Treaty

between

the Kingdom of Bahrain

and

the Federal Republic of Germany

concerning

the Encouragement and Reciprocal Protection of Investments

The Kingdom of Bahrain
and
the Federal Republic of Germany -

desiring to intensify economic co-operation between both States,

intending to create favourable conditions for investments by nationals and companies of either State in the territory of the other State,

recognizing that the encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations -

have agreed as follows:

Article 1

For the purpose of this Treaty

1. the term "investments" comprises every kind of asset invested in connection with economic activities by an investor of one Contracting State in the territory of the other Contracting State in accordance with the laws and regulations of the latter and shall include in particular:

   (a) movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;

   (b) shares of companies and other kinds of interest in companies;

   (c) claims to money which has been used to create an economic value or claims to any performance having an economic value;

   (d) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and good will;

(e) any right conferred by law or under public contract or any licenses, permits or concessions issued according to law;

any alteration of the form in which assets are invested shall not affect their classification as investment;

2. the term "returns" means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees;

3. the term "national" means

   (a) in respect of the Kingdom of Bahrain:
   natural persons who have the nationality of the Kingdom of Bahrain,

   (b) in respect of the Federal Republic of Germany:
   Germans within the meaning of the Basic Law of the Federal Republic of Germany;

4. the term "companies" means

   (a) in respect of the Kingdom of Bahrain:
   natural persons, partnerships, corporations and other legal entities created and organised according to the laws of the Kingdom of Bahrain and having its head office in its territory,

   (b) in respect of the Federal Republic of Germany:
   any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit.

Article 2

(1) Each Contracting State shall in its territory promote as far as possible investments by nationals or companies of the other Contracting State and admit such investments in accordance with its legislation. It shall in any case accord such investments fair and equitable treatment.

(2) Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory of nationals or companies of the other Contracting State.

Article 3

(1) Neither Contracting State shall subject investments in its territory owned or controlled by nationals or companies of the other Contracting State to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

(2) Neither Contracting State shall subject nationals or companies of the other Contracting State, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.

(3) Such treatment shall not relate to privileges which either Contracting State accords to nationals or companies of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

(4) The treatment granted under this Article shall not relate to advantages which either Contracting State accords to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4

(1) Investments by nationals or companies of either Contracting State shall enjoy full protection and security in the territory of the other Contracting State.

(2) Investments by nationals or companies of either Contracting State shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting State except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the ex-

propriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting State whose investments suffer losses in the territory of the other Contracting State owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting State than that which the latter Contracting State accords to its own nationals or companies as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Nationals or companies of either Contracting State shall enjoy most-favoured-nation treatment in the territory of the other Contracting State in respect of the matters provided for in this Article.

Article 5

Each Contracting State shall guarantee to nationals or companies of the other Contracting State the free transfer of payments in connection with an investment, in particular

(a) of the principal and additional amounts to maintain or increase the investment;

(b) of the returns;

(c) in repayment of loans;

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

(e) of the compensation provided for in Article 4.

Article 6

If either Contracting State makes a payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting State, the latter Contracting State shall, without prejudice to the rights of the former Contracting State under Article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of such national or company to the former Contracting State. The latter Contracting State shall also recognize the subrogation of the former Contracting State to any such right or claim (assigned claims) which that Contracting State shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 4 (2) and (3) as well as Article 5 shall apply mutatis mutandis.

Article 7

(1) Transfers under Article 4 (2) or (3), under Article 5 or Article 6 shall be made without delay at the applicable rate of exchange.

(2) This rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

Article 8

(1) If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to this Treaty contain a regulation, whether general or specific, entitling investments by nationals or companies of the other Contracting State to a treatment more favourable than is provided for by this Treaty, such regulation shall to the extent that it is more favourable prevail over this Treaty.

(2) Each Contracting State shall observe any other obligation it has assumed with regard to investments in its territory by nationals or companies of the other Contracting State.

Article 9

This Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting State in the territory of the other Contracting State consistent with the latter's legislation.

Article 10

(1) Disputes between the Contracting States concerning the interpretation or application of this Treaty should as far as possible be settled by the governments of the two Contracting States.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting State be submitted to an arbitration tribunal.

(3) Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting State shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the governments of the two Contracting States. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting State has informed the other Contracting State that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting State 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 is a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either Contracting State or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting State should make the necessary appointments.

(5) The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting State shall bear the cost of its own member and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting States. The arbitration tribunal may make a different

regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

(6) If both Contracting States are Contracting States of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States the arbitration tribunal provided for above may in consideration of the provisions of Article 27 (1) of the said Convention not be appealed to insofar as agreement has been reached between the national or company of one Contracting State and the other Contracting State under Article 25 of the Convention. This shall not affect the possibility of appealing to such arbitration tribunal in the event that a decision of the Arbitration Tribunal established under the said Convention is not complied with (Article 27) or in the case of an assignment under a law or pursuant to a legal transaction as provided for in Article 6 of this Treaty.

Article 11

(1) Disputes concerning investments between a Contracting State and a national or company of the other Contracting State should as far as possible be settled amicably between the parties in dispute.

(2) If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the national or company of the other Contracting State, be submitted for arbitration. Unless the parties in dispute agree otherwise, the dispute shall be submitted for arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

(3) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

(4) During arbitration proceedings or the enforcement of an award, the Contracting State involved in the dispute shall not raise the objection that the national or company of the other Contracting State has received compensation under an insurance contract in respect of all or part of the damage.

Article 12

This Treaty shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting States.

Article 13

The annexed Protocol is an integral part of this Treaty.

Article 14

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible.

(2) This Treaty shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing by either Contracting State twelve months before its expiration. After the expiry of the period of ten years this Treaty may be denounced at any time by either Contracting State giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of this Treaty, the provisions of Articles 1 to 13 shall continue to be effective for a further period of fifteen years from the date of termination of this Treaty.

Done at Manama on 5th February 2007 in duplicate in the Arabic, German and English languages, all three texts being authentic. In case of divergent interpretations of the Arabic and German texts, the English text shall prevail.

For the
Kingdom of Bahrain

For the
Federal Republic of Germany

Protocol
to the
Treaty
between
the Kingdom of Bahrain
and
the Federal Republic of Germany
concerning
the Encouragement and Reciprocal Protection of Investments

The Kingdom of Bahrain and the Federal Republic of Germany have agreed on the following provisions to the Treaty of 5th February 2007 concerning the Encouragement and Reciprocal Protection of Investments:

(1) Ad Article 1

(a) Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the investment.

(b) Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport issued by the competent authorities of the Contracting State concerned shall be deemed to be a national of that State.

(2) Ad Article 2

(a) Investments made, in accordance with the legislation of either Contracting State, within the territory of that Contracting State by nationals or companies of the other Contracting State shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply to the areas of the exclusive economic zone and the continental shelf insofar as international law permits the Contracting State concerned to exercise sovereign rights or jurisdiction in these areas.

products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 3.

(b) The provisions of Article 3 do not oblige a Contracting State to extend to natural persons or companies resident in the territory of the other Contracting State tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to natural persons and companies resident in its territory.

(c) The Contracting States shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting State who wish to enter the territory of the other Contracting State in connection with an investment; the same shall apply to employed persons of either Contracting State who in connection with an investment wish to enter the territory of the other Contracting State and sojourn there to take up employment. Applications for work permits to engage key personnel shall also be given sympathetic consideration.

(4) Ad Article 4

A claim to compensation shall also exist when, as a result of State intervention in the enterprise in which the investment is made, its economic substance is severely impaired.

(5) Ad Article 7

A transfer shall be deemed to have been made "without delay" within the meaning of Article 7 (1) if effected within such period as is normally required for the completion of transfer

formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

(6) Whenever goods or persons connected with an investment are to be transported, each Contracting State shall neither exclude nor hinder transport enterprises of the other Contracting State and shall issue permits as required to carry out such transport. This shall include the transport of

(a) goods directly intended for an investment within the meaning of the Treaty or acquired in the territory of either Contracting State or of any third State by or on behalf of an enterprise in which assets within the meaning of the Treaty are invested;

(b) persons travelling in connection with an investment.