AGREEMENT

BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF BELARUS
AND
THE GOVERNMENT OF THE STATE OF KUWAIT
FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION
OF INVESTMENTS

The Government of the Republic of Belarus and the Government of the State of Kuwait, hereinafter referred to as the “Contracting Parties”; Desiring to create favorable 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; 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” shall mean 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 includes:
   (a) any movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;
   (b) shares, stocks, and other forms of equity participation, and bonds, debentures, and other forms of debt interests in a legal person, and other debts and loans and securities issued by any investor of a Contracting Party;
   (c) claims to money and claims to any other assets or performance pursuant to contract having an economic value;
   (d) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and patterns and technical processes, know-how, undisclosed information, 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.

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

2. The term “investor” with respect to either Contracting Party shall mean:
   (a) any natural person holding the nationality or citizenship of the Republic of Belarus or the State of Kuwait in accordance with applicable laws;
   (b) any legal person constituted or incorporated under the laws and regulations of the Republic of Belarus or the State of Kuwait accordingly;
   (c) in case of the State of Kuwait - the Government of the State of Kuwait.
Article 1
Protection of investments

1. The term "legal person" shall mean any legal entity, whether or not organized for pecuniary gain, and whether privately or governmentally owned or controlled, which is constituted under the laws of a Contracting Party or is owned or effectively controlled by investors of a Contracting Party.

2. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees and any payments in kind.

3. The term "territory" in respect of either Contracting Party means the territory of the State of a Contracting Party concerned including land, internal waters, territorial sea, the seabed and subsoil over which the Contracting Party has sovereign rights or jurisdiction in accordance with international law.

4. The term "freely convertible currency" shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

5. The term "without delay" shall mean such period as is normally required for the completion of necessary formalities 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 two months.

6. The term "laws and regulations" in respect of either Contracting Party means the laws and regulations of the State of the Contracting Party concerned.

Article 2
Admission and encouragement of investments

1. Each Contracting Party shall in its territory and in accordance with its applicable laws and regulations admit and encourage investments by investors of the other Contracting Party.

2. Each Contracting Parties shall, in respect of investments admitted in its territory, grant such investments all necessary permits, consents, approvals, licenses and authorizations to such extent and on such terms and conditions as may be determined by its laws and regulations.

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.

4. Each Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality or citizenship to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporary and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

Article 3
Protection of investments

1. Investments by investors of either Contracting Party shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other
Each Contracting Party shall accord in its territory to investments or returns of the other Contracting Party, treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of any third State.

Each Contracting Party shall accord in its territory to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of investments, treatment not less favourable than that which it accords to its own investors or to investors of any third State.

The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

Treatment of investments

1. Each Contracting Party shall accord in its territory to investments or returns of investors of the other Contracting Party, treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

2. Each Contracting Party shall accord in its territory to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or to investors of any third State.

3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
(a) any existing or future free trade area, customs union, common market or similar international agreement, including other forms of regional economic cooperation, to which either of the Contracting Parties is or may become a party;

(b) any international agreement which is related wholly or mainly to taxation.

Article 5
Expropriation

1. (a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, requisitioned or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or requisitioned (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party 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.

(b) 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. Such compensation shall be calculated in a freely convertible currency to be chosen by the investor and shall include interest calculated on the LIBOR basis or its equivalent, from the date of expropriation until the date of payment.

(c) Where the above-mentioned fair market value cannot be readily ascertained, compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, appreciation, current returns, discounted cash flow value, book value and goodwill. The amount of compensation finally determined shall be promptly paid to the investor.

2. In light of the principles set out in paragraph 1 of this Article and without prejudice to the rights of the investor under Article 9 of this Agreement, the investor affected shall have the right to prompt review by a judicial or other competent and independent authority of the Contracting Party which made the expropriation, of its decision, including the valuation of its investment and the payment of compensation herefore.

3. For further certainty, expropriation shall include situations where a Contracting Party expropriates the assets of any legal person that is incorporated or established under the laws in force in its own territory in which an investor of the other Contracting Party has an investment, including through the ownership of shares, stocks, debentures or other rights or interests.

4. For the purposes of this Agreement, the term "expropriation" shall also include interventions or regulatory measures by a Contracting Party that have a de facto expropriatory effect, in that their effect results in depriving the investor in fact from his ownership, control or substantial benefits over his investment or which may result in loss or damage to the economic value of the investment, such as the freezing or locking of the investment, levying of arbitrary or excessive taxes on the investment, compulsory sale of all or part of the investment, or other comparable measures.
1. Except where Article 5 of this Agreement applies, when investments made by
an investor of either Contracting Party suffers a loss owing to war or other armed
conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or
other similar events in the territory of the other Contracting Party, the investor shall be
accorded restitution or compensation which in either case shall be prompt,
adequate and effective.

Article 6
Compensation for losses

1. A claim to compensation in accordance with the principles and provisions of
this Article shall also exist when, as a result of an action by a Contracting Party in any
territory in which an investment is made by investors of the other Contracting Party,
the investment is substantially affected.

2. Transfers of payments under paragraph 1 of this Article shall be effected
without delay or restrictions and, except in the case of payments in kind, in a freely
convertible currency. In case of such delay in effecting the required transfers, the
investor affected shall be entitled to receive interest for the period of such delay.

Article 7
Transfer of payments related to investments

1. Each Contracting Party shall guarantee to investors of the other Contracting
Party the free transfer of payments in connection with an investment into and out of its
territory, including the transfer of:
   (a) the initial capital and any additional capital for the maintenance, management
and development of the investment;
   (b) returns as defined in paragraph 4, Article 1 of this Agreement;
   (c) payments under a contract, including a loan agreement;
   (d) proceeds from the sale or liquidation of the whole or any part of the
investment;
   (e) earnings and other remuneration of personnel engaged from abroad in
connection with the investment;
   (f) payments of compensation pursuant to Articles 5 and 6;
   (g) payments referred to in Article 8;
   (h) payments arising out of the settlement of disputes.

2. Transfers of payments under paragraph 1 of this Article shall be effected
without delay or restrictions and, except in the case of payments in kind, in a freely
convertible currency. In case of such delay in effecting the required transfers, the
investor affected shall be entitled to receive interest for the period of such delay.
Article 8
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 Party"), the Host Party shall recognize:
   (a) the assignment to the Indemnifying Party by law or by legal transaction of all 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
   assignment, in respect of:
   (a) the rights and claims acquired and the obligations assumed by it by virtue of
       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 9
Settlement of disputes between a Contracting Party
and an investor of the other Contracting Party

1. Disputes arising between a Contracting Party and an investor of the other
   Contracting Party 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 settlement, at the choice of
   the investor party to the dispute, through one of the following means:
   (a) the competent court of the host Contracting Party which is a party to the
       dispute;
   (b) an international arbitration in accordance with the following paragraphs of this
       Article.

3. In the event that an investor chooses to submit the dispute for resolution to
   international arbitration, the investor shall give its irrevocable consent in writing to
   submit the dispute to one of the following bodies:
   (a) The International Centre for Settlement of Investment Disputes (ICSID),
       established pursuant to the Convention on the Settlement of Investment Disputes
8. An arbitral tribunal established under this Article shall decide the issues in dispute in accordance with 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 which is a party to the dispute, including its rules on conflict of laws, and such recognized rules of international law as may be applicable, also taking into consideration the relevant provisions of this Agreement.

9. For the purpose of Article 25(2)(b) of the Washington Convention, an investor, other than a natural person, which has the nationality of a Contracting Party party to the dispute on the date of the consent in writing referred to in paragraph (5) of this Article and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting Party, shall be treated as a "national of another Contracting Party" and for the purpose of Article 1 Schedule "B" of the Additional Facility Rules shall be treated as a "national of another State".

10. The awards of arbitration, which may include an award of interest, 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.

11. 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 or the fact that the investor of the other Contracting Party is national of another State.
Article 10
Settlement of disputes between the Contracting Parties

1. The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or other 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 constituted as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above have not been complied with, 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 of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or if he, too, is prevented from discharging the said function, any 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 take its decision by a majority of votes. Such decision shall be made in accordance with this Agreement and such recognized rules of international law as may be applicable and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs of its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings 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
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 12
Application of other rules

If the legislation of either Contracting Party or obligations under international law relating to investments made prior to the date when the notice of termination becomes effective, the provisions of this Agreement shall continue to prevail over this Agreement.

Article 13
Scope of the Agreement

This Agreement shall apply to all investments, whether existing at or made after the date of its entry into force by investors of either Contracting Party in the territory of the other Contracting Party, but shall not apply to the disputes which arose before the entry into force of this Agreement.

Article 14
Entry into force

Each Contracting Party shall notify the other Contracting Party in writing when its national or 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 receipt of the later notification.

Article 15
Duration and termination

This Agreement shall remain in force for a period of thirty (30) years and shall remain 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.

In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of termination of this Agreement.
In witness whereof, the respective plenipotentiaries of both Contracting Parties have signed this Agreement.

Done at Kuwait on this 10th day of July 2001 corresponding to 19th day of Rabi II in two originals in the Russian, Arabic and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Government of the Republic of Belarus

Mikhail Myasnikovich
Head of the Administration of the President of the Republic of Belarus

For the Government of the State of Kuwait

Adel Khalid Al-Sabeh, Ph.D
Minister of Oil and Acting Minister of Finance & Minister of Planning & Minister of State and Administrative Development Affairs