

# **Agreement between the Government of the State of Kuwait and the Government of the Islamic Republic of Iran for the promotion and reciprocal protection of investments**

The government of the State of Kuwait and the Government of the Islamic Republic of Iran, (hereinafter the "Contracting Parties";

Desiring to create the conditions for the completion of economic cooperation in their own environment and in connection with the investments made by investors of a Contracting Party in the territory of the other Contracting Party;

Recognizing that the mutual encouragement and mutual benefit of such investments shall serve as an incentive to revitalize the trade and to promote prosperity in both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

1. For the purposes of this Agreement, the term "investment" means:

(A) All types of property, assets or rights which are in the hands of a Contracting Party and which are owned or controlled by an investor of the other Contracting Party from an investor of the other Contracting Party in accordance with the laws and regulations of that Contracting Party,

(B) Equity, shares, other forms of corporate participation, and other debts, loans and securities administered by any Contracting Party to a Contracting Party ;

(C) claims for monies and advances in accordance with a contract of economic value;

(D) Intellectual property rights, including, but not limited to, copyrights, trademarks, patents, designs, prototypes, and technical processes, expertise and trade secrets, trade names and goodwill;

The term investment also applies to proceeds held for the purpose of re-investment, and the resulting from the liquidation, as defined in these terms.

A change in the form in which the assets were invested or been re-invested it will not affect the nature of the investment.

2. The term "investor" in relation to one Contracting Party shall mean:

(A) a natural person, any natural person holding the nationality of the Contracting Party in accordance with the laws in force.

(B) legal entities established or constituted under the laws and regulations of that Contracting Party, such as companies, institutions, development funds, brokers, foundations, legal entities, public authorities and corporations.

3. The term "proceeds" means the funds received from the investment, irrespective of the manner in which they are paid, and in particular, but not exclusively, the investment gains, the financial benefit, capital gains, dividends, royalties, management fees, technical assistance or other payments or fees, and non-cash payments.

4. The term "liquidation" means any sale made to transfer all or part of the investment.

5. The term "territory" means, only for the purposes of this agreement, will be the territories of the Islamic Republic of Iran and of the Government of Kuwait, in which each of the Contracting Parties have sovereign rights and jurisdiction, in accordance with international law.

6. The term "freely convertible currency" means any currency that the International Monetary Fund will, as often as once, determine as freely usable currency in accordance with the provisions of the IMF Agreement and any amendments thereto.

7. The term of "undue delay" means the length of time required to complete the transfer of funds. The term will start from the date of submission of all required documents and for no reason will not exceed two months .

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

1. Each Contracting Party shall, in accordance with its laws and regulations, accept and encourage Investors of the other Contracting Party.
2. Each Contracting Party shall, in respect of investments admitted in its territory, grant all licenses, agreements, decrees, permits and authorizations for the establishment of these investments in accordance with the conditions which may be determined in accordance with its laws and regulations.
3. The Contracting Parties shall consult with each other in any way they consider adequate to encourage and facilitate investment opportunities within their respective territories.
4. Each Contracting Party, in accordance with its laws and regulations relating to the entry and residence and work of natural persons, shall consider favorably the applications for admission, temporary residence and the employment of key personnel, including those of a high-level managerial and technical staff who are hired for the purpose of investing in its territory.

The key relatives of the key staff members will enjoy the same behavior in relation to entry and temporary residence in the territory of the contracting party.

5. Whenever goods or persons connected with an investment are to be transferred, each Contracting Party shall, to the extent permitted by applicable laws and regulations, permit such transfer by the companies of the other Contracting Party.

## **Article 3. Encouragement and Treatment of Investments**

1. Investments by investors of each Contracting Party shall at all times be fair and equitable and shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with the principles of international law accepted by both Contracting Parties and the provisions of this agreement
2. No Contracting Party shall in any way harm the use, enjoyment, management, execution, expansion, sale, or other types of investment under the provisions of this Agreement, with arbitrary or discriminatory measures.

Each Contracting Party, in respect of the use, management, execution, expansion, sale or other types of transfer of investments made in its territory by investors of the other Contracting Party, shall apply the same treatment regarding its investments of investors, or the investors of a third party, whichever is more favorable

3. In any case, the provisions of this article shall not be interpreted as requiring a Contracting Party to grant the benefits of any kind of conduct, priority or advantage arising from the following:

(A) any customs union, economic union, free trade organization , a monetary union or another form of economic or regional integration, have any of the contracting parties become a party or may become,

(B) any international, regional, bilateral or other similar arrangement and any domestic legislation that is wholly or mainly related to taxes;

4. Each Contracting Party shall ensure the right of investors of the other Contracting Party to have access to its courts, courts and its executive agencies, and any other body having judicial power.
5. Each contracting party shall have published all the laws and regulations which are related to investments or directly affect the investments of investors of the other contracting party in its sphere of influence.
6. No Contracting Party may impose any necessary measures that have the effect of discriminating against the investments of the other Contracting Party in the interest of the investment of its investors or investors of third countries.

## **Article 4. Compensation for Losses**

1. Except as provided for in Article 5, if the investments made by the investor of each Contracting Party due to war or other armed conflicts, national emergency situations, insurrections, internal riots, revolts, riots or other similar events in the territory of the other contracting party are damaged, the contracting party shall, in the event of a restitution of property, compensation, damage or other settlement arrangements, grant no less favorable treatment that such enjoyed by investor

of that contracting party, or investors of any third country, whichever is more favorable.

2. Without prejudice to paragraph 1, an investor of a Contracting Party who sustains damage to one Contracting Party within the territory of the other Contracting Party as a result of:

(A) seizure of his investment or part of it by forces or the authorities of the other part;

(B) the destruction of his or her part of the investment by the forces and authorities of that party who is not due to war or necessity of the situation, shall be subject to the recovery of property or payment of damages, which in any case must be prompt and effective.

## **Article 5. Expropriation**

1.

(A) Investments made by investors of one Contracting Party in the territory of another Contracting Party shall not to be nationalized, expropriated, dispossessed or seized, or be subject to direct or indirect measures such as blocking. The confiscation, expropriation, dispossession, or seizure (hereinafter referred to as "confiscation") shall not be enforceable by the other Contracting Party unless the acts in question are for the general purpose associated with its internal requirements. The contracting party shall be liable for the payment of a prompt, appropriate and effective compensation, provided that the measures taken are non-discriminatory and in accordance with the lawful procedure.

(B) The compensation is equivalent to the actual value of the confiscated investment and based on the fair and real value of the market in relation to the confiscated investment immediately before the confiscation or public awareness of the imminent confiscation, whichever comes first (henceforth called as the date of assessment) will be determined and calculated. The compensation will be freely convertible to a foreign currency. Based on the market-leading conversion rate on the market, that currency will be calculated on the date of assessment and will include the related costs. Damages will be determined in accordance with the principles of internationally recognized valuation. The amount of final damages will be paid promptly to the investor.

2. In accordance with the principles set forth in Clause (1), and without prejudice to the rights of the investor, in accordance with article 9 of this Agreement, the investor affected by the confiscation will have the right to request immediate investigation of his case, including the assessment of his investment and, therefore, payment of damages by reference to a judge or a competent and independent authority of the contracting party who has made the confiscation.

3. For the sake of further certainty, confiscation includes situations in which, the assets or the money invested in a company or firm formed or established by the investor in accordance with the law in force in the territory a contracting party, are confiscated.

4. If, as a result of the action of one Contracting Party in any company invested by investors of another Contracting Party, the investment is materially damaged, there will also be a claim for damages in accordance with the principles and provisions of this article.

## **Article 6. Return and Transfer of Investment Payments**

1. Each Contracting Party shall ensure that investors of another Contracting Party guarantee the free transfer of payments for an investment to and from its territory, including :

(A) Initial capital and any additional capital for the maintenance, management and development of the investment,

(B) Proceeds,

(C) Payments under a contract, including depreciation of the principal and the interest earned under the loan agreement;

(D) Royalties and fees for the rights referred to in Article 1, paragraph 1 (d);

(E) The proceeds from the sale or the refinancing of all or part of the investment;

(F) Income and other remuneration of a foreign employee of an investor who has obtained work permits in the territory of the Contracting Party in which the investment is made;

(G) Payment of damages arising from Sub- Clauses (4) and (5);

(H) Payments under Article (7);

(I) Arising from the settlement of investment disputes.

2. The transfer of payments in accordance with paragraph (1) shall be made without undue delay or limitations, except for non-cash payments into freely convertible currency. In case of delays in making transfers, the investor affected by this delay is entitled to interests for the period of delay in the event that it is easily attributable to the government's action.

3. Transfers will be made to the prevailing exchange rate of the cash market on the transfer date for the transfer currency. In the absence of a market for foreign currency, the applicable rate will be the most recent rate applied to investments made internally or in US dollars, whichever is better for investment.

4. The investor can agree on how to return or transfer the subject matter of this article in another way.

## **Article 7. Subrogation**

Whenever a contracting party or an institution designated by it in respect of payment made under an insurance contract or guarantee of investment by another contracting party is subrogated to the investor in the framework of a legal system of an investment contracting party,

(A) This subrogation will be recognized by the other Contracting Party;

(B) The successor will not be entitled to more than what the investor deserves to do;

(C) The disputes between the successor and the other contracting party will be settled under Article 9 of this Agreement.

## **Article 8. Compliance with the Obligations**

Each Contracting Party shall ensure compliance with the obligations imposed by this Agreement in relation to the investments of investors of the other Contracting Party.

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

1. Disputes relating investment between the host Contracting Party and an investor of the other Contracting Party, shall be settled amicably. If after four months of the written notification of the claim, the dispute is not settled amicably, the investor concerned may referred it to one of the following:

(A) the competent court of the Contracting Party in which is the investment is made; or

(B) An arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(C) An arbitral tribunal of the International Court of Arbitration for the Chamber of Commerce in Paris, ;

(D) In accordance with the rules of arbitration of the International Centre for Settlement of Investment Disputes which was established by Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature opened for signature by States on March 18, 1965, as soon as both contracting parties become members therein;

(E) Any other dispute settlement method agreed upon by the parties to the dispute.

2. Regardless of the fact that the investor may refer the dispute to binding judgment, he may, before proceeding with the arbitration, or during the course of the arbitration, from the judicial or administrative courts of the Contracting Party which is party to the dispute, demand a temporary prohibition in order to safeguard his rights and interests, provided that he does not include any claim for payment of any kind of damage.

3. In any judicial or arbitral proceedings or in any other manner, or in the execution of any decision or ruling relating to investment disputes between a Contracting Party and an investor of the other Contracting Party, a Contracting Party shall not declare its sovereign immunity as defense. Any claim or counterclaim may not be based on the fact that the relevant investor, in accordance with an insurance contract, indemnity or other damages for all or part of the loss suffered by any third party, whether public or private, including the other party to the contract, and the subscriptions It will receive or receive brokers or agents, unless a claim for damages has been filed by both the insurer and the investor, and the claims will result in double damages for loss.

4. Each judgment is a definitive and enforceable difference for both parties.

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

1. The Contracting Parties shall, as soon as possible, resolve any dispute arising out of the interpretation or implementation of this Agreement through consultations or other diplomatic means.
2. If the dispute has not been resolved within six months from the date of the request for such consultations or other diplomatic procedures requested by each of the Contracting Parties, and the Contracting Parties have not agreed otherwise in writing, each Contracting Party may, at the time of submission, further notify to the Contracting Party, that it will refer the dispute to an arbitral tribunal based on the provisions of this article.
3. The arbitral tribunal will be convened in the following manner: each Contracting Party will elect a member of the Tribunal and the two members will agree on a third-country national as the President of the Court of Arbitration appointed by the two Contracting Parties. These members must be elected within two months and the chairman must be elected within four months from the date on which each Contracting Party to the other Contracting Party notifies its decision to refer the dispute to the arbitral tribunal.
4. If the periods set out in paragraph (3) above are not met, each Contracting Party, in the absence of any other agreement, invites the President of the International Court of Justice to make the appointments. If the President of the International Court of Justice is a national of one of the Contracting Party or otherwise refuses to perform its task, to call on the Vice-President of the International Court of Justice to carry out the necessary appointments. If the Vice-President of the International Court of Justice is also a national of one of the Contracting Parties or he also fails to perform his duty, the next Senior Judge of the International Court of Justice, who is not a national of either Contracting Party, will be called on to make the necessary appointments.
5. The arbitral tribunal will decide by a majority of votes. These decisions will be made in accordance with this Agreement and the rules of international law that may be applicable and will be final and binding on both Contracting Parties. Each Contracting Party shall pay the costs of the arbitration tribunal designated by that Contracting Party as well costs of representation in the course of arbitration. The costs of the boss and other costs of the arbitration proceedings shall be equally paid by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, determine that more or all of these costs are paid by one of the Contracting Parties. In all other cases, the Tribunal will determine its rules of procedure and the place of arbitration.

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

If the legislation of either Contracting Party or the obligations under existing or subsequent international law arising between the Contracting Parties in addition to this Agreement include provisions, whether public or private, where the investments made by the investors of the other Contracting Party, shall be treated more favorably than those provided for in this agreement, this rule will prevail to the extent that it is more favorable to the investor.

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

This Agreement shall apply to all investments which are approved by the competent authority of the Contracting Party of the Investor whether made before or after the date of its entry into force by investors of each Contracting Party in the territory of the other Contracting Party.

The competent authority of the Islamic Republic of Iran is the Organization for Investment and Economic and Technical Assistance of Iran.

## **Article 13. Validity, Duration and Termination**

1. Each State Party shall notify the other Party in writing, when it has fulfilled its constitutional requirements for the entry into force of this Agreement, and this Agreement shall entry into force, within thirty days after the date of receipt of the notice will be finalized later.
2. This Agreement shall enter into force for a period of twenty years, and shall remain in force for such period or periods, unless at least one year before the expiration of the initial period or any subsequent period, each Contracting Party to the other Contracting Party, in its discretion, Informing you about the termination of the agreement.
3. In respect of investments that took place before the date of the notification of the termination of this Agreement, the

provisions of this Agreement shall continue to apply for a period of twenty years from the date of termination of this Agreement.

4. The provisions of this Agreement shall apply, irrespective of the existence of diplomatic or consular relations between the contracting parties.

In witness whereof, the undersigned, being duly authorized thereto by both Contracting Parties, have signed the agreement.

This Agreement was signed in Tehran on November 24, 2005 in accordance with 14/2/1/1428 (Hejjimmiri) and on April 13, 2006 in two versions, in Persian, English and Arabic, and all texts of it are equally valid. If there is a difference, the English version will prevail.

For the Government of the Islamic Republic of Iran

Dr. Mohammad Sabah Al Salam Al-Sabah, Deputy Prime Minister and Minister of Foreign Affairs

On behalf of the Government of the Islamic Republic of Iran

Manouchehr Mottaki, Minister of Foreign Affairs