

AGREEMENT between the Government of the Sultanate of Oman and the Government of the Republic of Austria for the Promotion and Reciprocal Protection of Investments

THE GOVERNMENT OF THE SULTANATE OF OMAN AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA

hereinafter referred to as "Contracting Parties",

DESIRING to create favourable conditions for greater economic cooperation between their two countries,

RECOGNIZING that the promotion and reciprocal protection of investments may strengthen the readiness for such investments and hereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

ARTICLE 1 Definitions

For the purposes of this Agreement

(1) "investor" of a Contracting Party" means:

- (a) a natural person having the nationality of a Contracting Party in accordance with its applicable law; or
- (b) any legal person or entity constituted or organized in the territory of one Contracting Party in accordance with the applicable laws of that Contracting Party;

making or having made an investment in the other Contracting Party's territory.

(2) "investment" means every kind of asset effected as investment, directly or indirectly, by an investor of the other Contracting Party, and shall include in particular, though not exclusively:

- (a) shares, stocks and other forms of equity participation in an enterprise, and rights derived therefrom;
- (b) bonds, debentures, loans and other forms of debt and rights derived therefrom;
- (c) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(d) claims to money and claims to performance pursuant to a contract having an economic value;

(e) intellectual property rights as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organisation, including industrial property rights, copyright, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill;

(f) rights conferred by law or contract such as concessions, licenses, authorizations or permits to undertake an economic activity ;

(g) any other tangible or intangible, movable or immovable property, or any related property rights, such as leases, mortgages, liens, pledges.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made.

(3) "returns" means the amounts yielded by an investment and, in particular, profits, interests, capital gains, dividends, royalties, licence fees and other fees.

(4) "without delay" means such period as is normally required for the completion of necessary formalities for the payments of compensation or for the transfer of payments. This period shall commence for payments of compensation on the day of expropriation and for transfers of payments on the day on which the request for transfer has been submitted. It shall in no case exceed one month.

(5) "territory" means with respect to each Contracting Party the land territory, internal waters, maritime and air space under its sovereignty, including the exclusive economic zone and the continental shelf where the Contracting Party exercises, in conformity with international law, sovereign rights and jurisdiction.

ARTICLE 2

Treatment of Investments

(1) Each Contracting Party shall, according to its laws and regulations, promote and admit investments by investors of the other Contracting Party.

(2) Each Contracting Party shall accord to investments by investors of the other Contracting Party and their returns fair and equitable treatment and full and constant protection and security in its territory.

(3) A Contracting Party shall not impair by unreasonable or discriminatory measures the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment by investors of the other Contracting Party.

(4) Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords to its own investors and their

investments or to investors of any third state and their investments with respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, whichever is more favourable to the investor.

(5) No provision of this Agreement shall be construed as to oblige a Contracting Party to extend to the investors of the other Contracting Party and to their investments the present or future benefit of any treatment, preference or privilege resulting from:

(a) any membership in a free trade area, customs union, common market, economic community or any multilateral agreement on investment;

(b) any international agreement, international arrangement or domestic legislation regarding taxation.

ARTICLE 3 Transparency

(1) Each Contracting Party shall make publicly available and allow access to its laws, regulations, procedures as well as international agreements which may affect the operation of this Agreement.

(2) Each Contracting Party shall respond to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph (1).

ARTICLE 4 Nationalization, Expropriation and Compensation

(1) investments by investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose on a non-discriminatory basis in accordance with due process of law and against prompt, adequate and effective compensation.

(2) Compensation shall:

(a) be paid without delay.

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred or become publicly known, whichever happened earlier. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with the generally recognized principles of valuation and on equitable principles taking into account, inter alia, the capital invested, depreciation, current returns, capital already repatriated, replacement value, goodwill and other relevant factors.

(c) be paid and made freely transferable in the currency of the country of which the claimants are nationals or in any freely convertible currency agreed upon by both parties.

(d) include interest at a commercial rate established on a market basis for the currency of payment from the date of expropriation until the date of actual payment.

(3) An investor of a Contracting Party which claims to be affected by expropriation by the other Contracting Party shall be entitled to prompt review of its 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 another competent and independent authority of the latter Contracting Party.

ARTICLE 5

Compensation for losses

(1) Investors of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt or force majeure occurring on the territory of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own investors or those of any third state, whichever is more favourable to the investor concerned.

(2) Without prejudice to paragraph (1) of this Article investors of a 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 investments or part thereof by the forces or authorities of the other Contracting Party, or

(b) destruction of their investments or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be in accordance with Article 4 paragraphs (2) and (3).

ARTICLE 6

Transfers

(1) Each Contracting Party shall guarantee that all payments relating to an investment by an investor of the other Contracting Party be freely transferred into and out of its territory without delay. Such transfers shall include, in particular:

(a) the initial capital and additional amounts to maintain or increase an investment;

(b) returns;

(c) payments made under a contract including a loan agreement;

(d) proceeds from the sale or liquidation of all or any part of an investment;

(e) payments of compensation under Article 4 and 5;

(f) payments arising out of the settlement of a dispute;

(g) earnings and other remuneration of personnel engaged from abroad in connection with an investment.

(2) Each Contracting Party shall further guarantee that such transfers be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer in the territory of the Contracting Party from which the transfer is made. The bank charges shall be fair and equitable.

(3) In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for conversion of currencies into Special Drawing Rights.

(4) Notwithstanding paragraphs (1) to (3), a Contracting Party may prevent a transfer according to paragraph (1) (d) through the equitable, non-discriminatory and good faith application of measures to insure the payment of the valid financial obligations of the investor, measures relating to or ensuring compliance with laws and regulations on the issuing, trading and dealing in securities, futures and derivatives, reports or records of transfer, or measures 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 commitments or obligations under this Agreement.

ARTICLE 7

Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment by an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize without prejudice to the rights of the investor under Article 10 the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

ARTICLE 8

Other Obligations

Each Contracting Party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.

ARTICLE 9
Application of other Rules

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

ARTICLE 10
Settlement of Disputes between an Investor and a Contracting Party

(1) A dispute between a Contracting Party and an investor of the o Contracting Party shall, if possible, be settled amicably by negotiation consultation between the two parties concerned.

(2) If such a dispute cannot be settled within a period of 60 days from the date of request for settlement, the investor concerned may submit the dispute to:

(a) the competent court or administrative tribunal of the Contracting Party;

(b) an arbitral tribunal established under:

(i) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);

(ii) the rules of arbitration of the International Chamber of Commerce (ICC);

(iii) the rules of the International Center for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington, D.C., on March 18, 1965;

(c) any other form of dispute settlement agreed upon by the parties to the dispute.

(3) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Article. However, a dispute may not be submitted to international arbitration if a local court in either Contracting Party has rendered its decision on the dispute.

(4) The consent referred to in paragraph (3) implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted.

(5) A Contracting Party shall not assert as a defence or otherwise, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

(6) Issues in dispute under Article 8 shall be decided, absent other agreement, in accordance with the law of the Contracting Party, party to the dispute, including its rules on the conflicts of laws, the law governing the authorization or agreement and such rules of international law as may be applicable.

(7) The arbitration awards shall be final and binding upon the parties to the dispute and each Contracting Party, party to the dispute, shall make provisions for effective enforcement of such awards without delay.

ARTICLE 11

Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled amicably by negotiations through diplomatic channels.

(2) If the Contracting Parties fail to reach a settlement within three (3) months after the beginning of negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal in accordance with the provisions of this Article.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way: Within two (2) months of the receipt of the request each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third state, with which both Contracting Parties maintain diplomatic relations, who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice-President, shall be invited to make the necessary appointments in accordance with paragraph (3) of this Article. If the Vice-President is a national of either Contracting Party or 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 rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties.

(6) Each Contracting Party shall be responsible for the costs of its own member and of its representation in the arbitral proceedings. Unless the tribunal decides otherwise both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs.

(7) In all other respects, the tribunal shall define its own rules of procedure, unless the Contracting Parties decide otherwise.

ARTICLE 12

Application of the Agreement

(1) This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation by investors of the other Contracting Party prior as well as after the entry into force of this Agreement.

(2) This Agreement shall not apply to claims which have been settled or procedures which have been initiated prior to its entry into force.

ARTICLE 13

Consultations

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

ARTICLE 14

Entry into Force and Duration

(1) The Contracting Parties shall notify each other through diplomatic channels when the conditions required by the national legislation for its entry into force have been fulfilled. The Agreement shall enter into force on the first day of the third month which follows the date of receipt of the latter notification.

(2) This Agreement shall remain in force for a period of ten (10) years; it shall be extended thereafter for another identical period or periods unless denounced in writing through diplomatic channels by either Contracting Party at least one year before its expiry.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Articles 1 to 12 of the present Agreement shall continue to be effective for a further period of twenty (20) years from the date of termination of the present Agreement.

DONE in duplicate at Muscat on the 1st of April 2001, in the Arabic, German and English languages, all texts being equally authentic. In case of difference of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF
THE SULTANATE OF OMAN

FOR THE GOVERNMENT OF
THE REPUBLIC OF AUSTRIA

