

A G R E E M E N T

B E T W E E N

T H E R U S S I A N F E D E R A T I O N

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**F O R T H E P R O M O T I O N A N D R E C I P R O C A L P R O T E C T I O N O F
I N V E S T M E N T S**

The Russian Federation and the State of Kuwait (hereinafter referred to as the "Contracting Parties")

Desiring to create favourable conditions for the development of the 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 promotion and reciprocal protection of such investments will be conducive to the stimulation of business initiative and will increase 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 owned or controlled by an investor of one Contracting Party and invested in the territory of the other Contracting Party in accordance with its legislation. This term shall include, in particular:

- a) movable and immovable property as well as any property rights such as mortgages;
- b) shares, debentures and other securities, as well as stocks and any other forms of interests in a company or enterprise;
- c) debt, claims to money or to any performance under loan agreement or under other contract having an economic value and related to an investment;
- d) intellectual property rights, including in particular, copyrights, patents, trade marks, industrial designs, trade names as well as know-how, trade secrets, and goodwill;
- e) rights conferred by law or under contract to carry out economic activity, or by virtue of any licenses and permits pursuant to law, including rights to search for, cultivate, extract or exploit natural resources;

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

2. The term "investor" shall mean with regard to each Contracting Party:

- a) (i) any natural person holding the citizenship or nationality of that Contracting Party in accordance with its legislation;
- (ii) any legal entity, constituted in accordance with the legislation in force in the territory of that Contracting Party, including a corporation, company, association, enterprise, partnership or other organisation, irrespective of whether their liabilities are limited or otherwise;

provided that such natural person or legal entity is competent, in accordance with the legislation of that Contracting Party, to make investments in the territory of the other Contracting Party;

b) that Contracting Party.

3. The term "returns" shall mean amounts yielded by an investment, in particular includes profit; interest; capital gains; dividends; royalties; management, technical assistance or other fees; as well as returns in kind.

4. The term "territory" shall mean the territory of the Russian Federation or the territory of the State of Kuwait, as well as the maritime areas, such as the exclusive economic zone and the continental shelf, adjacent to the outer limits of the territorial sea of the respective State, over which it exercises in accordance with the international law sovereign rights and jurisdiction for the purpose of exploration, exploitation and conservation of natural resources.

5. The term "activities connected with an investment" shall include in particular, the organization, control, operation, maintenance and disposal of companies, branches, agencies, offices or other organisations for the conduct of business; the acquisition, use and disposal of property of all kinds, including intellectual property, as well as the protection thereof; the borrowing of funds; the purchase, sale and issue of shares and other securities and the purchase of foreign exchange for imports.

6. The term "without delay" shall mean such period as is normally required to fulfill the necessary formalities for the transfer of payments. The said period shall commence on the day which the request for transfer has been submitted and may not exceed three months.

7. The term "investment agreement" shall mean an agreement between a Contracting Party and an investor of the other Contracting Party concerning an investment.

Article 2

Promotion and Reciprocal Protection of Investments

1. Each Contracting Party will promote in its territory investments by investors of the other Contracting Party and admits such investments in accordance with its legislation.

2. Investments by investors of one Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall not impair in its territory by arbitrary, mandatory or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments by investors of the other Contracting Party.

3. A Contracting Party shall in accordance with its legislation permit investors of the other Contracting Party which have investments in its territory to employ top managerial and technical personnel of their choice regardless of nationality.

A Contracting Party shall in accordance with its legislation relating to the entry and sojourn of aliens give sympathetic consideration to applications of the foreigners,

working in connection with an investment made by an investor of other Contracting Party, as well as members of their families, to enter into, remain on and leave its territory.

4. Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall to the extent permissible under its relevant laws and regulations permit the carrying out of such transport by enterprises of the other Contracting Party.

5. Each Contracting Party shall in an appropriate process of law make public all laws, regulations, and other normative acts that pertain to or directly affect investments in its territory of investors of the other Contracting Party.

6. In case of reinvestment of the returns of an investment, such reinvestment and its returns shall enjoy the same protection and treatment as the initial investment. Such protection and treatment shall also be accorded to proceeds from the liquidation of an investment.

7. Investments by investors of either Contracting Party shall not be subjected to requisition, confiscation or other similar measures, except under due process of law.

8. Each Contracting Party shall provide effective means of asserting claims and enforcing rights with respect to investments and authorizations relating thereto and investments agreements.

9. Neither Contracting Party shall impose any additional requirements as a condition of expansion or maintenance of investments, which require commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar additional requirements.

Article 3

Treatment of Investments

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

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards their activity in connection with investments treatment no less favourable than that which it accords to its own investors or to investors of any third state, whichever is more favourable.

3. Each Contracting Party reserves the right to make or maintain in its legislation limited exceptions from national treatment granted in accordance with paragraphs 1 and 2 of this Article. Any new exception will not apply to investments made in its territory by investors of the other Contracting Party before the entry into force of such an exception, unless the exception relates to the maintenance of defense, national security and public order, protection of the environment, morality or public health.

4. The most-favoured-nation treatment granted in accordance with paragraphs 1 and 2 of this Article shall not apply to advantages and privileges which a Contracting Party is providing or will provide in the future:

- a) in connection with its participation in a free trade area, a customs or economic union, or similar international agreements;
- b) by virtue of the agreements in the field of economic cooperation of the Russian Federation with the states that constituted the former Union of Soviet Socialist Republics;

- c) by virtue of the Unified Economic Agreement between the Countries of the Gulf Cooperation Council of which the State of Kuwait is a party.

Article 4

Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflicts, a state of national emergency, civil disturbances or other similar events shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which it accords to its own investors or to investors of any third state, whichever is more favourable.

Article 5

Expropriation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to other measures having effect equivalent to expropriation or nationalization, including measures resulting in the loss of ownership of, or control over, the investments (hereinafter referred to as "expropriation"), except for public interest, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. The compensation provided in paragraph 1 of this Article shall be equivalent to the market value of the expropriated investment immediately before the expropriation was taken or impending expropriation became public knowledge, whichever is earlier. The compensation shall be paid without delay and shall include interest from the date of expropriation until the date of payment at the commercial rate established on a market basis.

3. Consistent with the provisions of Article 9 of this Agreement, the investor that asserts that its investments were expropriated shall have a right under the legislation of the Contracting Party making the expropriation to prompt review by a judicial or other independent authority of that Contracting Party of its case, of the valuation of its investment and of the payment of compensation in accordance with the principles set out in this Article.

Article 6

Transfer of payments

1. Each Contracting Party shall guarantee to investors of the other Contracting Party free transfer of payments in relation to an investment and in particular:

- a) initial capital, and additional amounts to maintain or increase the investment,
- b) returns,
- c) payments under a contract including funds in repayment of loans,
- d) proceeds of sale or liquidation of the whole or any part of the investment,

- e) compensation according to Articles 4 and 5 of this Agreement,
- f) payments as a result of the settlement of a dispute,
- g) the unspent wages and other remunerations of nationals of the other Contracting Party deriving from their work and services in connection with an investment.

2. The transfer of payments provided for in paragraph 1 of this Article, shall be effected without delay, in a freely convertible currency and at the market rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 7

Subrogation

1. If one Contracting Party or its designated agency makes a payment to any of its investors under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency by law or by legal transaction of all the rights and claims of the indemnified investor and that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the indemnified investor, except the rights available to the investor by virtue of Article 9 of this Agreement.

2. The former Contracting Party or its designated agency shall be accorded in all circumstances in respect of the rights and claims acquired by it by virtue of subrogation

as well as in respect of any payments received in pursuance of those rights and claims the same treatment as the investor was accorded by virtue of this Agreement in respect of the investment concerned.

3. As regards the payments made by virtue of subrogation, the provisions of Articles 5 and 6 of this Agreement shall apply.

Article 8

Consultations

The Contracting Parties may, whenever necessary, hold consultations on any matter concerning the interpretation or application of this Agreement.

Article 9

Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between a Contracting Party and an investor of the other Contracting Party relating to an investment of the latter in the territory of the former shall, as far as possible, be settled in an amicable way.
2. If such a dispute cannot be settled within six months from the date either party to the dispute requested amicable settlement, it shall be submitted by either party to the dispute for settlement:

- a) in accordance with any previously agreed dispute-settlement procedures, or
- b) by an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as those Rules may be modified by the parties to the dispute (the Appointing Authority referenced therein to be the Secretary-General of the International Centre for the Settlement of Investment Disputes).

3. The decision of the arbitration shall be final and binding on the parties to the dispute.

Article 10

Settlement of Disputes between Contracting Parties

1. The Contracting Parties shall endeavour to settle any dispute between them concerning the interpretation or application of this Agreement through negotiations.

2. If the dispute has not been settled within six months following the date on which such negotiations 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:

- a) the arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member of the tribunal, and then these two members of the tribunal shall agree upon a national of a third state as the Chairman of the arbitral tribunal to be appointed by both Contracting Parties. The members of the tribunal shall be appointed within two months, and the

Chairman of the tribunal within four months, from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal;

- b) if the periods specified above have not been complied with, either Contracting Party may, in the absence of any other arrangements, 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, 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;
- c) the arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with the norms of international law and shall be binding on both Contracting Parties. Each Contracting Party shall bear the expenses of the member of the arbitral tribunal it has appointed, as well as the expenses for its representation in the arbitration proceedings. The cost of the Chairman of the arbitral tribunal as well as other costs shall be borne in equal parts by the two Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11

Application of other Rules

1. If, on the basis of the legislation of a Contracting Party or on the basis of an international agreement to which both Contracting Parties are parties, is accorded to

investments or to activities connected with investments of an investor of the other Contracting Party, treatment more favourable than that which is provided for in this Agreement, the more favourable treatment shall apply.

2. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of an investor of the other Contracting Party.

Article 12

Application of the Agreement

1. The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after 1 January 1987.

2. The provisions of this Agreement shall not apply to taxation.

Article 13

Entry into Force, Duration and Termination of the Agreement

1. Each Contracting Party shall notify in writing the other Contracting Party of the completion of its constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

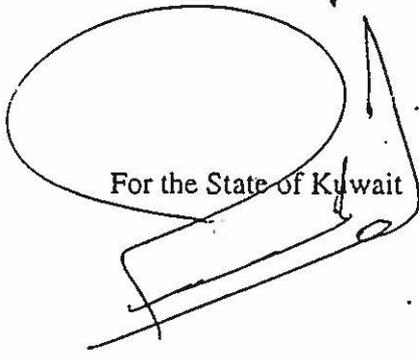
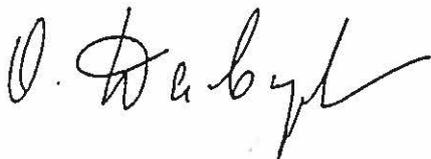
2. This Agreement shall be concluded for a period of fifteen years. It will be automatically extended for subsequent fifteen year periods, unless one of the Contracting Parties notifies the other Contracting Party in writing, at least twelve months before the expiry of the initial or any subsequent period of its intention to terminate this Agreement.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall remain in force for a further period of fifteen years from that date.

4. The Protocol to this Agreement shall form an integral part of this Agreement.

Done in duplicate at Kuwait on this 21st day of November, 1994 corresponding to 18th day of Jamada II 1415 H in the Russian, Arabic and English languages, all texts being equally authoritative. In case of divergency of interpretation, the English text shall be used.

For the Russian Federation



For the State of Kuwait

PROTOCOL

to the Agreement between the Russian Federation and the State of Kuwait for the Promotion and Reciprocal Protection of Investments

On signing the Agreement between the Russian Federation and the State of Kuwait for the Promotion and Reciprocal Protection of Investments, the Contracting Parties have also agreed on the following provisions:

1. With respect to Article 1, paragraph 1

The term "investment" includes investments controlled directly by investors of the Contracting Party as well as investments controlled indirectly by such investors through investors of a third state. The foregoing also applies to investments "owned" as used in Article 1, paragraph 1 of the said Agreement.

The Contracting Parties also acknowledge that the question whether control exist will depend on the factual circumstances of the particular case. To this end consideration should be given, inter alia, to whether there is:

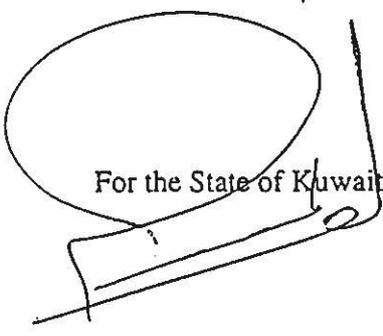
- a) a substantial interest in the investment, taking into account the extent of equity or other forms of financial interest;
- b) the ability to exercise substantial influence over the management and operation of the investment; or
- c) the ability to exercise substantial influence over the composition of the board of directors or over the composition of any other managing body.

2. With respect to Article 2, paragraph 9

The provisions of this paragraph shall be applicable by the Contracting Parties after the expiration of five years from the date of entry into force of the said Agreement.

Done in duplicate at Kuwait on this 21st day of November, 1994 corresponding to 18th day of Jamada II 1415 H in the Russian, Arabic and English languages, all texts being equally authoritative. In case of divergency of interpretation, the English text shall be used.

For the Russian Federation



For the State of Kuwait