

Agreement between the Arab Republic of Egypt and the State of Kuwait for the Promotion and Protection of Investment (2001) [English Translation] (excerpts)

Excerpts from Almasryia for Operating & Maintaining Touristic Construction Co. L.L.C. v. State of Kuwait (ICSID Case No. ARB/18/2)

Award on the Respondent Application under Rule 41(5) of the ICSID Arbitration Rules (1 November, 2019) Paragraphs 36 & 52

ARTICLE 7

1 – (a) Investments made by investors belonging to either of the two Contracting States in the territory of the other Contracting State shall not be subject to nationalisation, expropriation, or confiscation, nor shall they be subject, directly or indirectly, to measures whose effect is equivalent to nationalisation, expropriation, or confiscation (referred to collectively hereinafter as “expropriation”) by the other Contracting State, except for a public purpose relating to a national interest of that Contracting State, and then in return for compensation that is immediate, sufficient and effective, and on the condition that those measures are taken on a non-discriminatory basis, and in accordance with legal procedures in general usage.

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3 – “Expropriation” also includes cases when a Contracting State expropriates the assets of a company or enterprise which was set up or founded in accordance with the laws in force in its territory, in which an investor belonging to the other Contracting State has a majority or important share, through owning stocks, shares, bonds, rights, or other interests.

4 – The term “expropriation” also includes any interference or regulatory procedures carried out by a Contracting State such as incorporating or restricting the investment, or the forced sale of all or part of the investment, or any other similar procedures having the same effect of seizing the property or expropriating it, and arising from which procedures, the investor is in actuality dispossessed of his property, or his majority or substantial interest in his investment, or suffers loss or damage to the economic value of the investment.

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ARTICLE 10

1 – Disputes which arise between a Contracting State and an investor belonging to the other Contracting State, in relation to an investment in the territory of the first State which returns to the latter, shall be settled, as far as is possible, by amicable means.

2 – If that dispute cannot be settled within six months of the date on which either of the two parties to the dispute requested an amicable settlement by notifying the other party in writing, then the dispute shall be referred for resolution by one of the following means, to be chosen by the investor who is a party to the dispute.