

Agreement between the Government of the French Republic and the Government of the Kingdom of Saudi Arabia on the reciprocal encouragement and protection of investments

The Government of the French Republic and the Government of the Kingdom of Saudi Arabia, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two Contracting Parties and to create favorable conditions for French investments in Saudi Arabia and Saudi investments in France

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two Contracting Parties, in the interest of their economic development

Have agreed on the following provisions:

Article 1.

For the purposes of this Agreement:

1. The term "investment" means all assets of any kind, such as property, rights and income, owned or controlled by an investor of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the laws of the latter, and in particular but not exclusively:

(a) movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, sureties and all similar rights ;

(b) Shares, stocks and bonds of companies incorporated in the territory of one of the Contracting Parties and other forms of rights or participation in such companies, even if minority or indirect, as well as securities issued by one of the Contracting Parties or any of its investors;

(c) Claims or obligations, or rights to any benefits of economic value;

(d) Intellectual, commercial and industrial property rights, including, but not limited to, copyrights and related rights, patents, licenses, industrial designs, technical processes, know-how, trademarks, trade secrets, registered names and goodwill;

(e) Rights conferred by law or by virtue of a public or private contract or any license, authorization or concession granted by legal means.

No change in the form of investment of assets shall affect their characterization as an investment, provided that such change is not contrary to the laws of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "investor" means :

- any natural person possessing the nationality of one of the Contracting Parties, in accordance with the legislation of the latter ;

- any legal entity incorporated in the territory of one of the Contracting Parties, in accordance with the legislation thereof, having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties or by legal entities having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the legislation thereof such as joint stock companies, enterprises, cooperatives, corporations, partnerships, offices, establishments, funds, organizations, trade associations and other similar entities, whether limited or unlimited in liability;

- either Contracting Party and its financial institutions and authorities, public funds and other similar governmental

institutions.

3. The term "income" means all sums produced by an investment, in particular profits, dividends, royalties, capital gains or any other similar payments.

The income from the investment and, in the case of reinvestment, the income from its reinvestment shall enjoy the same protection as the investment.

4. This Agreement shall apply to the territory of each Contracting Party and to the maritime area of each Contracting Party, hereinafter defined as the economic zone and the continental shelf which extend beyond the limits of their territorial waters and over which they have, under international law, rights of sovereignty and jurisdiction.

Article 2.

1. Each Contracting Party shall use its best endeavours to encourage investments made in its territory and maritime zone by investors of the other Party, and shall admit them within the framework of its legislation. It shall accord to such investments, in all circumstances, fair and equitable treatment.

2. Neither Contracting Party shall hinder, through arbitrary or discriminatory measures, the administration, maintenance, use, enjoyment or disposal of investments made in its territory by investors of the other Contracting Party.

Article 3.

1. Each Contracting Party shall accord to the investments it has admitted and to the income from the investments of investors of the other Contracting Party treatment no less favourable than that accorded to the investments and to the income from the investments of investors of a third State.

2. Each Contracting Party shall, in accordance with its laws and regulations, accord to investments it has admitted and to the income from investments of investors of the other Contracting Party treatment no less favorable than that accorded to investments and to the income from investments of its own investors.

3. Each Contracting Party shall, in its territory, accord to investors of the other Party treatment no less favorable than that accorded to its own investors or to investors of a third State, whichever is more advantageous, with respect to the administration, maintenance, use, enjoyment or disposition of their investments, or with respect to the enforcement of their rights in respect of such investments (e.g., transfers and indemnities) or any other activity related thereto.

4. Treatment under this Article shall not, however, extend to privileges accorded by a Contracting Party to investors of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

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

Article 4.

1. Investments made by investors of one of the Contracting Parties shall enjoy full protection and security in the territory and maritime zone of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation, nationalization or freezing of assets, or any other measure the effect of which is to dispossess, directly or indirectly, the investors of the other Party of investments made in its territory and maritime zone, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

Any measures of dispossession which may be taken must give rise to the payment of prompt, adequate and effective compensation, the amount of which, equal to the value of the investments concerned, must be assessed in relation to the normal economic situation which prevailed before any threat of dispossession.

This compensation, its amount and the terms of its payment shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. Until the date of its payment, it shall bear interest at the appropriate market rate.

3. Investors of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime area of the other Contracting Party shall receive from the latter treatment no less favourable than that accorded to its own investors or to those of the

most favoured Nation.

Article 5.

Each Contracting Party shall, in the territory or maritime area of which investments have been made by investors of the other Contracting Party, grant to such investors the free transfer of:

- (a) The principal and additional sums intended to maintain the investment at its level or to increase it ;
- (b) income from investments and other current income;
- c) royalties from the intangible rights referred to in Article 1, paragraph 1, letters d and e;
- d) Payments made for the repayment of regularly contracted loans;
- e) Proceeds from the total or partial liquidation of the investment, including capital gains on the investment;
- (f) Compensation for loss of possession or for loss as provided for in Article 4, paragraphs 2 and 3.

Investors of each Contracting Party who have been authorized to work in the territory or maritime zone of the other Contracting Party, in respect of an approved investment, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the official rate of exchange in force on the date of the transfer.

Article 6.

1. Any investment dispute between one of the Contracting Parties and an investor of the other Contracting Party shall be settled amicably to the extent possible.
2. If the dispute has not been settled in accordance with the procedure described in paragraph 1 of this Article within six months from the date on which the request for settlement was filed, it shall, at the request of the investor, be submitted to the competent court of the Contracting Party in whose territory the investment was made, or be submitted to arbitration in accordance with the provisions of the Agreement on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965. If the investor opts for arbitration, the Contracting Party undertakes not to require that all local recourse procedures have been exhausted.
3. (a) If the dispute is submitted to the Contracting Party's competent court, as permitted by paragraph 2, the investor shall refrain from concurrently resorting to international arbitration and the court's award shall be binding and not subject to appeal or recourse other than as provided by the Contracting Party's law.
3. b) If the dispute is submitted to arbitration in accordance with the provisions of paragraph 2, the award shall be enforceable and not subject to appeal or recourse other than as provided for in the above-mentioned Agreement.

The enforcement of the award shall be governed by the laws relating to the enforcement of judgments in force in the State in whose territories the award is enforceable.

Article 7.

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime area of the other Contracting Party, makes payments to one of its investors, it is thereby subrogated to the rights and actions of such investors.

Such payments shall not affect the rights of the investors to have recourse to the procedures described in Article 6.

Article 8.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.
2. If the dispute is not settled within six months of the date on which it was raised by either Contracting Party, it may be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner:

Each Contracting Party shall appoint one member, and the two members shall appoint, by mutual agreement, a national of a third State who shall be appointed by both Contracting Parties as chairman of the tribunal. All members shall be appointed within two months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits set forth in paragraph 3 of this Article have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Under-Secretary-General, provided that he is not a national of one of the Contracting Parties, shall make the necessary appointments.

5. The arbitral tribunal shall take its decisions by majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

Article 9.

Where the legislation in force in one of the Contracting Parties or commitments under international law existing at the time of the Agreement or entered into subsequently between the Contracting Parties contain provisions, whether general or specific, whereby more favourable treatment than that provided for in this Agreement may be accorded to investments made by investors of the other Contracting Party, such provisions shall, to the extent that they are more favourable, prevail over the provisions of this Agreement.

Article 10.

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

Investments which have been the subject of a special commitment by one Contracting Party to investors of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that commitment insofar as it contains provisions more favourable than those contained in this Agreement.

Article 11.

Each of the Parties shall notify the other of the completion of the constitutional procedures required for the entry into force of this Agreement, which shall take effect thirty days after the date of receipt of the last notification.

This Agreement is concluded for an initial term of ten years. It shall remain in force indefinitely after that term, unless either Party terminates it through diplomatic channels with one year's written notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Done at Jeddah, this 26th day of June 2002 (corresponding to 15/4/1423) in two originals, each in the French and Arabic languages, both texts being equally authentic.

For the Government of the French Republic :

The Minister of Foreign Affairs, Cooperation and Francophonie

D. de Villepin

For the Government of the Kingdom of Saudi Arabia:

Minister of Finance and National Economy,

Ibrahim Abdelaziz al Assaf

PROTOCOL

Upon signing the Agreement between the Government of the French Republic and the Government of the Kingdom of Saudi Arabia on the reciprocal encouragement and protection of investments, the Contracting Parties have further agreed on the following provisions, which shall be considered as an integral part of the Agreement:

With respect to Article 2:

(a) Any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measure of similar effect, shall be deemed to be de jure or de facto impediments to fair and equitable treatment.

(b) Within the framework of their domestic legislation, the Contracting Parties shall give favourable consideration to applications for entry and authorisation to stay, work and travel submitted by persons from one of the Contracting Parties in connection with an investment made in the territory or maritime area of the other Contracting Party.

With regard to Article 7:

To the extent that the regulations of one Contracting Party provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by investors of that Party in the territory or maritime area of the other Party.

Investments made by investors of one of the Contracting Parties in the territory or maritime zone of the other Party may only obtain the guarantee referred to in the above paragraph if they have first obtained the approval of the latter Party.

With regard to Article 8:

The Contracting Parties undertake to enter into consultations if either of them so requests in order to resolve any dispute relating to this Agreement or to discuss any matter concerning the interpretation or application of this Agreement.

Done at Jeddah, this 26th day of June 2002 (corresponding to 15/4/1423) in two originals, each in the French and Arabic languages, both texts being equally authentic.

For the Government of the French Republic :

The Minister of Foreign Affairs, Cooperation and Francophonie

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