

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE SULTANATE OF OMAN

AND

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

ON

ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Sultanate of Oman

and

the Government of the Kingdom of the Netherlands,

their respective countries hereinafter referred to as the Contracting Parties,

DESIRING to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNISING that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investments is desirable,

ACKNOWLEDGING that the development of economic and business ties will promote internationally accepted labour standards,

CONSIDERING that these objectives can be achieved without compromising health, safety and environmental measures of general application.

Have agreed as follows:

*Article 1*  
*Definitions*

For the purposes of this Agreement:

- a) the term "investments" means every kind of asset owned or controlled, directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party that has the characteristics of an investment and includes in particular the following, though not exclusively:
- (i) movable and immovable property as well as any other rights *in rem* in respect of every kind of asset, including mortgages, pledges and similar rights;
  - (ii) rights derived from shares, stocks, securities, bonds and other kinds of interests in companies and joint ventures;
  - (iii) claims to money, other assets or any performance having an economic value;
  - (iv) rights in the fields of: intellectual property, technical processes, goodwill and know-how;
  - (v) rights conferred by law or under contract, including rights to prospect, explore, extract and cultivate natural resources.

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

- b) the term "investor" shall comprise with regard to either Contracting Party:
- (i) natural persons having the nationality of the Contracting Parties in accordance with its laws. and;

- (ii) legal persons constituted on the territory of one Contracting Party under the law of that Contracting Party;
- c) The term "returns" means all amounts yielded by an investment or reinvestment, and in particular though not exclusively includes profits, interests, capital gains, dividends and other current income.
- d) The term "territory" means, with respect to each Contracting Party the land, territorial waters, maritime area and air space under its sovereignty, including the exclusive economic zone and continental shelf where the Contracting Party exercises sovereign rights and jurisdiction in accordance with its domestic law and international law.

## *Article 2*

### *Admission and promotion*

1) Each Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

2) The Contracting Parties shall within the framework of their laws and regulation consider in good faith applications for the entry and sojourn of key personnel of either Contracting Party who are required in connection with an investment to enter the territory of the other Contracting Party.

## *Article 3*

### *Treatment of investments*

1) Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal of such investments.

Contracting Party shall accord to such investments full physical security and protection.

2) More particularly, and unless otherwise specified in this Agreement, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

3) If a Contracting Party has accorded special advantages to investors of any third State:

a) by virtue of agreements establishing free trade zones, customs unions, economic unions, monetary unions or similar institutions;

b) on the basis of interim agreements leading to such unions or institutions;

c) under an agreement for the avoidance of double taxation, any other international agreement or arrangement relating wholly or mainly to taxation;

or,

d) on the basis of reciprocity with regard to taxation, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

Issues of taxation on income and capital shall be dealt with in accordance with the Agreement for Avoidance of Double Taxation with Respect to Taxes on Income and Capital between the Contracting Parties. In case there is no such agreement between the Contracting Parties, the respective national tax law shall be applicable.

Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

6) The provisions of paragraph 2 of this Article shall not oblige the Sultanate of Oman to accord investors of the other Contracting Party the same treatment that it accords to its own investors with regard to ownership of land and real estate. The same applies to grants and soft loans in connection with specific development and social programs aimed at the encouragement of investments by local small and medium sized enterprises, subject to the condition that these shall not significantly affect the investments and activities of the investors of the other Contracting Party.

#### *Article 4* *Transfers*

1) Each Contracting Party shall guarantee to the investors of the other Contracting Party the transfer of payments relating to an investment. The transfers shall be made in a freely convertible currency, without delay or restriction. Such transfers include in particular though not exclusively:

- a) returns;
- b) capital and additional capital being used to operate, maintain, increase or expand investments and any other amounts required for coverage of expenses connected with the investments;
- c) funds in repayment of loans related to an investment;
- d) royalties or fees;
- e) wages, remunerations and accruals of natural persons from abroad engaged in activities related to an investment in the host country;
- f) the proceeds from total or partial sale or liquidation of the investment;
- g) payments arising under Articles 5 and 6.

2) With respect to paragraph 1 under f of this Article, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:

- a) to protect the rights of creditors,
  - b) relating to or ensuring compliance with laws and regulations:
    - i) on the issuing, trading and dealing in securities, futures, options and derivatives,
    - ii) concerning reports or records of transfers, or
  - c) in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings,
- provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's obligations under this agreement.

#### *Article 5*

#### *Expropriation and nationalization*

- 1) Neither Contracting Party shall nationalize, expropriate or take any measures, directly or indirectly, the effect of which would be tantamount to expropriation or nationalization (hereinafter referred to as 'expropriation'), which deprive investors of the other Contracting Party of their investments unless the following conditions are complied with:
- a) the measures are taken in the public interest and under due process of law;
  - b) the measures are not discriminatory or contrary to any undertaking which the Contracting Party, which takes such measures, may have given;
  - c) the measures are taken against prompt, adequate and effective compensation. Such compensation shall represent the real market value of the investments affected immediately before the decision for the expropriation was taken or became publicly known, whichever became earlier. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taken into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, appreciation, current returns, book value, goodwill and other relevant factors;
  - d) Such compensation shall include interest at a normal commercial market rate from the date of expropriation until the date of payment of the compensation and shall, in order to be effective for the claimants, be paid and made

concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

2) Without prejudice to Article 8 of this Agreement, investors of either Contracting Parties whose investments have been affected by expropriation, shall in any case be entitled to prompt review of their case in relation to the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a Judicial authority or any other competent authority of the host Contracting Party for the investment.

*Article 6*  
*Compensation for losses*

1) Investors of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

2) The provisions of paragraph 1 of this Article, shall also apply to investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- a) requisitioning of their property by the forces or authorities of the latter Contracting Party, or
- b) destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation.

*Article 7*  
*Subrogation*

If the investments of an investor of one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

*Article 8*  
*Settlement of disputes between an investor and a Contracting Party*

1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall, if possible, be settled amicably.

2) If the dispute referred to in paragraph 1 of this Article cannot be settled within three months from the date on which either party to the dispute requested in writing an amicable settlement, the investor shall be entitled to submit the dispute, at his choice, for settlement to:

- a) the competent court of the Contracting Party concerned;
- b) the International Centre for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), opened for signature at Washington on 18 March 1965, when both Contracting Parties have become a party to the said Convention;
- c) the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Disputes



by the Secretariat of the Centre (Additional Facility Rules), when one of the Contracting Parties is not a party to the Convention mentioned under b);

- d) a sole arbitrator or an international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
- e) the Court of Arbitration of the International Chamber of Commerce (ICC).

3) Without prejudice to paragraph 2 of this Article, the parties to the dispute may consider other forms of international dispute settlement.

4) Each Contracting Party hereby gives its consent to the submission of a dispute to international conciliation or arbitration mentioned in paragraph 2 of this Article.

5) The arbitral awards shall be final and legally binding on the parties to the dispute and shall be executed under the laws of the Contracting Party in whose territory the investment was made.

6) A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall, in accordance with Article 25, Paragraph 2, under b, of the Convention mentioned under Paragraph 2, under b, above, for the purpose of the Convention be treated as a national of the other Contracting Party."

7) A Contracting Party which is a party to a dispute shall not at any stage of arbitration proceeding or enforcement of an arbitration award raise the objection that the investor who is the other party to the dispute has received an indemnity to cover all or part of its losses by virtue of an indemnity, guarantee or insurance contract.

*Article 9*  
*Scope of the Agreement*

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments, which have been made before that date.

*Article 10*  
*Consultations*

Either Contracting Party may propose to the other Party that consultations be held on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

*Article 11*  
*Settlement of disputes between the Contracting Parties*

1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a period of three months by means of diplomatic negotiations, shall, unless the Contracting Parties have otherwise agreed, be submitted, at the request of either Contracting Party, to an arbitral tribunal, composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Contracting Party.

2) If one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Contracting Party to make such appointment, the latter Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

3) If the two arbitrators are unable to reach agreement, within the two months following their appointment, on the choice of the third arbitrator, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

4) If, in the cases provided for in the paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Contracting Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Contracting Parties so agree.

6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

8) 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 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.

*Article 12*  
*Territorial application*

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification provided for in Article 13, paragraph (1) provides otherwise.

*Article 13*  
*Entry into force, duration and termination*

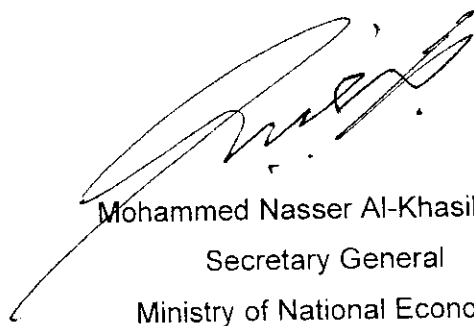
- 1) The present Agreement shall enter into force on the first day of the second month following the latter date on which the Contracting Parties have notified each other in writing that legally required procedures have been complied with, and shall remain in force for a period of fifteen years.
- 2) Unless notice of termination has been given by either Contracting Party at least one year before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of twenty years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least one year before the date of expiry of the current period of validity.
- 3) In respect of investments made before the date of the termination of the present Agreement, the provisions of the Articles 1 to 12 shall continue to be effective for a further period of twenty years from that date.
- 4) Subject to the period mentioned in paragraph (2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.
- 5) Upon entry into force of the present Agreement, the Agreement on

Sultanate of Oman and the Kingdom of the Netherlands, signed on 19 September 1987, shall be terminated in the relation between the Sultanate of Oman and the Kingdom of the Netherlands, and replaced by the present Agreement, but only with respect to those parts of the Kingdom of the Netherlands to which the present Agreement applies in conformity with the notification mentioned in Paragraph 1 of this Article.


IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE in two originals at *Muscat*....., on the *17<sup>th</sup>* of *January*..... of the year 2009, corresponding with *20/1*..... of the year 1430H, in the Arabic, Netherlands and English languages, the three texts being authentic. In case of difference of interpretation the English text shall prevail.

For the Sultanate of  
Oman:

  
Mohammed Nasser Al-Khasibi  
Secretary General  
Ministry of National Economy

For the Kingdom of  
the Netherlands:

  
Frank Heemskerk  
Minister for Foreign Trade