

AGREEMENT

between the Republic of Austria and the United Arab Emirates for the Promotion and Protection of Investments

THEREPUBLICOFAUSTRIA AND THE UNITED ARAB EMIRATES hereinafter referred to as “Contracting Parties”,

DESIRING to create favourable conditions for greater economic co-operation between the Contracting Parties,

RECOGNIZING that the promotion and protection of investments may strengthen the readiness for such investments and hereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

CHAPTER ONE: GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Agreement

(1) “investor of a Contracting Party” means:

- a) a natural person having the nationality of a Contracting Party in accordance with its applicable law; or
- b) an enterprise constituted or organised under the applicable law of a Contracting Party; or
- c) the Government of either Contracting Party;
- d) making or having made an investment in the other Contracting Party’s territory.

(2) “investment by an investor of a Contracting Party” means every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party, including:

a) an enterprise constituted or organised under the applicable law of the first Contracting Party;

b) shares, stocks and other forms of equity participation in an enterprise as referred to in subparagraph (a), and rights derived there from;

c) bonds, debentures, loans and other forms of debt and rights derived there from;

d) any right whether conferred by law or contract, including turnkey contracts, concessions, licences, authorisations or permits to undertake an economic activity;

e) claims to money and claims to performance pursuant to a contract having an economic value;

f) intellectual and industrial property rights as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organisation, including copyright, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill;

g) any other tangible or intangible, movable or immovable property, or any related property rights, such as leases, mortgages, liens, pledges or usufructs.

(3) “enterprise” means a legal person or any entity constituted or organised under the applicable law of a Contracting Party, whether or not for profit, and whether private or government owned or controlled, including, for example, a corporation, trust, partnership, sole proprietorship, branch, joint venture or association.

(4) “returns” means the amounts yielded by an investment and, in particular, profits, interests, capital gains, dividends, royalties, licence fees and other fees.

(5) “without delay” means such periods as is normally required for the completion of necessary formalities for the payments of compensation or for the transfer of payments. This period shall commence for payments of compensation on the day of expropriation and for transfers of payments on the day on which the request for transfer has been submitted. It shall in no case exceed two months.

(6) “territory” means with respect to each Contracting Party the land territory, internal waters, maritime and airspace under its sovereignty, where the Contracting Party exercises, in conformity with international law, sovereign rights and jurisdiction.

Article 2

Promotion and Admission of Investments

(1) Each Contracting Party shall, according to its laws and regulations, promote and admit investments by investors of the other Contracting Party.

(2) Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

Article 3

Treatment of Investments

(1) Each Contracting Party shall accord to investments by investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

(2) A Contracting Party shall not impair by unreasonable or discriminatory measures the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment by investors of the other Contracting Party.

(3) Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords to its own investors and their investments or to investors of any third state and their investments

with respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, whichever is more favourable to the investor.

(4) No provision of this Agreement shall be construed as to oblige a Contracting Party to extend to the investors of the other Contracting Party and to their investments the present or future benefit of any treatment, preference or privilege resulting from

a) any membership in a free trade area, customs union, common market, economic community or any multilateral agreement on investment;

b) any international agreement, international arrangement or domestic legislation regarding taxation.

Article 4

Transparency

(1) Each Contracting Party shall do its utmost to promptly publish, or otherwise make publicly available, its laws, regulations, procedures as well as international agreements which may affect the operation of the Agreement.

(2) Each Contracting Party shall promptly respond to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph (1).

(3) No Contracting Party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede law enforcement or would be contrary to its laws and regulations protecting confidentiality.

Article 5

Expropriation and Compensation

(1) A Contracting Party shall not expropriate or nationalize directly or indirectly an investment of an investor of the other Contracting Party or take any measures having

equivalent effect such as freezing or blocking of assets (hereinafter referred to as expropriation) except:

- a) for a purpose which is in the public interest,
- b) on a non-discriminatory basis,
- c) in accordance with due process of law, and
- d) accompanied by payment of prompt, adequate and effective compensation in accordance with paragraphs (2) and (3) below.

(2) Compensation shall

- a) be paid without delay.
- b) include interest at a commercial rate established on a market basis for the currency of payment from the date of expropriation until the date of actual payment.
- c) be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.
- d) be paid and made freely transferable to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

(3) Due process of law includes the right of an investor of a Contracting Party which claims to be affected by expropriation by the other Contracting Party to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

Article 6

Compensation for Losses

(1) An investor of a Contracting Party who has suffered a loss relating to its investment in the territory of the other Contracting Party due to war or to other armed conflict, state of emergency, revolution, insurrection, civil disturbance, or any other similar event, in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or any other settlement, 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.

(2) An investor of a Contracting Party who in any of the events referred to in paragraph (1) suffers loss resulting from:

- a) requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party, or
- b) destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. The resulting payments shall be made in a freely convertible currency and be freely transferable without delay.

Article 7

Transfers

(1) Each Contracting Party shall guarantee that all payments relating to an investment by an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular:

- a) the initial capital and additional amounts to maintain or increase an investment;
- b) returns;

- c) payments made under a contract including a loan agreement;
- d) proceeds from the sale or liquidation of all or any part of an investment;
- e) payments of compensation under Articles 5 and 6;
- f) payments arising out of the settlement of a dispute;
- g) earnings and other remuneration of personnel engaged from abroad in connection with an investment.

(2) Each Contracting Party shall further guarantee that such transfers may be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer in the territory of the Contracting Party from which the transfer is made.

(3) In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for conversion of currencies into Special Drawing Rights as calculated by the International Monetary Fund for the date of payment.

(4) Notwithstanding paragraph 1 (b) a Contracting Party may restrict the transfer of a return in kind in circumstances where the Contracting Party is permitted under the GATT 1994 to restrict or prohibit the exportation or the sale for export of the product constituting the return in kind. Nevertheless, a Contracting Party shall ensure that transfers of returns in kind may be effected as authorised or specified in an investment agreement, investment authorisation, or other written agreement between the Contracting Party and an investor or investment of the other Contracting Party.

Article 8

Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance after the entry into force of this Agreement in respect of an investment by an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize without prejudice to the rights of the investor under Article 10 the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former

Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title. Article 13 is applicable.

Article 9

Other Obligations

(1) Each Contracting Party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.

(2) If the laws of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or enterprises of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

CHAPTER TWO: DISPUTE SETTLEMENT

Article 10

Settlement of Disputes between an Investor and a Contracting Party

(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 latter Contracting Party, should be settled amicably. Article 13 is applicable.

(2) If the dispute is not so settled, the investor may choose to submit it for resolution:

- a) to the competent courts or administrative tribunals of the Contracting Party, party to the dispute;
- b) in accordance with any applicable previously agreed dispute settlement procedure; or
- c) in accordance with this Article to:
 - (i) the International Centre for Settlement of Investment Disputes (“the Centre”), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“the ICSID Convention”), if the Contracting Party of the investor and the Contracting Party, party to the dispute, are both parties to the ICSID Convention;

- (ii) an ad hoc arbitration tribunal which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”);
- (3) A dispute may be submitted for resolution pursuant to paragraph 2 (c) of this Article after 90 days from the date notice of intent to do so was provided to the Contracting Party, party to the dispute.
- (4) Each Contracting Party hereby unconditionally consents to the submission of an investment dispute to international arbitration. However, a dispute may not be submitted to international arbitration if a local court in either Contracting Party has rendered its decision on the dispute.
- (5) If the investor chooses to file for arbitration, the host Contracting Party agrees not to request the exhaustion of local settlement procedures.
- (6) A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.
- (7) A tribunal established under this Article shall decide the dispute in accordance with this Agreement and such rules of law as may be agreed by the parties to the dispute. In the absence of such agreement it shall apply the law of the Contracting Party, party to the dispute, and such rules and principles of international law as may be applicable.
- (8) Issues in dispute under Article 9 shall be decided, absent any other agreement, in accordance with the law of the Contracting Party, party to the dispute, the law governing the authorization or agreement and such rules of international law as may be applicable.
- (9) Arbitration awards, which may include an award of interest, shall be final and binding upon the parties to the dispute. Each Contracting Party shall make provision for the effective enforcement of awards which shall be executed in accordance to national law.

Article 11

Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably or through consultations, mediation or conciliation.

(2) At the request of either Contracting Party a dispute concerning the interpretation or application of this Agreement may be submitted to an arbitral tribunal for decision not earlier than 90 days after such request has been notified to the other Contracting Party.

(3) A Contracting Party may not initiate proceedings under this Part for a dispute regarding the infringement of rights of an investor which that investor has submitted to arbitration under Article 10 of this Agreement, unless the other Contracting Party has failed to abide by and comply with the award rendered in that dispute or those proceedings have terminated without resolution by an arbitral tribunal of the investor's claim.

(4) The arbitral tribunal shall be constituted ad hoc as follows: Within 30 days after receipt of a request for arbitration, the Parties to the dispute shall appoint by agreement three members of the tribunal and designate one of them as chairman. Except for compelling reasons, the members shall be persons proposed by the Secretary General of ICSID.

(5) If the period specified in paragraph (4) is not observed, either Contracting Party may, in the absence of any other agreement, invite the Secretary General of ICSID to make the necessary appointments.

(6) Members of an arbitral tribunal shall be independent and impartial.

(7) The arbitral tribunal will settle disputes in accordance with this Agreement and the applicable rules and principles of international law.

(8) Unless the parties to the dispute decide otherwise, the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes shall apply to matters not governed by other provisions of this Article.

(9) The tribunal, in its award, shall set out its findings of law and fact, together with the reasons therefore. The arbitration award shall be final and binding upon the parties to the dispute.

(10) Each Party shall pay the cost of its representation in the proceedings. The cost of the tribunal shall be paid for equally by the Contracting Parties unless the tribunal directs that they be shared differently.

(11) Each Contracting Party shall enforce pecuniary obligations imposed by an arbitration award in accordance with the ICSID-Convention.

CHAPTER THREE: FINAL PROVISIONS

Article 12

Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 13

Consultations

Notwithstanding Articles 8 and 10 each Contracting Party shall have the right to propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

Article 14

Entry into Force and Duration

(1) This Agreement is subject to ratification and shall enter into force on the first day of the third month that follows the month during which the instruments of ratification have been exchanged.

(2) This Agreement shall remain in force for a period of ten years; it shall be extended thereafter for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Articles 1 to 13 of the present Agreement shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

DONE in duplicate at Dubai, on June 17th 2001, in the German, Arabic and English languages, all texts being equally authentic. In case of difference of interpretation the English text shall prevail.

For the Republic of Austria:

Dr. Martin Bartenstein

Minister of Economics and Labour

For the United Arab Emirates States:

Hamdan Bin Rashid Al Maktoum

Deputy Ruler of Dubai

Minister of Finance and Industry

Protocol

On signing the Agreement between the Republic of Austria and the United Arab Emirates for the Promotion and Protection of Investments, the undersigned plenipotentiaries have agreed on the following clarifications which shall be regarded as an integral part of the said Agreement;

With respect to Article 1 paragraph 1 (c) it is understood that the term Government in respect of the United Arab Emirates shall mean:

1. the Federal Government,
2. the Local Governments,
3. Local Authorities,
4. Government Agencies,
5. Foundations,
6. Funds,
7. Financial institutions such as Abu Dhabi Investment Authority, United

Arab Emirates Central Bank, Abu Dhabi Development Fund, Abu Dhabi Investment Company and the International Petroleum Investment Company or any other Institutions owned directly or indirectly by the Government of the United Arab Emirates.

DONE in duplicate at Dubai, on June 17th 2001, in the German, Arabic and English languages, all texts being equally authentic. In case of difference of interpretation the English text shall prevail.

For the Republic of Austria:

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Die vom Bundespräsidenten unterzeichnete und vom Bundeskanzler gegengezeichnete Ratifikationsurkunde wurde am 22. September 2003 ausgetauscht; das Abkommen tritt gemäß seinem Art. 14 Abs. 1 mit 1. Dezember 2003 in Kraft.

Schüssel