# Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the Republic of Azerbaijan on the Mutual Promotion and Protection of Investments

The Government Of The Kingdom of Saudi Arabia

And

The Government Of The Republic Of Azerbaijan

"hereinafter reffered to as the Contracting Parties"

desiring to intensify economic cooperation between both states, intending to create favorable conditions for investments by investors of either State in the territory of the other State, recognizing that the reciprocal promotion and 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 by an investor of a Contracting Party in the territory of the other Contracting Party according to its 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;

b) shares, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued hy 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, 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 includes, profit, dividends, royalties, capital gains 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 Jaw 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, offices, 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 Republic of Azerbaijan:

I. any national person who is a national of Azerbaijan in accordance with its laws; or

II. any legal person such as company, corporation, firm, business, association, institution of other entity constituted in accordance with the laws and regulations of the Republic of Azerbaijan and having its seat within its territory.

4. The term "territory" means:

a) in respect of the Kingdom of Saudi Arabia: in addition to the zones contained within the land boundaries, the marine and submarine zones over which the Kingdom of Saudi Arabia exercises sovereignty and sovereign or jurisdictional rights under international law.

b) in respect of the Republic of Azerbaijan: the "territory'' of the Republic of Azerbaijan including the respective Caspian Sea sector, over which the Republic of Azerbaijan exercises sovereign and jurisdiction rights, in accordance with national legislation and 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. It shall in any case accord such investments fair and equitable treatment.

(2) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors 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 favorable 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 favorable 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 the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favorable than the treatment it accords to its investors or to the investors of a third state, whichever is more favorable.

(4) The provisions in paragraph (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 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 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 undue delay and shall carry a rate of return determined on the basis of the market

prevailing rate of return 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 by 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 favorable by such other Contracting Party than that accorded by the latter Contracting Party to its own investors. Such payments shall be freely transferable.

(3) Investors of either Contracting Party shall enjoy most-favored-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

## Article 5.

If a Contracting Party or any related agency makes a payment to an investor under a guarantee it has assumed in respect of an investment made by that investor in the territory of the other Contracting Party the latter Contracting Party shall recognize the transfer of any rights or claim from the investor or any of its affiliates to the former Contracting Party or any related agency.

## Article 6.

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:

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.

## Article 7.

(1) Transfers under Articles 4, 5 or 6 shall be made without delay at the prevailing rate of exchange applicable on the date on which the investor applies for the related transfer.

(2) This rate of exchange shall, in the absence of a market rate of exchange, correspond to the cross rate - obtained from those rates which would be applied by the International Monetary Fund for conversions of the currencies concerned into Special Drawing Rights

## Article 8.

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 favorable than is provided for by this Agreement, such regulation shall to the extent that it is more favorable prevail over this Agreement in this context.

## 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 should as far as possible be settled amicably by the governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

(3) Such arbitration tribunal shall be constituted ad hoc 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 should 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 should 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 counseling 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 costs. 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, in connection with these investments in the territory of the former Contracting Party, should be amicably settled as far as possible.

(2) If the dispute cannot be settled in the way prescribed in paragraph (1) of this Article within six months of the date the request for the settlement has been submitted, it shall be at the request of the investor filed to the competent court of law of the Contracting Party in whose ten-itory the investment was made, or filed for arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

(3) If the dispute is submitted in accordance with paragraph (2) to the competent Court of Law of the Contracting Party, the investor cannot at the same time seek the international arbitration. If the dispute is filed for arbitration the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said convention. The award shall be enforced in accordance with domestic law.

## Article 12.

(1) This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible.

(2) This Agreement shall enter into force thirty days after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall remain in force thereafter for an unlimited period unless denounced in writing by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years, this Agreement may be denounced at any time by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

Done at Riyadh on 28th Muharram 1426, corresponding to 9th March 2005 in duplicate in the Arabic, Azerbaijani, and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Kingdom of Saudi Arabia

Ibrahim A. AL-ASSAF

Minister of Finance

For the Government of the Republic of Azerbaijan

Elmar MAMMADYAROV

Minister of Foreign Affairs