No. 22810

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
and
YEMEN

Agreement for the promotion and protection of investments. Signed at San'a on 25 February 1982

Authentic texts: English and Arabic.

Registered by the United Kingdom of Great Britain and Northern Ireland on 29 March 1984.

ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD
et
YÉMEN

Accord relatif à la promotion et à la protection des investissements. Signé à Sana le 25 février 1982

Textes authentiques : anglais et arabe.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 29 mars 1984.

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE YEMEN ARAB REPUBLIC FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Yemen Arab Republic,

Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. DEFINITIONS

For the purposes of this Agreement:

(*a*) "Investment" means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares, stock and debentures of companies or interests in the property of such companies;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(*b*) "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(*c*) "Nationals" means:

(i) In respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in any part of the United Kingdom or in any territory for the international relations of which the Government of the United Kingdom are responsible;

(ii) In respect of the Yemen Arab Republic: any natural person possessing the nationality of the Yemen Arab Republic.

(*d*) "Companies" means:

(i) In respect of the United Kingdom: corporations, firms or associations incorporated or constituted under the law in force in any part of the United King-

[1] Came into force on 11 November 1983, i.e., one month after the date of the exchange of the instruments of ratification, which took place at San'a on 11 October 1983, in accordance with article 11.

dom or in any territory to which this Agreement is extended in accordance with the provisions of Article 10;

(ii) In respect of the Yemen Arab Republic: corporations, firms, legal entities or associations incorporated or constituted under the law in force in any part of the Yemen Arab Republic.

(*e*) "Territory" means, in respect of the United Kingdom, Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 10.

Article 2. PROMOTION AND PROTECTION OF INVESTMENT

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

(2) Investments of nationals or companies of either 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. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 3. TREATMENT OF INVESTMENTS

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

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

(3) The provisions of this Agreement relating to national treatment or most-favoured-nation treatment shall not be construed so as to require one Contracting Party to extend to the nationals or companies of the other Contracting Party the advantages of any treatment, benefit, or privilege accorded by the former Contracting Party under any Agreement relating to an existing or future customs union, free trade area, common external tariff area or monetary union; under any international agreement relating wholly or mainly to taxation; or under any domestic legislation relating wholly or mainly to taxation.

Article 4. COMPENSATION FOR LOSSES

(1) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded

by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State.

(2) Without prejudice to paragraph (1) of this Article, nationals and companies 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 its forces or authorities, or

(*b*) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 5. EXPROPRIATION

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 6. REPATRIATION OF INVESTMENT

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of their capital and of their returns from it to the country where they reside, subject to the right of each Contracting Party in exceptional financial or economic circumstances to exercise equitably and in good faith powers conferred by its laws.

Article 7. REFERENCE TO INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the

Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965[1] any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25(2)(*b*) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

Article 8. DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

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

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed chairman of the tribunal. The chairman shall be appointed within two 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 any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President 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.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

Article 9. SUBROGATION

If either Contracting Party makes payment under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognise:

(*a*) The assignment, whether under law or pursuant to a legal transaction, of any right or claim from the party indemnified to the former Contracting Party (or its designated Agency), and

(*b*) That the former Contracting Party (or its designated Agency) is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a party.

The former Contracting Party (or its designated Agency) shall accordingly if it so desires be entitled to assert any such right or claim to the same extent as its predecessor in title either before a Court or tribunal in the territory of the latter Contracting Party or in any other circumstances. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by assignment under the terms of an indemnity, the former Contracting Party shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of companies or nationals of the latter Contracting Party or of any third State deriving from investment activities similar to those in which the party indemnified was engaged. Such amounts and credits shall be freely available to the former Contracting Party concerned for the purpose of meeting its expenditure in the territory of the other Contracting Party.

Article 10. TERRITORIAL EXTENSION

At the time of ratification or approval of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an exchange of notes.

Article 11. ENTRY INTO FORCE

(1) This Agreement shall be subject to approval in accordance with the constitutional requirements of the Contracting Parties. The instruments of ratification or approval shall be exchanged as soon as possible.

(2) This Agreement shall enter into force one month after the date of the exchange of the instruments of ratification or approval.

Article 12

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, by their respective Governments, have signed this Agreement.

DONE in duplicate at San'a this 25th day of February 1982 in the English and Arabic languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

[*Signed*]

DOUGLAS HURD

For the Government of the Yemen Arab Republic:

[*Signed*]

MOHAMMED HIZAM SHOHATI