

# Agreement between the Government of the State of Kuwait and the Government of the Federal Republic of Nigeria on investments

The Government of the State of Kuwait and the Government of the Federal Republic of Nigeria, hereinafter referred to as Contracting Parties;

Desiring to create conditions for the development of economic cooperation between the two conditions and, in particular, for investments made by investors of a Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection of such investments will be an incentive to stimulate business initiative and to increase prosperity in both Contracting Parties;

Have agreed as follows

## Article 1. Definition

For the purposes of this Agreement:

1. The term "investment" means all types of assets that are located in the territory of a Contracting Party that are owned or controlled by an investor of the other Contracting Party directly or indirectly.

It includes assets or rights made up of or in the form of:

(A) Company shares, shares, and other forms of shareholding, bonds, debt securities and other forms of debt rights in a company and other debts and loans and securities issued by any investor of a contracting party;

(B) Claims for funds and claims for any other assets or performance in accordance with a contract of economic value

(C) Intellectual property rights, including, without limitation, copyrights, trademarks, patents, industrial designs, models, technical processes, expertise, trade secrets, trade names and goodwill;

(D) Any right determined by law, contract, or under any licenses or permits granted in accordance with the law, including the rights to prospecting, exploration, extraction or exploitation of natural resources and the rights to engage in other economic and commercial activities or to provide services;

(E) tangible and intangible property, movable and immovable, and any related property rights, such as rents, mortgages, debt concessions, and possession mortgages.

The term "investment" also applies to "returns" held for the purpose of reinvestment, resulting from "liquidation" as defined later by these terms.

Any change in the form in which the assets or rights are invested or reinvested in it will not affect its nature as an investment.

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

(A) The government of that Contracting Party;

(B) A natural person who holds a nationality or is a citizen of that contracting party in accordance with its laws in force;

(C) Any legal person established or legally established under the laws and regulations of that contracting party, such as foundations, development funds, agencies, charitable foundations, and other legal facilities, bodies, and companies.

3. The term "company" means any legal entity, whether or not it is organized with the aim of achieving financial profit and whether it is owned or managed by the private or government sector, which was created in accordance with the law applied in the contracting party or is owned or actually managed by investors in the contracting party It includes institutions, funds,

solidarity companies, one-person companies, a branch, a joint venture, unions or other similar organizations.

4. The term "returns" means the amounts achieved by an investment, regardless of the form in which it is paid, including, but not limited to, profits, interest, capital gains, dividends, royalties, administrative fees, technical assistance or other payments or fees and in-kind payments, of any kind.

5. The term "liquidation" means any action taken for the purpose of the total or partial termination of the investment.

6. The term "Territory" means the territory of a Contracting Party, including any region outside the territorial sea which, in accordance with international law, has been determined or may subsequently be determined in accordance with the laws of the Contracting Party as a region in which a Contracting Party may exercise the rights of sovereignty or jurisdiction.

7. The term "freely convertible currency" means any currency designated by the International Monetary Fund from time to time as a currency freely used in accordance with the provisions of the IMF agreement and any amendments thereto.

8. The term "without delay" means the period usually required to complete the formalities necessary to transfer the payments. The aforementioned period shall start from the day on which the request for transfer is submitted, provided that in no case shall it exceed one month.

## **Article 2. Promotion and Protection of Investments**

1. Each of the Contracting Parties shall encourage and create more favourable conditions for the investments made by the investors of the other Contracting Party in its territory, and according to the rights granted by its laws in force, it shall accept such investments.

2. Investments made by the investors of a Contracting Party in the territory of the other Contracting Party at all times shall be treated fairly and equitably and be given full protection and security, in a manner consistent with the recognized principles of international law and the provisions of this Agreement. Neither of the contracting parties will in any way take arbitrary or discriminatory measures that will harm the administration, maintenance, use, enjoyment or disposal of investments in the territory of the investors of the other Contracting Party. Each of the Contracting Parties shall take into account any commitment or undertaking to which you may be a party regarding the investments of investors of the other Contracting Party.

3. Investments of the investors of any of the Contracting Parties upon establishment will not be subject to additional performance requirements that may harm their viability or adversely affect their use, management, disposal, operation, expansion, sale or any other disposal.

## **Article 3. National Treatment and Most Favored Nation Regime**

Each Contracting Party shall at all times treat investments in its territory on a basis no less favourable than that granted to the investments of its own investors or the investors of any third party, provided that the provisions of this Article do not require a Contracting Party to provide to the investors from another Contracting Party to grant the advantage of any transaction, preference or concession resulting from:

(A) Any customs union, economic union, free trade area or regional economic integration agreement to which either of the Contracting Parties is a party or may become a party to it;

(B) Any international, regional, or bilateral agreement or similar arrangement and any domestic legislation, wholly or mainly related to taxation.

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

1. Except when applying Article (6), the investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party are exposed to losses due to war, armed conflict, national emergency, revolution, civil unrest, rebellion, riots, or other similar events in the territory of the other Contracting Party, shall be granted with regard to restoring conditions to what they were, a guarantee or compensation for losses or any other settlement, treatment no less favourable than that granted by the latter Contracting Party to its investors or to the investors of any third party, whichever is more favourable for the investor.

2. However, the investors of one of the Contracting Parties who suffer a loss as a result of any of the events referred to in paragraph (1) above, in the territory of the other Contracting Party resulting from:

(A) Temporary seizure of their investment or part of it by its forces or powers;

(B) Destruction of all or part of their investments by its forces or authorities without this being due to the combat operations or without the necessity of the situation being taken into account;

shall be compensated or restored to their position, provided that in both cases it is immediate, sufficient and effective for the damage or loss suffered by them.

## **Article 5. Expropriation**

1. Investments made by investors of both Contracting Parties in the territory of the other Contracting Party will not be nationalized, expropriated, dispossessed, or subject directly or indirectly, to procedures with an effect equivalent to nationalization, expropriation, or dispossession (hereinafter referred to collectively as "expropriation") by the other Contracting Party except for a general purpose, related to the internal needs of that Contracting Party in exchange for immediate, adequate and effective compensation, provided that those actions were taken on the basis of non-discrimination and in accordance with generally applicable legal procedures.

2. The value of this compensation shall be the actual value of the expropriated investment, and it shall be determined and calculated according to internationally recognized valuation principles on the basis of the fair market value of the expropriated investment at the time immediately before the expropriation proceeding or in which expropriation has become imminent in public knowledge, whichever is earlier (hereinafter referred to as "valuation date.") Such compensation is calculated in a freely convertible currency that the investor chooses, based on the market value of the prevailing exchange rate for that currency at the valuation date and includes interest at a commercial price that is determined on the basis of the market, provided that in no case shall it be less than the interest rate prevailing between London banks (LIBOR) or its equivalent, from the date of expropriation until the date of payment.

3. For further clarification, expropriation includes cases in which a Contracting Party expropriates the assets of a company or project created or established under the laws in force in its territory in which an investor of the other Contracting Party has an investment in it, including and through the ownership of stocks, shares, debt securities, or other rights or interests.

4. For the purposes of this Agreement, the term "expropriation" also includes any statutory interventions or procedures by a Contracting Party having the same effect of expropriation that results in the investor being in effect deprived of his ownership, property, or substantial interests from his investment or that may have been for the economic value of the investment such as freezing or blocking the investment or this results in the loss or damage of imposing an arbitrary or excessive tax on the investment, the forced sale of all or part of the investment, or other similar measures.

## **Article 6. Free Transfer of Funds**

1. Each of the Contracting Parties guarantees the investors of the other Contracting Party the free transfer of investments and related payments inside and outside its territory.

2. Payments must be transferred under paragraph (1) without delay or restrictions, except in the case of payments in kind, in a freely convertible currency, in the event of delay in making the required transfers, the affected investor is entitled to receive interest for the period of that delay.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency (the Guarantor Party) makes a payment or compensation under a guarantee that has been pledged in connection with an investment in the territory of the other Contracting Party (the Host Party), then the Host Party must recognize:

(A) a waiver of the guarantor party under the law or a legal bargain for all rights and claims resulting from such investment;

(B) The guarantor party has the right to exercise all these rights, implement such claims, and undertake all investment-related obligations based on the principle of substitution of a creditor.

2. In all circumstances, the guarantor party is entitled to the same treatment relating to:

(A) The acquired rights, claims and obligations assumed under the assignment referred to in paragraph 1 above;

(B) Any payments received on the basis of those rights and claims. The original investor also had the right to receive under this agreement in relation to the investment in question.

## **Article 8. Settlement of Disputes between a Contracting Party and Investor of Another Contracting Party**

1. The disputes that arise between a Contracting Party and an investor of the other Contracting Party with respect to an investment belonging to the latter in the territory of the aforementioned first party, shall be settled as amicably as possible.

2. If those disputes cannot be settled within six months of the date of either party requesting a friendly settlement by submitting a written notification to the other party, the dispute is subject to resolution, at the choice of the investor that is a party to the dispute to one of the following means:

(A) in accordance with any appropriate pre-agreed procedures for the settlement of a dispute;

(B) international arbitration in accordance with the following paragraphs of this Article.

3. In the event that the investor chooses to submit the dispute for settlement to international arbitration, the investor must also submit his written consent to the dispute for settlement by one of the following mechanisms:

(A) (1) The International Center for Settlement of Investment Disputes (the "Center"), which was established on the basis of an Convention on the settlement of investment disputes between States and citizens of other States that was opened for signature in Washington on March 18, 1965 (the "Washington Convention"), if the Contracting Parties are parties to the Washington Convention and the Washington Convention applies to the dispute;

(2) The Center, in accordance with the rules governing the Additional Facility for the administration of procedures by the Center's General Secretariat (the "Additional Facility Rules" ), if the investor's Contracting Party or the Contracting Party that is a party to the dispute, but not both, is a party to the Washington Convention;

(B) An arbitral tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), as these rules are amended by the parties to the dispute (the appointing body referred to in Article 7 of the rules is the Secretary-General of the Center);

(C) An arbitral tribunal to be established based on the arbitration rules of any arbitration body agreed upon by the parties to the dispute.

4. Despite the fact that the investor has submitted the dispute to binding arbitration under paragraph 3, it may, before the initiation of arbitration procedures or during those procedures, seek from the judicial or administrative courts of the Contracting Party that is a party to the dispute, the issuing a temporary injunction to preserve his rights and interests, that does not include the request for compensation for any damages.

5. A Contracting Party shall not plead its sovereign immunity in any judicial, arbitral, or similar procedures, or in the implementation of any decision or ruling related to an investment dispute between a Contracting Party and an investor of the other Contracting Party. Also, it is not permissible to establish any counterclaim or right of set-off that the investor in question has received or will receive, based on an insurance contract, compensation for any damage or any other compensation for all or part of the damages claimed by any third party, whatever it is, whether public or private, including, that other Contracting Party and its sub-divisions, agencies or organs.

## **Article 9. Settlement of Disputes between Contracting Parties**

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

2. If the dispute is not settled within six months of the date of requesting these consultations or other diplomatic channels by either of the Contracting Parties and unless the Contracting Parties agree in writing to the contrary, then either of the Contracting Parties may, by written notification to the other Contracting Party, submit the dispute to an arbitral tribunal that shall be established for this purpose in accordance with the following provisions of this Article.

3. The Arbitral Tribunal shall be constituted as follows: Each of the Contracting Parties shall appoint one member, and these two members shall agree on a third-party citizen to be the president of the Arbitral Tribunal, to be appointed by the Contracting Parties. Such members are appointed within two months, and the President within four months from the date of notification to either of the Contracting Parties the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above are not observed, then 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.

5. If the President of the International Court of Justice is a citizen of one of the Contracting Parties, or if he finds an impediment to his performance of the said mission, he shall ask the Vice-President of the International Court of Justice to make the necessary appointments. If the Vice-President of the International Court of Justice is a citizen of one of the Contracting Parties, or if he finds a barrier preventing him from performing the mentioned mission, he shall ask the member of the International Court of Justice next in seniority and who is not a citizen of one of the Contracting Parties to make the necessary appointments.

6. The Arbitral Tribunal takes its decision by majority vote. This decisions shall be taken in accordance with the provisions of this Agreement and the recognized rules of international law, according to their application, and it shall be final and binding for each of the Contracting Parties. Each of the Contracting Parties shall bear the fees of the arbitral tribunal member appointed by that Contracting Party, as well as the fees of its representative in the arbitral proceedings. As for the president's fees, as well as any other costs, they shall be borne equally by both Contracting Parties. However, the Arbitral Tribunal may, at its discretion, decide to assign one of the Contracting Parties a percentage greater than or all of the costs mentioned. The Arbitral Tribunal shall determine its procedures in relation to all other matters.

## **Article 10. Relations between Contracting Parties**

The provisions of this Convention shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

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

If the legislation of either of the Contracting Parties or obligations under existing international law or that may arise at a later time between the Contracting Parties in addition to this Agreement includes provisions, whether public or private, where the investments of investors of another Contracting Party are granted more favorable treatment than that stipulated In this Agreement, these provisions prevail over this Agreement to the extent that they provide more favourable treatment.

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

This Convention shall apply to all investments, whether existing ones in the date of entry of this Agreement into force, or made after that date by investors of either Contracting Party in the territory of the other Contracting Party, and does not apply to any dispute arose before the entry into force of this Agreement.

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

Each of the Contracting Parties shall notify the other in writing of his fulfilment of the constitutional requirements necessary for the entry into force of this Agreement, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

## **Article 14. Duration**

1. This Agreement shall remain in force for a period of twenty-five (25) years, and thereafter shall remain in force for a similar period or periods, unless either of the Contracting Parties notifies the other Contracting Party in writing of its intention to terminate this Agreement at least one year before the end of the first period or any subsequent period.

2. With regard to investments made prior to the effective date of the notice of termination of this Agreement, the provisions of this Agreement shall remain in effect for a period of twenty (20) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned signatories authorized by their respective governments have signed this Agreement.

Done in Kuwait on this eighteenth day of the month of Rabi 'al-Akher 1432 AH, corresponding to the twenty-third day of March 2011, in two original copies in the Arabic language, both texts being equally authentic.

For the Government of the State of Kuwait

Khaled Suleiman Adjaradt,

Undersecretary of the Ministry of Foreign Affairs  
For the Government of the Federal Republic of Nigeria  
Dr. Alliot Idi Hong,  
Minister of State for Foreign Affairs