

**AGREEMENT BETWEEN**  
**THE KINGDOM OF SPAIN AND THE STATE OF KUWAIT**  
**FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Spain 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 for investments by investors of one Contracting Party in the territory of the other Contracting Party;

and

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

Have agreed as follows:

**ARTICLE 1**  
**DEFINITIONS**

For the purposes of this Agreement,

1. The term "investment" means every kind of asset or right in the territory of one Contracting Party that is owned or controlled directly or indirectly by an investor of the other Contracting Party, and in particular, though not exclusively, includes:

- a) movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;
- b) a company, or shares, stocks, and other forms of equity participation, and bonds, debentures, and other forms of debt interest in a company;
- c) claims to money or to any performance under contract having economic value and associated with an investment;
- d) intellectual and industrial property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and patterns and technical processes, know-how, trade secrets, trade names and goodwill;
- e) any right conferred by law, contract or by virtue of any licenses or permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to undertake other economic or commercial activities or to render services.

The term "investment" shall also apply to "returns" retained for the purpose of re-investment and to proceeds from "liquidation" as these terms are defined hereinafter.

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

2. The term "investor" shall mean:
  - a) physical persons who, according to the law of a Contracting Party, are considered to be its nationals.
  - b) juridical persons or any other legal entity constituted or otherwise duly organized under the applicable law of a Contracting Party and having its seat in the territory of that same Contracting Party, such as corporations, partnerships or business associations.
  - c) the Government of the State of Kuwait and any of its legal person constituted or incorporated under the laws and regulations of the State of Kuwait such as institutions, development funds, agencies, foundations and other statutory establishment and authorities, and companies.
3. The term "returns" means the amounts yielded by an investment and includes, in particular although not exclusively, profit, dividends, interest, capital gains, royalties, fees and payments in kind.
4. The term "liquidation" shall mean any disposal effected for the purpose of completely or partly giving up an investment.
5. The term "territory" means the land territory, the internal waters, the territorial sea and the airspace above of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial sea of each of the Contracting Parties over which they have or may have jurisdiction or sovereign rights in accordance with international law.
6. The term "without delay" shall mean such period as is normally required for the completion of the necessary financial arrangements for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

## **ARTICLE 2 PROMOTION AND ADMISSION OF INVESTMENTS**

1. Each Contracting Party shall in its territory promote, as far as possible, investments by investors of the other Contracting Party. Each Contracting Party shall admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall endeavour, according to its laws and regulations, to issue the necessary authorizations concerning the activities of consultants and other qualified persons including the entry and stay of their immediate family members, regardless of their nationality

3. The Contracting Parties may consult with each other in any manner they may deem appropriate to encourage and facilitate investment opportunities within their respective territories.

### **ARTICLE 3 PROTECTION OF INVESTMENTS**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall a Contracting Party accord to such investments treatment less favourable than that required by international law.

2. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. Each Contracting Party shall observe any obligation it may have entered into in writing with regard to investments of investors of the other Contracting Party.

3. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures, directives, guidelines and administrative ruling and judicial decisions of public application as well as international agreements.

### **ARTICLE 4 NATIONAL TREATMENT AND MOST FAVOURED NATION TREATMENT**

1. Each Contracting Party shall accord, in its territory, to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State whichever is more favourable to the investor concerned.

2. Each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned.

3. The treatment granted under paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other

Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from:

- a) its membership of, or association with, any existing or future free trade area, customs, economic or monetary union or other similar international agreements including other forms of regional economic organisation, or
- b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## ARTICLE 5 EXPROPRIATION

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to direct or indirect measures, such as the freezing or blocking of investments, having effect equivalent to nationalization or expropriation (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for public purpose and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with due process of law of general application.

2. Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date"). Such compensation shall be calculated in a freely convertible currency on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at a commercial rate established on a market basis for the currency of valuation of the date of expropriation until the date of payment.

3. Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, *inter alia*, the capital invested, replacement value, appreciation, depreciation, current returns, goodwill and other relevant factors. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currency and allowed to be freely transferred without delay.

4. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial authority or other competent and independent authority of that Contracting Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.

5. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investments to such investors of the other Contracting Party who are owners of those shares.

#### **ARTICLE 6 COMPENSATION FOR LOSSES**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection, riot, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned.

2. Notwithstanding paragraph 1, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:

- a) requisitioning of its investment or part thereof by the latter's forces or authorities; or
- b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective.

#### **ARTICLE 7 TRANSFERS**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments in connection with an investment into and out of its territory. Such transfers shall include, in particular, though not exclusively:

- a) the initial capital and any additional capital for the maintenance, management and development of the investment;
- b) returns;
- c) payments under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;
- d) compensations provided for under Articles 5 and 6;
- e) proceeds from the total or partial sale or liquidation of an investment;

- f) earnings and other remuneration of personnel engaged from abroad in connection with an investment;
- g) payments referred to in Article 9;
- h) payments arising out of the settlement of a dispute.

2. Transfers of payments under paragraph 1 shall be effected without delay or restrictions and, except in the case of payments in kind, in a freely convertible currency.

3. Transfers shall be made at the spot market rate of exchange prevailing in the host Contracting Party on the date of transfer for the currency to be transferred.

#### **ARTICLE 8 APPLICATION OF OTHER PROVISIONS**

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

2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect the provisions established by international agreements relating to intellectual and industrial property rights in force at the date of its signature.

#### **ARTICLE 9 SUBROGATION**

1. If a Contracting Party or its designated agency (the "Indemnifying Party"), makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting Party (the "Host Contracting Party"), the Host Contracting Party shall recognize:

- (a) the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an investment;
- (b) the right of the Indemnifying Party to exercise all such rights and enforce such claims and to assume all obligations related to the investment by virtue of subrogation.

2. The Indemnifying Party shall be entitled in all circumstances to the same treatment in respect of:

(a) the rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above;

(b) any payments received in pursuance of those rights and claims,

as the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

#### **ARTICLE 10 SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.

2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the dispute to an *ad hoc* arbitral tribunal in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be set up in the following way: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third country as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, 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 shall be invited to 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 International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall issue its decision on the basis of the provisions contained in this Agreement as well as the generally accepted principles of international law.

6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.

7. The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman, shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

**ARTICLE 11**  
**DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE**  
**OTHER CONTRACTING PARTY**

1. Disputes arising between one Contracting Party and an investor of the other Contracting Party concerning an obligation under this Agreement in respect of an investment of the latter in the territory of the former shall, as far as possible, be settled amicably.

2. If such disputes cannot be settled within a period of six months from the date at which either party to the dispute requested amicable settlement by delivering a notice in writing to the other party, the dispute shall be submitted for resolution, at the election of the investor party to the dispute, through one of the following means:

- (a) in accordance with any applicable, previously agreed dispute-settlement procedures;
- (b) the competent court of the Contracting Party in whose territory the investment was made; or
- (c) to international arbitration in accordance with the following paragraphs of this Article.

3. In the event that an investor elects to submit the dispute for resolution to international arbitration, the investor shall further provide its consent in writing for the dispute to be submitted to one of the following bodies:

- a) an ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- b) the International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18th March 1965, in case both Contracting Parties become members of this Convention. If a Contracting Party which is party in the dispute has not become a Contracting State of the Convention mentioned above, the dispute shall be dealt with pursuant to the rules of the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings of the ICSID.

c) an arbitral tribunal constituted pursuant to the arbitration rules of any arbitral institution mutually agreed upon between the parties to the dispute.

4. Notwithstanding the fact that the investor may have submitted a dispute to binding arbitration under paragraph 3, it may, prior to the institution of the arbitral proceeding or during the proceeding, seek before the judicial or administrative tribunals of the Contracting Party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interests, provided it does not include request for payment of any damages.

5. The awards of arbitration shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out promptly any such award and shall make provision for the effective enforcement in its territory of such awards.

6. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment dispute between a Contracting Party and an investor of the other Contracting Party, a Contracting Party shall not assert, as a defense, its sovereign immunity. A Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the alleged damages has been received or will be received by the investor pursuant to a guarantee or insurance contract.

## **ARTICLE 12 RELATIONS BETWEEN CONTRACTING PARTIES**

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

## **ARTICLE 13 SCOPE OF APPLICATION**

This Agreement shall be applicable to investments made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party. However, this Agreement shall not apply to claims or disputes arising out of events which occurred, or to claims or disputes which have been settled, prior to its entry into force.

## **ARTICLE 14 ENTRY INTO FORCE**

Each Contracting Party shall notify the other in writing when its constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the later notification.

**ARTICLE 15  
DURATION AND TERMINATION**

1. This Agreement shall remain in force for an initial period of fifteen (15) years and shall continue in force thereafter for similar period or periods unless, at least one year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.

2. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 13 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

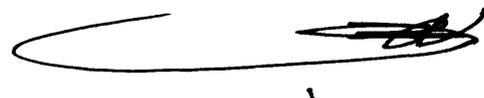
DONE in two originals at Madrid on this 8<sup>th</sup> day of September, 2005, corresponding to the 4<sup>th</sup> day of Shabban 1426H, in the Spanish, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

**FOR THE KINGDOM OF SPAIN**



**JOSÉ MONTILLA AGUILERA**  
Minister of Industry, Tourism  
and Commerce

**FOR THE STATE OF KUWAIT**



**BADER MESHARI AL-HUMAIIDHI**  
Minister of Finance