

49/6

AGREEMENT

**BETWEEN THE GOVERNMENT OF GEORGIA
AND**

THE GOVERNMENT OF THE STATE OF KUWAIT

**FOR THE PROMOTION AND RECIPROCAL PROTECTION
OF INVESTMENTS**

The Government of Georgia 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 state territory of the other Contracting Party;

Recognizing that the promotion 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 assets or rights established and owned or controlled directly or indirectly by an investor of one Contracting Party in the state territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including in particular, though not exclusively:

- (a) movable and immovable property and any related property rights such as leases, mortgages, pledges and other rights;

- (b) a company, or shares, stocks, and other forms of equity participation, and bonds, debentures, and other forms of debt interests in a company, 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, trade secrets, trade names, goodwill and other similar rights;
- (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 change in the form in which assets are invested or reinvested shall not affect their character as investments.

2. The term "investor" with respect to a Contracting Party shall mean:

- (a) a natural person holding the nationality or citizenship of that Contracting Party in accordance with its applicable laws;
- (b) a Contracting Party;
- (c) any legal person constituted or incorporated under the domestic legislations of that Contracting Party, such as institutions, development funds, agencies, foundations and other statutory establishments and authorities, and companies.

3. The term "company" 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 controlled by investors of a Contracting Party, and includes:

- (a) In case of Kuwait: a corporation, trust, partnership, sole proprietorship, branch, joint venture, association or other similar organization.

(b) In case of Georgia: Sole Proprietorship, Joint Liability Company, Limited Liability Company, Joint Stoke Company and Cooperative or other similar organization.

4. The term "returns" shall mean amounts yielded by an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, include profits, interest, capital gains, dividends, royalties and other payments or fees, and payments in kind, regardless of its type.

5. The term "liquidation" shall mean any disposal effected for the purpose of completely or partly giving up an investment.

6. The term "territory" shall mean:

a) In case of Kuwait:

- the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated under the laws of the State of Kuwait, as an area over which the State of Kuwait may exercise sovereign rights or jurisdiction.

b) In case of Georgia:

- the territory of Georgia within the state borders, recognized by the international community including land space, its subsoil and the airspace above, internal waters and territorial sea, its floor, subsoil and airspace above, where Georgia exercises its sovereignty, as well the continental shelf and exclusive economic zone in respect of which Georgia exercises its sovereign rights in accordance with the international law.

7. 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.

8. 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 one month.

Article 2

Promotion and Protection of Investments

✓ 1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory, and, subject to its right to exercise powers conferred by its laws,

shall admit such investment.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with recognized principles of International Law and the provisions of this Agreement. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its state territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.
3. Once established, investments of investors of either Contracting Party shall not be subject to additional performance requirements which may be detrimental to their viability or adversely affect their use, management, conduct, operation, expansion, sale or other disposition, unless required by the law or international obligations of the host state.

Article 3 National or Most Favorable Treatment

1. With respect to the establishment, use, management, conduct, operation, expansion and sale or other disposition of investments made in its state territory by investors of the other Contracting Party, each Contracting Party shall accord treatment no less favorable than that it accords, in like situations, to investments of its own investors or investors of any third state, whichever is the most favorable.
2. However, 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 customs union, economic union, free trade area, monetary union, or other form of regional economic arrangement or other similar international agreement, to which either of the Contracting Parties is or may become a party; or
 - (b) any international regional or bilateral agreement or other similar arrangement or any domestic legislation relating wholly or mainly to taxation.

Article 4

Compensation for Damage or Loss

When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the state territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is the most favorable.

Article 5

Expropriation

1. (a) Investments made by investors of one Contracting Party in the state territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or dispossession (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 expropriator 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 to be chosen by the investor, on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include losses of the investor from the date of expropriation to the date of the compensation payment, calculated at a commercial rate established on a market basis, however, in no event less than the prevailing LIBOR - rate of interest or equivalent, from the date of expropriation until the date of payment.
- (c) Where the above-mentioned fair market value cannot be legally ascertained, the 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 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 case, including the valuation of its investment and the payment of compensation therefore.

3. For further certainty, expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise that is incorporated or established under the laws in force in its own state 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 on which 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 blocking of the investment, levying of arbitrary or excessive tax on the investment, compulsory sale of all or part of the investment, or other comparable acts or measures.

5. 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 company in which investment is made by investors of the other Contracting Party, the investment is impaired in substance.

Article 6

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 state territory upon the fulfillment of their fiscal and any other legal obligations arising in the Host State. Such transfer shall include:

- (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) royalties and fees for the rights referred to in Article 1 paragraph 1 (d);
- (e) proceeds from the sale or liquidation of the whole or any part of the investment;
- (f) earnings and other remuneration of personnel engaged from abroad in connection with the investment;
- (g) payments of compensation pursuant to Articles 4 and 5;
- (h) payments referred to in Article 7; and
- (i) payments arising out of the settlement of disputes.

2. Without prejudice to paragraph 1, transfers of payments 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.

3. Transfers shall be made at the spot market rate of exchange prevailing in the state territory of the host Contracting Party on the date of transfer for the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent rate applied to inward investments or the exchange rate determined in accordance with the regulations of the International Monetary Fund or the exchange rate for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is the most favorable to the investor.

Article 7

Subrogation

1. If a Contracting Party, its designated agency or any other party appointed by it constituted or incorporated in the state territory of that Contracting Party (the "Indemnifying Party"), makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the (state) territory of the other Contracting Party (the "Host State"), the Host State 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; and
- (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:
 - (a) the same treatment in respect of the rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above; and
 - (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 8

Settlement of Disputes Between a Contracting Party and an Investor

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment shall be subject to negotiations between the parties to the dispute.
2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within six (6) months of the date when the request for the settlement has been submitted, the investor shall be entitled to submit the case to:
 - a) that competent court or administrative tribunal of the Contracting Party in the state territory of which the investment has been made; or
 - b) an *ad hoc* arbitrary tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - c) The International Center for Settlement of Investment Disputes (ICSID) through conciliation or arbitration established under the Convention on the Settlement of Investment Disputes between States and Nationals of the other States opened for signature in Washington D.C. on March 18, 1965 in the event both Contracting Parties shall have become a party to the Convention or the additional rules of the International Center for Settlement of Investment Disputes (in the event if the convention is not entered in the force for either Contracting Parties).
3. The awards of arbitration which may include an interest shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out responsibility to follow the decision.
4. Notwithstanding the fact that the investor may have submitted a dispute to binding arbitration under paragraph 2, 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.

Article 9

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 President of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within two months, and such President 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 the state 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 the state 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 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 for its representation in the arbitration proceedings. The expenses of the President 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 10
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 11
Application of Other Rules

If the legislation of either Contracting Party or obligations taken under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such rules shall to the extent that they are more favorable to the investor prevail over this Agreement.

Article 12
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 state territory of the other Contracting Party.

Article 13
Changes and Amendments

The provisions of this Agreement may be changed and amended by mutual agreement of the Contracting Parties, which is formed by the separate protocol and shall constitute an integral part of this Agreement and shall enter into force in accordance with the Article 14 of this Agreement.

Article 14
Entry into Force

The present Agreement shall enter into force on the thirtieth day following the date of receipt of the latter notification on completion of constitutional or internal procedures of Contracting Parties.

Article 15
Duration and Termination

1. This Agreement shall remain into force for a period of thirty (30) years and automatically remains into force for another thirty years until one year earlier 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 when the notice of termination of this Agreement 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 13th of October 2009 corresponding to day of 24th of Shawwal 1430 H in two originals each in the Georgian, Arabic and English languages. All texts are equally authentic. In case of divergence, the English text shall prevail.

For the Government of Georgia



Zurab Pololikashvili

Minister of Economic Development

**For the Government of the State
of Kuwait**



Mustafa Jassim Al-Shamali

Minister of Finance