees, at all times, fair and equitable treatment, to investments made in its territory by investors of the other Contracting Party. This treatment shall not be less favourable than that which it accords in like circumstances of its own to investments or investors to investors of a third State, and the most favourable treatment shall apply.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the activities related to their investments, including the use, enjoyment, management, development, maintenance, expansion or disposal of such investments, treatment no less favourable than that it accords to its own investors or to investors of a third State, and the most favourable treatment shall apply.

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

a) any customs union, economic union, free trade area or a monetary union or any other form of regional economic arrangement or other similar international agreement to which one of the Contracting Parties is or will be a part;

b) any international or regional agreement or bilateral convention or other similar arrangement and any domestic legislation relating wholly or substantially to taxes.

## **Article 5. Compensation for Loss or Damage**

1. Investors of one Contracting Party whose investments have suffered damage or losses due to a war or any other armed conflict or state of national emergency or disturbances or revolution, riot or any other similar event, which occurred in the territory of the other Contracting Party, shall benefit from the other Contracting Party, as regards the restoration of situations as they were or the recovery of losses, compensation or other settlement, a treatment no less favourable than that granted by the other Contracting Party to its own investors or to investors of a third State, the most favourable treatment shall apply.
2. Without prejudice to paragraph (1), investors of one Contracting Party who have suffered damage or loss resulting from one of the circumstances set out in paragraph above, in the territory of the other Contracting Party due to the temporary seizure of their property or part of them or their destruction will be entitled to a prompt, adequate and effective compensation for the damage or loss they have incurred during the period of seizure or as a result of the destruction of their property. Resulting payments shall be made in a freely convertible currency and may be transferred freely and without delay.

## **Article 6. Expropriation**

1. (a) investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized, or subject, directly or indirectly, to procedures that have an effect equivalent to expropriation or nationalization or dispossession of the property (hereinafter referred to as "expropriation") by the other Contracting Party except for a public purpose related to a national interest for that Contracting Party, with prompt, adequate and effective compensation provided that such procedures are taken on a non-discriminatory basis and in accordance with the applicable legal procedures.  
  
b) the amount of such compensation shall correspond to the real value of the expropriated investment and shall be determined and computed in accordance with internationally recognized principles on the basis of valuation of the fair market value of the expropriated investment at the time when the expropriation or impending was issued or made public in accordance with the procedure occurs first (hereinafter referred to as "valuation date"). Such compensation shall be calculated in the currency of investment or any other convertible currency on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include at a commercial interest rate to be determined on the basis of the market. It shall in no case shall be less than the rate in force between the London banks or its equivalent (LIBOR) from the date of expropriation until the date of payment.
2. In the light of the principles set out in paragraph 1, and without prejudice to the rights of the investor under article 9 of this Convention, the investor affected shall have a right to a prompt review by a judicial authority in the host country of the investment or from any other professional and independent authority of that Contracting Party of its case including the valuation of its investment and the payment of compensation to the investment.
3. The expropriation shall also include situations where a Contracting Party expropriating the assets of a company or an established or established under the laws in force in its territory and in which investors of the other Contracting Party has invested by the ownership of shares, assessments of debt securities or other rights or interests.
4. The term "expropriation" also includes any interventions or regulatory procedure of a Contracting Party such as the freezing or restriction of investment, or enforcement of a taxation contrary to tax purposes or exaggerated on investment, compulsory sale or partial or total investment, or other similar procedures having the same effect that confiscation or expropriation of dispossession which will be an investor interest of his ownership or control over its vital interests in its investment or which would loss or damage to the economic value of the investment.

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

1. Each Contracting Party shall guarantee to investors of the other Contracting Party shall, after the payment of taxes, the free transfer of payments relating to investment inside and outside 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 by virtue of a contract, including the payment of principal and accrued interest payments made pursuant to a loan agreement concluded in a legal manner;

d) royalties and rights set out in article 1.

e) any revenue from the sale or the total or partial liquidation of the investment;

f) funds received and other expenses of contract workers abroad who have a relationship with the investment;

j) payments of compensation under articles 5 and 6;

h) payments specified in Article 8;

i) payments arising out of the settlement of disputes.

2. The transfer of payments referred to in paragraph 1 will be implemented without delay or barriers in a convertible currency and freely transferable, except in the case of payments in kind.

3. Transfers shall be effected on a non-discriminatory basis, at recent market exchange rates in the host Contracting Party, on the date of transfer for recent transactions relating to the transferable currency. In the absence of a foreign exchange market, the rate that will be applied will be the most recent rate applied or the rate set in accordance with the regulations of the International Monetary Fund, or the rate of exchange rate fixed for the conversion of currencies into Special Drawing Rights or in US Dollars; the most favourable to the investor will be applied.

## **Article 8. Subrogation**

1. If a Contracting Party or its relevant agency or any other party designated by it ("the Guaranteeing Party") established or created in that Contracting Party, makes a payment under an indemnity or guarantee against non-commercial risks which it has underwritten, relating to an investment in the territory of the other Contracting Party ("the Host Party"), the Host Party shall recognise:

(a) the assignment to the guaranteeing party under a law or legal agreement of any rights or claims resulting from such investment;

(b) the right of the guaranteeing party to exercise such rights and to enforce such rights or claims. applications and obligations relating to the investment, on the basis of the principle of subrogation.

2. In all cases, the Guaranteeing Party shall have the right to:

a) to the same treatment in respect of the rights and claims owned and obligations assumed by virtue of the assignment referred to in paragraph 1 above;

b) to all payments to be received on the basis of those rights and claims.

3. Without prejudice to Article 7, all payments to be received by the Guaranteeing Party in local currency, on the basis of the rights and claims owned, shall be freely arranged and used by the Guaranteeing Party to meet the expenses that may incur in the territory of the host Party.

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

1. Disputes between a Contracting Party and an investor of the other Contracting Party relating to an investment of the latter in the territory of the first mentioned party, shall as far as possible, be settled amicably.

2. If such a dispute cannot be settled within six (6) months from the date of notification of the written request of one of the Parties of the dispute to the other party for the amicable settlement, the dispute shall be submitted for settlement at the election of the investor party to the dispute, according to one of the following means:

a) In accordance with one of the suitable procedures for the settlement of disputes, accepted in advance;

b) In accordance with the provisions of chapter on the settlement of disputes of the Unified Agreement for the Investment of Arab Capital in the Arab States of the year 1990;

c) to international arbitration in accordance with the following paragraphs of this article.

3. In the event that an investor chooses to submit the dispute to international arbitration, it shall also submit written consent to submit the dispute to one of the following mechanisms:

a) (1) to the International Centre for Settlement of Investment Disputes (the Centre), established under the Convention on

the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as "the Washington Convention"), if both parties are Contracting Parties to the Washington Convention and the Washington Convention is applicable to the dispute;

2) to the Centre under the Rules Governing Additional Facilities for the Administration of Proceedings by the Secretary of the Centre ("Additional Facility Rules"), if the Contracting Party of the Investor or the Contracting Party is a party to the dispute, and not both parties to the Washington Convention.

b) An arbitral tribunal to be established under the Arbitration Rules ("the rules") of the United Nations Commission on International Trade Law (UNCITRAL), depending on the amendments to be made to these rules by the parties to the dispute (the designated party stipulated in article 7 of the rules shall be the Secretary-General of the Centre);

c) an arbitral tribunal to be appointed on the basis of arbitration rules specific to an arbitral tribunal, which will be agreed between the parties to the dispute.

4. Even if the investor has submitted the dispute to binding arbitration pursuant to paragraph 3 above, it shall be permitted, before or during the arbitral proceedings, to apply to the courts of the Contracting Party party to the dispute for an interim judicial decision for preservation of its rights and interests. This shall not include a claim for compensation for damages.

5. The arbitral decisions, which may include an award for the payment of interest shall be final and binding on the parties to the dispute, and each Contracting Party shall carry out any such award without delay and shall take the necessary measures to the effective implementation of such awards in its territory.

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

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

2. If the dispute has not been settled within six (6) months from the date when either Contracting Party requested such consultations or the date of application of regulation through diplomatic channels and if both Contracting Parties do not agree in writing, otherwise it shall be permitted to one of the Contracting Parties by written notification to the other Contracting Party, to submit the dispute to an arbitral tribunal which will meet for this purpose, 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, with President and will be appointed by the two Contracting Parties. The two members shall be appointed within two months (2) and the Chairman within four (4) months, from the date of notification by either contracting party from the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the time limits laid down in paragraph 3 above are not 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 one of the Contracting Parties or if he is prevented from performing the abovementioned task, the Vice-President of the International Court of Justice shall be requested to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of one of the Contracting Parties, or if he is prevented from attending to the abovementioned duties, the Member of the International Court of Justice succeeding him in the order of precedence who is not a national of one of the Contracting Parties shall be requested to make the necessary appointments.

5. The Arbitral Tribunal shall decide by a majority of votes. This decision shall be taken in accordance with the provisions of this Convention and with the rules of international law recognised in accordance with their application and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the fees of the member it has appointed and the fees of its representative in the arbitral proceedings. The fees of the chairman and other expenses shall be borne equally by the two Contracting Parties. The Arbitral Tribunal may, depending on its assessment, decide to charge a higher percentage or the totality of the indicated costs to one of the Contracting Parties. The arbitral tribunal shall determine its own procedures with regard to all other aspects.

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

If the laws of one of the Contracting Parties or obligations under international law, present or future, between the two Contracting Parties, in addition to this Convention, contain a provision, either general or specific, which accords to investments or related activities carried out by investors of the other Contracting Party treatment more favourable than that

provided for in this Convention, that provision shall prevail over this Convention to the extent that it provides for more favourable treatment.

## **Article 12. Scope of the Convention**

This Agreement shall apply to all investments, whether those made on the date of entry into force of this Convention or those made after that date, by investors of one Contracting Party in the territory of the other Contracting Party. this Agreement shall not apply to any dispute that arose before its entry into force, unless the parties to the dispute agree otherwise.

## **Article 13. Entry Into Force**

Each Contracting Party shall notify the other Contracting Party, of the completion of the constitutional procedures necessary for the entry into force of this Convention. This Agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

## **Article 14. Duration and Termination**

1. This Agreement shall remain in force for a period of twenty (20) years and shall remain valid for a period or similar time periods unless either Contracting Party notifies in writing the other Contracting Party one year before the expiration of the initial or any subsequent period, of its intention to terminate this Agreement.
2. In respect of investments made prior to the date of entry into force of the notice of termination of this Agreement, the provisions of this Convention shall remain in force for a period of fifteen (15) years from the date of termination of this Convention.

In WITNESS WHEREOF, the plenipotentiaries duly concerned of the two contracting parties, have signed this Convention.

Done at Kuwait on 13 Rajab A.H. 1422 corresponding to 30 September 2001 in two originals in the Arabic language, both texts being equally authentic.

For the Government of the People's Democratic Republic of Algeria's

Hadi MESSAOUD

Ambassador

For the Government of the State of Kuwait

Abdelmohsein EL HANIF

Secretary General of the Ministry of Finance