

Agreement between the Government of the Hashemite Kingdom of Jordan and the Government of the state of Kuwait for the encouragement and protection of Investments

The government of the Hashemite Kingdom of Jordan and the government of the state of Kuwait, referred to hereinafter as the contracting countries.

Desiring to create favourable conditions for the development of economic cooperation between them, specifically investments made by investors of the contracting parties in the territories of the other contracting party.

Recognizing that the encouragement and reciprocal protection will be conducive to the stimulation of commercial initiative and increase prosperity in both contracting states

Have agreed as follows;

Article one:

Definitions

For the purposes of this agreement;

1 The term "investment" means every kind of investment of assets owned or controlled by investors of the contracting countries in another contracting country directly or indirectly whether through branch establishments wherever its headquarters in the contracting country or a third country, this term include without limitations:

- A Tangible and intangible assets movable and immovable assets and any property rights connected herewith such as rents liens mortgages pledges and beneficial rights or similar.
- B Business concessions or joint commercial project or joint project, shares, and other forms of interest in ownership, bonds, debentures and other forms of rights in company obligations or commercial project or joint project, and other obligations and securities issued by any investor of the contracting country.
- C Titles and claims to money and other assets claims or performance under contract having financial value.
- D Intellectual property and industrial rights including without limitations printing and publishing trade marks and patents, designs and industrial prototypes and technical processes, know how and commercial secrets, trade name and goodwill,
- E Any right acknowledged by law or contract or license, or permits granted according to law including the right of prospecting and discoveries and extraction or exploitation of natural resources, manufacturing and utilization rights and practice of other economic commercial or the provision of services.

Any change in shape where investment is made in assets or reinvestment in it shall not affect its nature as an investment.

The term "investment" shall also apply to "returns" retained for the purposes of reinvestment, as well returns from "liquidation" as per later definitions.

2 The term "investor" means as regards a contracting country:

- A A natural person possessing the nationality of the other contracting country according to its applicable laws.
- B The government of the other contracting country, its institutions and organizations.
- C Any other nominal entity legally established in terms of rules and regulations of the other contracting country, such as institutions, development funds, charitable and scientific organizations, establishments, agencies and projects, cooperative societies, various types of corporations, commercial unions or similar apparatuses, and any entity established outside the authority of contracting country as a nominal person owned or controlled by the other contracting country or any of its nationals or any entity within its jurisdiction.

Jurisdiction

- › Jordan
- › Kuwait

Legislation date

- › 21 May 2001

Topics

- › Investment Arbitration

Source

- › **Agreement between the Government of the Hashemite Kingdom of Jordan and the Government of the state of Kuwait for the encouragement and protection of Investments**, Supplied by the Research Staff at the Penn State Institute of Arbitration,

3 The term "returns" means the amounts yielded by an investment regardless of method of payment, including specially but not limited to, profits, interest, capital gains, share dividends, allowances, management fees, technical assistance or payments or other fees paid in kind of every type.

4 The term "liquidation" means any action taken to close an investment wholly or partially.

5 The term "region"

For the state of Kuwait, the region of Kuwait shall include any region outside the maritime region for the state of Kuwait designed according to international law or may later on be designed according to the laws of the state of Kuwait as an area the state of Kuwait may practice its sovereign or state rights.

As for the Hashemite Kingdom of Jordan: territories of the Hashemite Kingdom of Jordan as well Jordanian regional waters including the sea bed and all other regions extended outside Jordanian regional waters where Jordanian sovereignty is practiced according to international and Jordanian laws for the purposes of explorations and exploitation of natural resources whether alive or not alive and all other rights found in water and land and under the sea bed.

6 The term "connected activities" means activities connected with investment practiced according to investment laws of the host contracting country, including without limitations activities such as:

- A Construction, control, maintenance of branches and agencies, offices or other facilities for the management of business.
- B Organize corporations, acquisition of companies or interests in companies or its assets, and management, control and maintenance, use and enjoy, expansions, sales, or liquidation or any other act in organized or acquired companies.
- C Acquisition of ownership, use and conduct in all kinds of assets in any legal way including intellectual property rights and its protection.
- D Borrow monies from local financial institutions, as well purchase and sale, issue of shares and other securities in the local financial markets, purchase of foreign currency for the execution of the investments.

7 The term "convertible currency" means any currency designated by the International Monetary Fund from time to time as a currency freely used according to the IMF agreement and its amendments.

8 The term "prompt" means that period required to conclude the necessary formalities for the transfer of payments. Starting from the day of submission of application for transfer provided it does not exceed in any case one month.

Article two:

Acceptance and encouragement of investments

1 Each of the two contracting countries shall, according to its applicable laws and regulations accept and encourage investments in its region made by investors of the other contracting country.

2 Each of the contracting countries, as regards acceptable investments in its regions, shall grant these investments and connected activities with permits and approvals and licenses necessary as far as possible according to provisions stated by its laws and regulations.

3 The two contracting countries shall consult between themselves in any way seen fit for the encouragement and facilitation of investments opportunities in each of the regions.

4 Each of the contracting countries shall according to its laws and regulations connected with entry and residency of natural persons, and in good faith to study investors applications of the other contracting country, and applications of higher management employees from technicians and administrators appointed for the purposes of investment to enter and temporary residence in its region. As well granting family members the same treatment as regards entry and temporary residency in the host contracting country.

The two contracting countries shall grant, according to its laws and regulations to investors of the other contracting country who invest in its region, employment of any principal person without regard to his nationality, throughout the period granted to the principal person in entry and residency and work in the region of the first mentioned

contracting country.

5 When goods and persons connected with the investment are transported, then each of the contracting countries shall permit up to the legal permissible limit, the process of transport through legitimate means of the other contracting country.

Article three:

Protection of investments

1 Investments made by investors of any contracting country shall enjoy complete protection and safety in the region of the other contracting country at a level commensurate with recognized international laws and conditions of this agreement the two contracting countries shall not take any arbitrary or discriminating measures that leads to damage to such investments or connected activities including the use and enjoyment, management and development, maintenance and expansion of the investments.

2 Each of the contracting countries shall declare all laws and regulations and provisions connected with or directly affecting investments or connected activities in its region to investors of the other contracting country.

3 Each of the two contracting countries shall as far as investments provide effective facilities to ensure the requirements and execution of rights, each contracting country shall guarantee to investors of the other contracting country the right to resort to courts and administrative establishments and all other apparatuses that exercise judicial authority, as well the right to appoint persons qualified according to applicable laws and regulations for the purposes of affirmation of claims and execution of rights for their investments and connected economic activities.

4 The two contracting countries may not impose on any investors of the other contracting country compulsory discriminatory measures against investments made by investors of the other contracting country in favor of investments made by its own investors or investors of a third country, requiring or restricting the purchase of materials, or energy, or fuel or production facilities or transportation or processing of any kind or restricting the marketing of its products internally or outside the region of the host contracting country.

5 Moreover, investments of the host contracting country may not be subject to performance requirements harmful to its growth capabilities or adverse effects on its usage or enjoyment or its management or maintenance or expansion or on other connected activities, unless these requirements are considered vital for public health considerations or public order or the environment which shall be applied according to a publicly applicable legal instrument.

6 Investments made by investors of any of the contracting countries in the host contracting country may not be subject to confiscation or expropriation or similar measure unless according to legal measure in conformity with applicable international laws and other specific provisions in this agreement.

7 Each of the contracting countries shall consider any commitment or obligation any investment or connected activity in its region towards investors of the other contracting country.

Article four:

Treatment of investments

1 Each contracting country shall guarantee a fair and equitable treatment at all times, to investments in its region made by investors of the other contracting country. This treatment shall be not less favorable in similar investment circumstances than treatment accorded to investors of a third country which ever is more favorable.

2 Each contracting country shall grant investors of the other contracting country, as afr as connected activities related to their investments including the use and enjoyment, administration, development, maintenance and expansion or conduct, treatment, not less favorable than that granted to its own investors or investors of a third country whichever is more favorable.

3 Despite this, provisions of this article shall not be interpreted to commit a contracting country to provide to investors of the other contracting country special featured treatment or privilege resulting in:

- a A customs or economic union, or a free trade zone, or monetary union or any sort of regional economic arrangements or any similar other international agreement formed between the two contracting countries being parties to or may become a party to it.
- b Any international or regional agreement or bilateral agreement or similar arrangement or local legislation related totally or principally to taxation.

Article 5:

Compensation for losses or damages

1 Investors of one of the contracting countries whose investments in the other contracting country are subjected to damages or losses due to wars or other armed conflict or a national emergency or revolution or disturbances or similar events, shall be granted, by the other contracting country as regards the return to previous conditions, or return of losses or compensation or any other settlement, not less favorable than treatment granted to by the other contracting country to its own investors or investors of a third country whichever is more favorable.

2 Without infraction to paragraph (1), investors of one of the contracting countries subject to damages or losses resulting from the events mentioned in that paragraph in the region of the other contracting country resulted from:

- a Temporary confiscation of their property or parts thereof by its forces or authorities
- b Destruction of their properties or parts thereof by its forces or authorities without being a cause to combat operations or without due cause to circumstances.

Shall be granted prompt sufficient and effective compensation for the damages or losses caused to them during the confiscation or resulted from the destruction of their properties, resulting payments must be made in a freely convertible currency and its transfer shall be permitted freely without delays.

Article six:

Expropriations

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a Investment made by investors of any of the contracting countries in the region of the other contracting country shall not be nationalized expropriated or dislocation or subjected in any way directly or indirectly to measurements with effects equal to nationalization or expropriation or dislocation (referred to collectively hereafter as expropriation) by the other contracting country unless for national interest of that contracting country against prompt sufficient and effective compensation provided that these measure are taken on non-discriminatory basis and according to legal measure general applicable.

b The amount of compensation shall equal the effective value of the expropriated investment, and shall be defined and accounted for according to internationally known principals of valuations based upon the fair market value of the expropriated investment at the time preceding directly expropriation measure or spread of news of expropriation whichever precedes the other (referred to after that date as "valuation"), accounting for this compensations shall be in a freely convertible currency chosen by the investor, on the basis of applicable exchange rate market value for that currency at the date of valuation or the exchange rate fixed according the International Monetary Fund, whichever is more favorable to the investor including commercial interest to be fixed according to market conditions, provided that interest rate shall be not less than London Ineterbank rate (Libor) or equivalent, from the date of expropriation until the date of payment.

c If the fair market value stated above cannot be determined, then the compensation shall be determined according to fair principles taking into account all the factors and circumstances connected, such as invested capital, the nature and duration of the investment, the value of rplacement, increase in the value of the investment and current returns, and the value of the discounted cash flow and the book value and current goodwill. The determined value of the compensation shall be paid promptly to the investors in a freely convertible currency and permit the free transfer without delays.

2 In the light of principles stated in paragraph (1), and without infraction of the rights of the investor mentioned in article 9 of this agreement, the investor who suffered has the right of immediate

review by judicial authorities or an independent relevant authority of that contracting country for his case including the valuation of his investment and payment of compensation for this investment.

3 Expropriation means also case of expropriation by the contracting country of company assets or project established according to applicable laws in its region which the investor of the other contracting country has an investment through share and bonds ownership or debenture or rights or other direct interests.

4 The term "expropriation" include also any interrelations or regular measure by the contracting country such as the freezing or restriction of investment, or the imposition of arbitrary taxes or similar measures with the same effect of confiscation of property or expropriation of actually depriving the investor of his investment or substantial interests in it or that may cause a loss or suffering to the economic value of the investment.

Article seven:

Repatriation of payments related to investments

1 The two contracting country guarantee to investors of the other contracting country the free transfer from and to its region, payments related to their investments including:

- a Original capital and any additional capital for the maintenance, administration and development of the investment.
- b Returns
- c Payments in terms of a contract, including repayment of the original loan, the payment of interest due as per a loan agreement.
- d Royalties and fees for the rights mentioned in article 1 paragraph 1 (d)
- e Returns due from the sale or liquidation of all or any part of the investment.
- f Monies gained and other allowances for contracted workers from outside and who are connected with the investment.
- g Payments of compensation according to articles 5 and 6
- h Payments arising from the settlement of conflicts.

2 Payments stated in paragraph (1) shall be executed without delay or restrictions in a freely convertible currency, save case of payments in kind.

3 Repatriation shall be made without distinction at spot exchange rates in the host contracting country on the date of the transfer as for spot currencies, in case of absence of foreign exchange market, the applicable rate will be the most recent rate applicable to incoming investments or the exchange rate specified according to the rules of the IMF or an exchange rate fixed for the transfer of currencies for special drawing rights whichever is more favorable to the investor.

Article eight:

Subrogation

1 If a contracting country or its relevant agency or any other recognized party by the (guaranteeing party) makes payment in terms of compensation or guarantee against non commercial risks, committed as far as an investment in the other contracting country (host country) then the host country shall recognize:

- a The transfer of ownership rights and resulting claims from such investment in terms of law or legal agreements to the guaranteeing party.
- b By the guaranteeing party practicing such rights and execution of these claims and commitments related to the investment based upon the principal of subrogation of the debtor.

2 In all circumstances, the guaranteeing party has the right to:

- a The same treatment related to rights and claims gained and commitments of the guaranteed commitments for subrogation as stated in above paragraph (1)
- b Any payments received according to these rights and claims.

3 Without infringement of article 7, any payments received by the guaranteeing party in a local currency according to rights and claims gained, must be made available and used freely to the guaranteeing party for the purposes of meeting expenses incurred in the host country.

Article nine:

Settlement of disputes between the contracting country and an investor

1 Disputes arising between a contracting country and the investor of the other contracting country as regards the investment of the latter in the territory of the country first mentioned, shall be resolved amicably as far as possible.

2 If the dispute cannot be resolved during six month from the date of application by any party to the dispute for an amicable settlement by way of delivery of a written notification to the other party, the dispute shall be referred for settlement by the investor party to the dispute by any of the following methods:

- a According to any appropriate procedures previously agreed upon for the settlement of dispute.
- b According to the provisions of the special article on the settlement of disputes of this unified agreement for the investment of Arab capital in Arab countries of 1980.
- c International arbitration according to the article following.

3 In case the investor chooses to submit the dispute for settlement to international arbitration, the investor shall also provide a written approval for the submission of the disputes through any of the following parties:

- a International center for the settlement of investments disputes (the center), set up by agreement for the settlement of investments disputes between states and nationals of other countries presented for signature in Washington on 18 March 1965 (Washington agreement) in case the two contracting countries parties to the Washington agreement and implementation of the Washington agreement to the dispute
- b Arbitration tribunal established in term of arbitration principles (principles) of the United Nations commission for trade law (Uncitral) as amended by parties to the dispute (the appointed party referred to in article 7 of the principles in the secretary general of the center)
- c Arbitration tribunal appointed according to the special arbitration by any arbitration tribunal agreed upon by the parties to the dispute.

4 Despite the investor submitting the dispute for obligatory arbitration in terms of paragraph (2) above he may and before the start of the arbitration proceedings or during the proceedings, request the arbitrator of the contracting country party to the dispute to issue a temporary injunction for the preservation of his rights and interests provided this application includes any damages.

5 Each of the contracting countries shall provide it unconditional approval to submit the investment dispute for the purpose of settlement through obligatory arbitration according to the choice of the investor in terms of paragraph (3) (a) (b) or mutual agreement of the two parties to the dispute in terms of paragraph (3) (c)

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- a The approval stated in paragraph (5) together with the approval in paragraph (3) shall satisfy the special written application of the parties to the dispute for the purposes of of the second chapter of the Washington agreement and the principles of additional facilities, and the second article of the United Nations recognizing the execution of foreign arbitration signed in New York on June 10 1958 (New York agreement) and article 1 of the Uncitral rules.
- b Any arbitration in terms of this article, and as mutually agreed between the parties, must be concluded in a country subject to the New York agreement. The claims submitted to arbitration subject to this agreement shall be considered arising from the relationship or commercial treatment for the purposes of article (1) of the New York agreement.
- c None of the contracting countries shall not grant diplomatic protection or apply for international application connected with any dispute referred to arbitration unless in the case of failure of the other contracting country in its obligation to the ruling issued regards the dispute of its implementation, provided the possibility of exchange of diplomatic unofficial notices only for the purposes of facilitation of settlement of the dispute.

7 The arbitration court so established in terms of this article, issues connected with the dispute according to the rules of law as agreed between the parties to the dispute. In case of absence of such agreement, the law of contracting country shall prevail including its

own rules for legal disputes, and the rules of recognized international law including its implementation taking into consideration also the specific conditions in this agreement.

8 The investor, contrary to a natural person who carries the nationality of the contracting country subject to the dispute, from the date of written approval stated in paragraph (6), which prevailed over it before the dispute arising between him and that contracting country, investors of the other contracting country shall be treated according to article 25 (2) (b) of the Washington agreement as a citizen of the other contracting country and the purposes of article 1 (6) of the additional rules "as a citizen of another country"

9 Arbitration decisions, which contains rulings for the payment of interest shall be final and binding on both parties to the dispute, the two contracting countries shall executed the ruling immediately and undertake the necessary formalities for the effective execution of these rulings in its territory.

10 The contracting country must not be compelled, protected by its immunity in any legal proceedings or arbitration proceedings or contrary to that or in the execution of any decision or ruling related to an investment dispute between them and an investor of the other contracting country. As well no counter claims or settlement right on account the investor receiving or shall receive, according to an insurance contract, compensation for damages or any other compensation for any or part of the damages claimed from a third party whether public or private including the other contracting country its departments and agencies or apparatus.

Article ten:

Settlement of disputes between the two contracting countries.

1 The two contracting countries shall settle any dispute connected with the interpretation of or implementation of this agreement through consultations and diplomatic channels.

2 If the dispute is not settled within six months from the date of application for such consultations or from the date of application for settlement through diplomatic channels by the two contracting countries, unless contrary to that, agreed upon in writing by the two contracting countries any of the contracting countries may through written notice to the other contracting country, submit the dispute to arbitration court specially set according to the following conditions of this article.

3 An arbitration court shall be established as follows: each of the contracting countries shall appoint one member, these two members shall agree upon a citizen of a third country to be their president to be appointed by the two contracting countries, the appointment of the two members shall be during two months, the president during four months from the date of notice by the contracting countries to the other contracting country its intend to refer the dispute to an arbitration court.

4 If the periods stated in paragraph (3) above are not complied with, any of the contracting countries may, in the absence of any arrangement, to call upon the president of the International Court of Justice to make the necessary appointments. If the president of the International court of Justices is a national of one of the contracting countries or any restrictions prevent the performance of the mentioned tasks, the deputy president of the International Court shall make the necessary appointments, if the deputy president of International Court of Justice is a national of one of the contracting countries or any restrictions prevent the performance of the stated tasks, a member of the International Court of Justice following him in seniority and is not a national of any of the contracting countries shall make the necessary appointments.

5 The arbitration court shall make its decisions by a majority of votes, the decision shall be made according to this agreement and recognized international law including its implementations, and shall be final and binding upon the contracting countries, each of the two contracting countries shall ber the cost of its member appointed to the arbitration court by that contracting country, as well the cost of its representatives in the arbitration proceedings. The costs of the president and any other costs shall be borne equally by contracting countries, the court may award greater arbitration costs a larger proportion than the stated costs, the arbitration court shall establish its own rules in all other matters.

Article eleven:

Relations between the two contracting countries

The provisions of this agreement shall apply regardless of the

existing of diplomatic or consular relations between the two contracting countries.

Article twelve:

Execution of other provisions

If legislation in any contracting country or its commitments under international law currently existing or may come into force at a later date between the two contracting countries in addition to this agreement, containing rules whether public or private, granting investments or connected activities made by the investors of the other contracting country, most favored treatment than that stated in this agreement, then this condition applies to this agreement as far as application of most favored treatment.

Article thirteen:

Scope of the agreement

This agreement applies to all investments, whether existing or that may come after the agreement entering into force by investors of any of the contracting countries in the territory of the the other contracting country, provide this agreement applies to all disputes arising before coming into force, unless otherwise agreed by the parties to the dispute.

Article fourteen:

Agreement entering into force

Each of the contracting countries shall notify the other of the compliance with the necessary legislative requirements for entry into force of this agreement, the agreement enters into force as from the thirtieth day after receipt of latest notification.

Article fifteen:

Duration and expiry

1 This agreement remains in force fro (30) thirty years, and continues in force for a similar period, unless one of the contracting countries notifies the other contracting country in writing one year before the expiry of the first period or subsequent period, with its intentions to terminate the agreement.

2 As regards investments established before the notification to terminate the agreement coming into force, the provisions of this agreement shall remain in force for (20) twenty years from the date of its termination.

In witness whereof, the respective, the duly authorized representative have signed this agreement.

Done in Kuwait on the twenty eighth day of Safar 1422 Hijri coinciding the twenty first day of May 2001, on two original copies in Arabic, both copies being equally authoritative.

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