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## **ahrain Bilateral Investment Treaty**

**a**Signed September 29, 1999; Entered into Force May 31, 2001

106th Congress SENATE Treaty Doc.

2d Session 106-25

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INVESTMENT TREATY WITH BAHRAIN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE STATE OF BAHRAIN CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT WITH ANNEX AND PROTOCOL, SIGNED, AT WASHINGTON ON SEPTEMBER 29, 1999

MAY 23, 2000.-Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

79-118 WASHINGTON : 2000 **B**

LETTER OF TRANSMITTAL

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The White House,

*May 23, 2000.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on September 29, 1999. I transmit also, for the information of the Senate, the report of the Department of State with respect to this Treaty. The bilateral investment treaty (BIT) with Bahrain is the third such treaty between the United States and a Middle Eastern country. The Treaty will protect U.S. investment and assist Bahrain in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthen the development of its private sector.

The Treaty is fully consistent with U.S. policy toward international and domestic investment. A specific tenet of U.S. policy, reflected in this Treaty, is that U.S. investment abroad and foreign investment in the United States should receive national treatment. Under this Treaty, the Parties also agree to customary international law standards for expropriation. The Treaty includes detailed provisions regarding the computation and payment of **B**

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WILLIAM J. CLINTON

LETTER OF SUBMITTAL y

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Departme t of Stat ,

Washi gto ,

April 24, 2000.

Th Pr si t,

Th Whit Ho s .

Th Pr si t: I hav th ho or to s bmit to o th Tr at B twe th Gov r me t of th U it Stat s of America a th Gov r me t of th Stat of Bahrai Co c r i g th E co rag me t a R cipocal Prot ctio of I v stme t, with A x, sig at Washi gto o S pt mb r 29, 1999. I r comme that this Tr at with A x, b tra smitt to th S at for its a vic a co s t to ratificatio .

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Th Offic of th U it Stat s Tra R pr s tativ a th Departme t of Stat joi tl l this BIT gotiatio , with assista c from th Departme ts of Commerc , Tr as r , a E rg .

Th U.S.-Bahrai Tr at

Th Tr at with Bahrai is bas o th 1994 U.S. protot p BIT a satisfi s th U.S. pri cipal obj ctiv s i bilat ral i v stme t tr at gotiatio s:

--All forms of U.S. i v stme t i th t rritor of Bahrai ar cov r .

--Cov r i v stme ts r c iv th b tt r of atio al tr atme t or most-favor - atio (MFN) tr atme t both whil th ar b i g stablish a th r aft r, s bj ct to c rta i sp cifi xc ptio s.

--Sp cifi p rforma c r ir me ts ma ot b impos po or forc agai st cov r i v stme ts.

--Expropriatio is p rmitt o l i accor a c with c stomar i t r atio al law sta ar s. y

--Parties are invited to permit the transfer, in a freely usable currency, of funds related to a covered investment, subject to exceptions for specified purposes.

--Investment disputes with the host government may be referred by investors, regarding their covered investments, to binding international arbitration as an alternative to domestic courts.

These elements are further described in the following article- by-article analysis of the provisions of the Treaty:

Title and Preamble

The Title and Preamble state the purpose of the Treaty. The foremost is the encouragement and protection of investment. Other purposes include economic cooperation in investment issues; the stimulation of economic development; higher living standards; promotion of respect for internationally-recognized worker rights; and maintenance of health, safety, and environmental measures. While the Preamble does not impose binding obligations, its statement of purpose may assist in interpreting the Treaty and in defining the scope of Party-to-Party consultations pursuant to Article 8.

## Article 1 (Definitions)

Article 1 defines terms used throughout the Treaty.

Company, Company of a Party

The definition of "company" is broad, covering a types of legal entities constituted or organized under applicable law, and includes corporations, trusts, partnerships, sole proprietorships, ranches, joint ventures, and associations. The definition explicitly covers non-profit entities, as well as entities that are owned or controlled by the state. "Company of a Party" is defined as a company constituted or organized under the laws of that Party.

National

The Treaty defines "national" as a natural person who is a national of a Party under its own laws. Under U.S. law, the term "national" is broader than the term "citizen." For example, a native of American Samoa is a national of the United States, but not a citizen.

Investment, Covered Investment

The Treaty's definition of investment is broad, recognizing that investment can take a wide variety of forms. Every kind of investment is specifically incorporated in the definition; moreover, it is explicitly noted that investment may consist or take the form of any of a number of interests, claims, and rights.

The Treaty provides an illustrative list of the forms an investment may take. Establishing a subsidiary is a common way of making an investment. Other forms that an investment might take include equity and debt interests in a company; contractual rights; movable, immovable, intangible, and intellectual property; and rights conferred pursuant to law, such as licenses and permits. Investment as defined by the Treaty generally excludes claims arising solely from trade transactions, such as a sale of goods across a border that does not otherwise involve an investment.

The Treaty defines "covered investment" as an investment of a national or company of a Party in the territory of the other Party. An investment of a national or company is one that the national or company owns or controls, either directly or indirectly. Indirect ownership or control could be through other, intermediate companies or persons, including through third countries. Control is not specifically defined in the Treaty; ownership of over 50 percent of the voting stock of a company would normally convey control, but in many cases the requirement could be satisfied by less than that proportion, regarding other arrangements.

The broad nature of the definitions of "investment," "company," and "company of a Party" means that investments can be covered by the Treaty even if ultimate control lies with non-Party nationals. A Party may, however, deny the benefits of the Treaty in the limited circumstances described in Article 12.

State Enterprise, Investment Authorization, Investment Agreement

The Treaty is a "state enterprise" as a company owned, or controlled through ownership, by a Party. Purely regulatory control over a company of equal status is a state enterprise.

The Treaty is a "vested authority" as an authority granted by the vesting authority of a Party to a covered investment or a national or company of the other Party.

The Treaty is a "vested agreement" as a written agreement between the national authority of a Party and a covered investment or a national or company of the other Party that (1) grants rights with respect to natural resource or other asset controlled by the national authority and (2) the investment, national, or company relies upon the tabling or acquiring a covered investment. This is to thus exclude agreements with national authority (including U.S. State as well as agreements arising from various types of regulatory activities of the national government, including, the tax area, ruling, closing agreement, and a vaccine pricing agreement).

ICSID Convention, Centre, UNCITRAL Arbitration Rule

The "ICSID Convention," "Centre," and "UNCITRAL Arbitration Rule" are explicitly intended to make the text clearer.

## Article 2 (Treatment of Investment)

Article 2 contains the Treaty's major obligation with respect to the treatment of covered investment.

Paragraph 1 generally ensures the better of national or MFN treatment both the entity and the phase of investment. It thus prohibits, out of exception, the Annex, "creation" of the bilateral investment treaty process, as well as nationality-based post-establishment measures. For purposes of the Treaty, "national treatment" means treatment no less favorable than that which a Party accords, like treatment, to investment in its territory of national or company of the other Party. For purposes of the Treaty, "MFN treatment" means treatment no less favorable than that which a Party accords, like treatment, to investment in its territory of national or company of a third country. The Treaty obliges each Party to provide whichever of national treatment or MFN treatment is the most favorable. This is done by the Treaty as a "national or MFN treatment." Paragraph 1 explicitly states that the national or MFN treatment obligation will extend to state enterprise that provides goods and services to covered investment.

Paragraph 2 states that each Party may adopt or maintain exceptions to the national or MFN treatment that are with respect to the sector or matter specified in the Annex. Further restrictive measures are permitted in each sector. (The specific exceptions are contained in the section titled "Annex" below. In the Annex, Parties may take exceptions only to the obligation to provide national or MFN treatment; there are no sectoral exceptions to the rest of the Treaty's obligations. Finally, a party may, upon the provision, a Party may not require the investment to a preexisting covered investment.

Paragraph 2 also states that a Party is not required to extend to covered investment national or MFN treatment with respect to procedures provided for multilateral agreement concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights. This provision clarifies that certain procedural procedures are granted under intellectual property conventions, such as the Patent Cooperation Treaty, all out of the BIT. This exception parallels those in the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the North America Free Trade Agreement (NAFTA).

Paragraph 3 sets out a minimum standard of treatment based on customary international law. The obligation to accord "a reasonable treatment" and "full protection and security" are explicitly stated, as each Party's obligation not to impair, through unreasonable or discriminatory measures, the management, conduct, operation, sale or other disposition of covered investment. The general reference to international law also implicitly incorporates other customary rules of customary international law regarding the treatment of foreign investment. However, this provision does not incorporate obligations based on other international agreements.

Paragraph 4 requires that each Party provide effective means of asserting claims and enforcing rights with respect to covered investment.

Paragraph 5 requires that transparency of each Party's regulation of covered investment.

### Article 3 (Expropriation)

Article 3 incorporates into the Treaty customary international law standards for expropriation. Article 3 also includes detailed provisions regarding the compensation and payment of prompt, adequate, and effective compensation. Paragraph 1 describes the obligation of the Parties with respect to expropriation and nationalization of a covered investment. The obligations apply to both direct expropriation and indirect expropriation through measures "tantamount to expropriation or nationalization" and they apply to "creeping expropriation"--a series of measures that collectively amount to an expropriation of a covered investment without taking title.

Paragraph 1 further bars all expropriation or nationalization except those that are for a public purpose; carried out in a non-discriminatory manner; in accordance with due process of law; in accordance with the general principles of treatment provided in Article 3(3); and subject to "prompt, adequate and effective compensation."

Paragraphs 2, 3, and 4 more fully describe the meaning of "prompt, adequate and effective compensation." They define principles that the investor holds to be made whole.

### Article 4 (Compensation for Damages Due to War and Similar Events)

Paragraph 1 entitles investment covered by the Treaty to national and MFN treatment with respect to any measures relating to loss or damage to a party's territory owing to war or other armed conflict, civil disturbance, or similar events. Paragraph 2, by contrast, creates an unconditional obligation to pay compensation for such losses when the loss results from retribution or from direct or indirect actions not required by the necessity of the situation.

### Article 5 (Transfers)

Article 5 protects investors from certain government exchange control that limit current and capital account transfers, as well as limitations on inward transfers made by creating a shortage and, in certain circumstances, limitations on returns on kind.

In paragraph 1, each Party agrees to permit all transfers relating to a covered investment to be made freely and without delay into and out of the territory." Paragraph 1 also provides a list of transfers that must be allowed. The list includes non-exchange, and is intended to protect flows to both affiliated and non-affiliated entities.

Paragraph 2 provides that each Party must permit transfers to be made in a "freely convertible" at the market rate of exchange prevailing on the date of transfer. "Freely convertible" is defined by the International Monetary Fund; at present these are the U.S. dollar, Japanese yen, German mark, French franc, and British pound sterling.

In paragraph 3, each Party agrees to permit returns on kind to be made where shareholders have a authorized by an investment authorization or written agreement between a Party and a covered investment or a national or company of the other Party.

Paragraph 4 recognizes that, notwithstanding the obligation of paragraph 1 through 3, a Party may prevent a transfer through the establishment, non-discriminatory, and good faith application of laws relating to bankruptcy, insolvency, or the protection of the rights of creditors; criminal or penal offenses; or nationalizing compliance with order or judgment in adjudicatory proceedings.

### Article 6 (Performance Requirements)

Article 6 prohibits the Parties from mandating or enforcing prescribed performance requirements as a condition for the establishment, acquisition, expansion, management, conduct, or operation of a covered investment. The prohibition includes, but is not limited to, imposition of any of the prescribed performance requirements by means

of a commitment to taking into account with the receipt of a governmental promise or authorization. The list of prohibited measures is exhaustive of domestic contracts. The measures are domestic purchases, foreign exchange, foreign investments, technology transfer, and foreign investments relating to the conduct of a business or development of the host country. Such measures are made so as to avoid a competitive disadvantage.

The last sentence of Article 6 makes clear that a Party may, however, impose conditions for the receipt of contracts of business.

## **Article 7 (Entry, Sojourn, and Employment of Aliens)**

Paragraph 1 requires each Party to allow, subject to its laws relating to the entry and stay of aliens, the entry into its territory of the other Party's nationals for certain purposes relating to a covered investment activity involving the commitment of a "substantial amount of capital." This paragraph is subject to the provisions of Bahai relating to entry and stay visas. U.S. immigration law. It also affords similar treatment to U.S. nationals in Bahai. The requirement to commit a "substantial amount of capital" is intended to prevent abuse of the investment statute; it parallels the requirements of U.S. immigration law.

In addition, paragraph 1(b) prohibits labor certification requirements as a means of restricting the entry of investment workers.

Paragraph 2 requires that each Party allow covered investments to enjoy the same national treatment as investments in the host country. This provision is subject to the requirements of the host country's laws relating to the entry and stay of investment workers. No provision is made for the entry of investment workers to U.S. employment opportunities.

## **Article 8 (State-State Consultations)**

Article 8 provides for prompt consultation between the Parties, at the request of a Party, relating to the interpretation or application of the Treaty or the realization of the Treaty's objectives. A Party may request consultation for a matter substantially relating to the cooperation or protection of covered investments, where the other Party is alleged to be in violation of the Treaty.

## **Article 9 (Settlement of Disputes Between One Party and a National or Company of the Other Party)**

Article 9 sets forth the various means by which investors brought against a Party by an investor (specifically, a national or company of the other Party) may be resolved.

Article 9 provides that the "investment dispute," which is a dispute arising out of or relating to an investment, a covered investment, or a claim based on each of the foregoing, is defined by the Treaty with respect to a covered investment.

In the event that an investment dispute cannot be settled amicably, paragraph 2 gives an investor a choice (with the exception of paragraph 3(b) concerning investment liability, explained below) among the options to settle the dispute. These options are: (1) submission of the dispute to the courts of a member state; (2) investment dispute resolution by arbitration; or (3) investment dispute resolution by investment arbitration.

Under paragraph 3(a), the investor can submit an investment dispute to binding arbitration 90 days after the dispute arises, provided that the investor has not submitted the claim to a court of a member state of the Party or invoked investment dispute resolution by arbitration. The investor may choose among the International Centre for Settlement of Investment Disputes (ICSID) (Convention on the Settlement of Investment Disputes), the Arbitration Facility of ICSID (if Convention on the Settlement of Investment Disputes is not available), a non-binding arbitration system, or the United Nations Commission on International Trade Law (UNCITRAL), or any other arbitration institution. The arbitration may be conducted by both Parties to the dispute.

Before or during arbitration proceedings, however, paragraph 3(b) provides that a vector may seek, without affecting the right to pursue arbitration under the Treaty, temporary relief involving the payment of damages from local courts or administrative tribunals of the Party that is a party to the dispute for the preservation of the right and interests. The paragraph does not alter the power of the arbitral tribunal to recommend or order temporary measures they may deem appropriate.

Paragraph 4 of the Treaty provides that the submission of a vector dispute to binding arbitration is ordered with the host of the vector.

Paragraph 5 provides that any ICSID Convention arbitration shall take place in a country that is a party to the United Nations Convention on the Recognition and Enforcement of Arbitral Awards. This provision facilitates the enforcement of arbitral awards. In addition, paragraph 6, each Party commits to enforce arbitral awards rendered pursuant to this Article.

The Federal Arbitration Act (9 U.S.C. 1 et seq.) affirms the requirement for the enforcement of ICSID Convention awards. The United States Convention on the Settlement of Investment Disputes Act of 1966 (22 U.S.C. 1650-1650a) provides for the enforcement of ICSID awards.

Paragraph 7 ensures that a Party may not assert a defense, or for any other reason, that the vector involved in the investment dispute has received or will receive reimbursement for the same damages under a guarantee or guarantee contract.

Paragraph 8 provides that, for the purpose of this Article, the nationality of a company the host country will be determined by ownership or control, rather than by place of incorporation. This provision allows a company that is incorporated in a third country to bring a claim in its own name.

## **Article 10 (Settlement of Disputes Between the Parties)**

Article 10 provides for binding arbitration of disputes between the United States and Bahrain over the interpretation or application of the Treaty that are not resolved through consultation or other diplomatic channels. The article permits various procedural aspects of arbitration proceedings, including time periods, selection of arbitrators, and distribution of arbitration costs between the Parties. The article also provides that the Parties' prior consent to arbitration.

## **Article 11 (Preservation of Rights)**

Article 11 clarifies that the Treaty does not derogate from any obligations a Party might have to provide better treatment to the covered investment than provided by the Treaty. Thus, the Treaty establishes a floor for the treatment of covered investment. A covered investment may be entitled to more favorable treatment through domestic legislation, other international obligations, or a specific obligation (e.g., to provide a tax holiday) assumed by a Party with respect to that covered investment.

## **Article 12 (Denial of Benefits)**

Article 12(a) prevents the right of each Party to deny the benefit of the Treaty to a company owned or controlled by a national of a non-Party country with which the denying Party does not have normal economic relations, or a company to which the Treaty does not apply economically. For example, at the time the United States does not maintain normal economic relations with, among other countries, Cuba and Libya.

Article 12(b) permits each Party to deny the benefit of the Treaty to a company of the other Party if the company is owned or controlled by a non-Party national and if the company has substantial business activities in the Party where the Treaty is established. Thus, the United States could deny the benefit to a company that is a subsidiary of a wholly owned company or a subsidiary of Bahrain controlled by a national of a third country. However, this provision would not generally permit the United States to deny the benefit to a company of Bahrain that maintains its central administration or principal place of business in the territory of, or has a real and substantial connection with, Bahrain.

## **Article 13 (Taxation)**

Article 10 excludes matters generally from the coverage of the BIT, on the basis that such matters should be dealt with in bilateral trade treaties. However, Article 10 does not preclude a national or company from bringing claims under Article 9 that such provisions in an investment agreement or a authorization have been violated. In addition, the dispute settlement provisions of Articles 9 and 10 apply to such matters in relation to alleged violations of the BIT's expropriation article.

Under paragraph 2, a national or company that asserts in a dispute that a trade matter involves expropriation may submit that dispute to arbitration pursuant to Article 9(1) only if (1) the investor has first referred to the competent trade authorities of both Parties the issue of whether the trade matter involves an expropriation, and (2) the trade authorities have not both determined, within 9 months from the time of referral, that the matter does not involve an expropriation. The "competent trade authority" of the United States is the Assistant Secretary of the Treasury for Trade Policy, who will make such a determination only after consultation with the Inter-Agency Staff Coordinating Group on Expropriations.

## **Article 14 (Measures Not Precluded)**

The first paragraph of Article 14 reserves the right of a Party to take measures that it considers necessary for the fulfillment of its international obligations with respect to maintenance or restoration of international peace or security, as well as those measures it regards as necessary for the protection of its own essential security interests.

International obligations with respect to maintenance or restoration of peace or security would include, for example, obligations arising out of Chapter VII of the United Nations Charter. Measures permitted by the provision on the protection of a Party's essential security interests would include security-related actions taken in time of war or national emergency. Actions not arising from a state of war or national emergency must have a clear and direct relationship to the essential security interests of the Party involved. This Treaty makes explicit the implicit understanding that measures to protect a Party's essential security interests are self-justifying in nature, although each Party would expect the provisions to be applied by the other in good faith.

The second paragraph permits a Party to prescribe special formalities in connection with covered investments, provided that these formalities do not impair the substance of any Treaty rights. Such formalities could include reporting requirements for covered investments or for transfers of funds, or incorporation requirements.

## **Article 15 (Application to Political Subdivisions and State Enterprises of the Parties)**

Paragraph (a) makes clear that the obligations of the Treaty are applicable to all political subdivisions of the Parties, such as provincial, State, and local governments.

Paragraph (b) recognizes that under the U.S. federal system, States of the United States may, in some instances, treat out-of-State residents and corporations in a different manner than they treat in-State residents and corporations. The Treaty provides that the national treatment commitment, with respect to the States, means treatment no less favorable than that provided by a State to U.S. out-of-State residents and corporations.

Paragraph 2 extends a Party's obligations under the Treaty to its state enterprises in the exercise of any delegated governmental authority. This paragraph is designed to clarify that the exercise of governmental authority by a state enterprise must be consistent with a Party's obligations under the Treaty.

## **Article 16 (Entry Into Force, Duration, and Termination)**

Paragraph 1 states that the Treaty enters into force 90 days after exchange of instruments of ratification. The Treaty remains in force for a period of 10 years and continues in force thereafter unless terminated by either Party as provided in paragraph 2. Paragraph 2 permits a Party to terminate the Treaty at the end of the initial 10 year period, or at any later time, by giving 1 year's written notice to the other Party. Paragraph 3 also provides that the Treaty applies to covered investments existing at the time of entry into force as well as to those established or acquired thereafter. The Treaty does not state an intention by the Parties to apply the Treaty's provisions retroactively. Thus, under customary international law, the Treaty does not apply to disputes with



respect to acts or omissions which took place before the Treaty came into force or to any situation which ceased to exist before the date of entry into force of the Treaty.

Paragraph 3 provides that, in the Treaty terminated, investments that qualified as covered investments on the date of termination (i.e., years prior to the date of termination) continue to be protected under the Treaty for 10 years from the date of termination of the investment. A Party's obligations with respect to the establishment and acquisition of investments shall be presumed to apply upon the date of termination of the Treaty.

Paragraph 4 stipulates that the Annex shall form an integral part of the Treaty.

Paragraph 5 states that the Parties and persons mentioned in the Treaty are reckoned according to the Gregorian calendar. The final use of the Treaty provides that the English and Arabic language texts are equally authentic; however, in the event of divergence, the English text shall prevail. Brazil requested that the English text prevail in the event of divergence, in recognition of the widespread use of the English language in international commerce and transactions in Brazil.

## Annex

U.S. bilateral investment treaties, other than excepted provisions to national and MFN treatment, where the Parties' domestic regimes do not conform to national and MFN treatment, or where treatment in certain sectors or matters is negotiated and governed by other agreements. Future derogations from the national treatment obligations of the Treaty are generally permitted only in the sectors or matters listed in the Annex, pursuant to Article 2(2), and must be made on a non-MFN basis unless otherwise specified therein.

Under number of statutes, many of which have long-standing background, the U.S. federal government or States may not necessarily treat investments of nationals or companies of Brazil differently from U.S. investments or investments from third country. Paragraphs 2 and 3 of the Annex list the sectors or matters subject to U.S. exceptions.

The U.S. exceptions from national treatment obligations are: atomic energy; customhouse brokers; licenses for broadcast, common carrier, oreron utility radio stations; COMSAT; subsidiaries or grants, including but not limited to, government-supported loans, guarantees, and insurance; State and local measures exempt from Article 202 of the North American Free Trade Agreement pursuant to Article 108 thereof; and landing of submarines.

The U.S. exceptions from national and MFN treatment obligations are: services; air and maritime transport, and related activities; banking, insurance, securities, and other financial services; and one-way satellite transmissions of Direct-to-Home (DTH) and Direct Broadcast Satellite (DBS) television services and other digital audio services.

Paragraph 3 of the Annex lists Brazil's exceptions from national treatment obligations, which are: operations or control of television and radio broadcasting and other forms of mass media; services; and national privatization or exploration or drilling of crude oil.

Paragraph 4 of the Annex lists Brazil's exceptions from national and MFN treatment obligations, which are: air transportation; purchase or operations of land; and until January 1, 2005, purchase or operations of securities quoted on the Brazilian Stock Exchange.

Paragraph 5 of the Annex ensures that national treatment obligations are not subject to the provisions of the Minerals or Petroleum Reserves Act (MLLA) (30 U.S.C. 801 et seq.) and 30 U.S.C. 7435, regarding National Petroleum Reserves, with respect to national and companies of Brazil. The Treaty provides for resort to binding arbitration to resolve disputes, rather than denial of mineral rights or rights to national petroleum reserves to investors of the other Party, as is the current process under the statute. U.S. domestic remedies, including, however, remaining available for use in conjunction with the Treaty's provisions.

The MLLA and 30 U.S.C. 7435 direct that foreign investor be denied access to leases or mineral concessions or other lands, leases or land rights in the National Petroleum and Oil and Gas Reserves, and rights or other

pipelines across the federal lands, if U.S. investors are denied a less than similar like privileges in the foreign country.

Bahrain's extension of national treatment in these sectors will fully meet the objectives of the MLLA and 10 U.S.C. 7435. Bahrain was informed during negotiations that, where it included in its list of treatment exemptions, the United States would (consistent with the MLLA and 10 U.S.C. 7435) exclude the leasing of mine and pipeline rights for way government lands from the national and MFN treatment obligations of the Treaty.

The listing of assets made in the Annex does not necessarily signify that domestic laws have entirely excluded the foreigners. And, pursuant to Article 2(2), any additional restrictions limited to a Party may adapt with respect to listed sectors made may not impede the divestiture of existing vested investments.

Finally, listing of assets made in the Annex exempts a Party only from the obligation to accord national MFN treatment. But parties are obligated to accord vested investments in all sectors even those listed in the Annex all the rights conferred by the Treaty.

The U.S. Government agencies that participated in negotiating the Treaty in the interim recommending that it be transmitted to the Senate at an early date.

Respectfully submitted,

MADLINE ALBRIGHT.

TREATY BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND

THE GOVERNMENT OF THE STATE OF BAHRAIN

CONCERNING THE ENCOURAGEMENT

AND RECIPROCAL PROTECTION OF INVESTMENT

The Government of the United States of America and the Government of the State of Bahrain (hereinafter the "Parties");

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of the Parties in the territory of the Parties;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties;

Agreeing that a stable framework of investment will maximize effective utilization of economic resources and improve living standards;

Recognizing that the development of economic and business ties can promote respect for international agreements and cooperation;

Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment;

Have agreed as follows:

## ARTICLE I

For the purposes of this Treaty,

(a) "company" means any entity constituted or organized under applicable law, whether for profit, and whether privately or governmentally owned or controlled, and includes, but is not limited to, a partnership, trust, joint

partnership, sole proprietorship, branch, joint venture, association, or other organization;

(b) "company of a Party" means a company constituted or organized under the laws of that Party;

(c) "national of a Party" means a natural person who is a national of that Party under its applicable law;

(d) "investment" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company and includes, but is not limited to, investment contracts, shares, or taking the form of:

(1) a company;

(2) shares, stock, and other forms of equity participation and bonds, debentures, and other forms of debt interests in a company;

(3) contractual rights, such as under turnkey construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;

(4) moveable and immovable property; and intangible property, including, but not limited to, rights, such as, easements, mortgages, liens and pledges;

(5) intellectual property, including, but not limited to:

copyrights and related rights

patents

rights in plant varieties

industrial designs

rights in semiconductor layout designs

trade secrets, including, but not limited to, know-how and confidential business information

trade and service marks, and

trade names; and

(6) rights conferred pursuant to law, such as, licenses and permits;

(e) "covered investment" means an investment of a national or company of a Party in the territory of the other Party;

(f) "state enterprise" means a company owned or controlled through ownership interests by a Party;

(g) "investment authorization" means an authorization granted by the foreign investment authority of a Party to a covered investment of a national or company of the other Party;

(h) "investment agreement" means a written agreement between the national authorities of a Party and a covered investment of a national or company of the other Party that (1) grants rights with respect to natural resources or other assets controlled by the national authorities and (2) the investment national or company receives upon its establishment or acquiring a covered investment;

(i) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington March 18, 1965;

(j) "Centre" means the International Centre for Settlement of Investment Disputes established by the ICSID Convention; and

(k) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law. :

## ARTICLE

With respect to the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of covered investments, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in

its territory of its own nationals or companies (hereinafter "national treatment") or to investments in its territory of nationals or companies of a third country (hereinafter "most favored nation treatment"), whichever is most favorable (hereinafter "national and most favored nation treatment"). Each Party shall ensure that its state enterprises, in the provision of the goods or services, accord national and most favored nation treatment to covered investments.

2 (a) A Party may adopt or maintain exceptions to the obligations of paragraph 1 in the sectors or with respect to the matters specified in the Annex to this Treaty. In adopting such an exception, a Party may not require the investment, in whole or in part, of covered investments existing at the time the exception becomes effective.

(b) The obligations of paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

3 (a) Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.

(b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, sale or other disposition of covered investments.

4 Each Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.

5 Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and a judicial decisions, that pertain to or affect covered investments are promptly published or otherwise made publicly available.

## ARTICLE 3

Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with the process of law and the general principles of treatment provided for in Article 2, paragraph 3.

2 Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriatory act was taken ("the date of expropriation"); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory act has become known before the date of expropriation.

3 If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of

expropriation until the date of payment.

4 If the fair market value is denominated in a currency that is not freely usable, the compensation paid -- converted into the currency of payment at the market rate of exchange prevailing on the date of payment -- shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest to be made in freely convertible currency used from the date of  
expansion until the date of payment.

## ARTICLE

1. The Party shall, in connection with the investment to be made, agree to  
modify the investment agreement in its entirety to conform with the evolution  
of the national legal system.

2. The Party shall, in accordance with paragraph 2 through 4 of Article  
3 in the event that the investment is made in its entirety to conform with the  
evolution of the national

legal system in accordance with the event that results from:

( ) equalization of the investment by the Party' for the authority

(b) deletion of the investment by the Party' for the authority that was not equated by the  
nature of the situation.

## ARTICLE 5

1. The Party shall permit the investment to be made freely and without delay into  
and out of its territory. Such investment shall be not limited to:

( ) contribution to capital;

(b) profit dividend, capital gain and proceeds from the sale of the investment or from the  
partial liquidation of the investment;

( ) interest, royalty payment, management fee and technical assistance fee;

(d) payment made under contract including but not limited to loan agreement; and

(e) compensation pursuant to Article 3 and 4 and payment arising out of investment dispute.

2. The Party shall permit the investment to be made in freely convertible currency at the market rate of exchange  
prevailing on the date of the investment.

3. The Party shall permit the investment to be made authorized or specified in the investment authorization  
agreement or other written agreement between the Party and the investor or national  
company of the other Party.

4. Notwithstanding paragraph 1 through 3, the Party may prevent the investment through the equitable non-  
discriminatory and good faith application of its laws relating to:

( ) bankruptcy in violation of the protection of the rights of the investor;

(b) insolvency proceedings in the investment;

( ) insolvency proceedings; or

(d) enforcement with order of judgment in judicial proceedings.

## ARTICLE 6

Neither Party shall mandate or enforce any condition for the establishment, acquisition, expansion,  
management, operation of the investment or any equipment (including but not limited to any  
commitment under contract in connection with the receipt of government license or authorization):

( ) to achieve a particular level of performance of local content or to purchase or use other wise give preference  
to products or services of domestic origin or from domestic sources; 4

(b) to limit the investment of product or service in relation to a particular volume of production, export or foreign exchange earnings;

(c) to export a particular level or percentage of product or service, either generally or to a specific market region;

(d) to limit the investment of product or service in the particular territory in relation to a particular volume of production, export or foreign exchange earnings;

(e) to transfer technology, a production process or other proprietary knowledge to a national company in the particular territory, except in order, in connection with the investment undertaken that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition law; or

(f) to carry out a particular level or percentage of each and development in the particular territory.

Such equipment do not include conditions for the receipt of continued receipt of an advantage.

## ARTICLE 7

1 (a) Subject to its laws relating to the entry and residence of aliens, each Party shall permit to enter and to remain in its territory national of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which the, or a company of the other Party that employs them, have contributed or are in the process of contributing a substantial amount of capital or other resources.

(b) Neither Party shall, in granting entry under paragraph 1 (a), require a labor certification to the other country of origin, in effect, or a numerical restriction.

2 Each Party shall permit covered investment to engage to managerial personnel of their choice, regardless of nationality.

## ARTICLE 8

The Parties agree to consult, on the request of either party to resolve any dispute in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty or to the realization of the objectives of the Treaty.

## ARTICLE 9

1 For the purpose of this Treaty, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of an investment contract, or a recognized or established investment contract with effect to a covered investment.

2 A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternative:

(a) to the court or administrative tribunal of the Party that is a party to the dispute; or

(b) in accordance with an applicable, previously agreed dispute-resolution mechanism; or

(c) in accordance with the terms of paragraph 3.

3 (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b), and that ninety days have elapsed from the date on which the dispute arose, the national or company concerned may submit the

dispute for resolution by binding arbitration:

(1) to the Centre, if the Centre is available; or

(2) to the Additional Facility of the Centre, if the Centre is not available; or.

(3) in accordance with the UNCITRAL Arbitration Rules;

(4) if agreed by the parties to the dispute, to another arbitration institution in accordance with the arbitration rules.

(b) A national company, notwithstanding that it may have submitted a dispute to binding arbitration under paragraph 3 (a), may seek interim injunctive relief, notwithstanding the payment of a deposit, before the judicial authorities of the State that is a party to the dispute, provided that the institution of the arbitration proceedings does not prejudice the protection of its rights and interests.

4. Each Party to the present Convention shall submit to binding arbitration in accordance with the national company under paragraph 3 (a) (1), (2), and (3) the mutual agreement of the parties to the dispute under paragraph 3 (a) (4). This Convention and the submission of the dispute to binding arbitration shall satisfy the requirement:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Arbitration Rules of the Convention of the parties to the dispute; and

(b) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in New York, June 10, 1958, for an "agreement in writing."

5. An arbitration under paragraph 3 (a) (2), (3) (4) shall be held in a State that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in New York, June 10, 1958.

6. An arbitral award pursuant to this Article shall be final and binding on the parties to the dispute. Each Party shall carry out the award in accordance with the provisions of such award in its territory of the enforcement of such award.

7. In an proceeding involving an investment dispute, a Party shall not assert, as a defence, counterclaim, right of set-off or otherwise, that in recognition of the compensation for all party to the award has been received by the party pursuant to an insurance guarantee contract.

8. For purposes of Article 25 (2) (b) of the ICSID Convention and this Article, a company of a Party that, immediately before the commencement of the investment dispute, is a company of the Party.

## ARTICLE 10

1. An dispute between the parties concerning the interpretation of the Treaty, that is not solved through consultations through diplomatic channels, shall be submitted upon the request of the Party to an arbitral tribunal of binding jurisdiction in accordance with the applicable rules of international law. In the absence of an agreement between the parties to the contrary, the UNCITRAL Arbitration Rules shall govern, except that the provisions of paragraph (a) modify the provisions of paragraph (b) modify the arbitration rules of the parties to the proceedings.

2. Within the months specified in the request, each Party shall appoint an arbitrator. The arbitrators shall select a third arbitrator as chairman, shall be a national of a third State. The UNCITRAL Arbitration Rules shall apply to the appointment of the arbitrators. The arbitrators shall be appointed by the Secretary-General of the Centre.

3. Unless the parties agree, all submissions shall be made and all hearings shall be completed within six months of the date of the submission of the dispute to the arbitration, and the arbitral panel shall render its decision within three months of the date of the final submissions to the arbitration proceedings, which is later.

4. Expenses incurred by the Chairman of the Arbitration, and the costs of the proceedings, shall be paid by the parties to the dispute. However, the arbitral panel may, at its discretion, decide that a high proportion of the

costs be paid by one of the Parties.

## ARTICLE 11

This Treaty shall not derogate from any of the following that the title conferred estimates to the time it more favorable than that conferred by this Treaty:

(a) laws, regulations, administrative practices or procedures, or administrative or judicial decisions of the Party;

(b) treaties or obligations; or

(c) obligations assumed by the Party, including, but not limited to, those conferred estimates authorized or estimated agreement.

## ARTICLE 12

Each Party reserves the right to enter into any of the other Party the benefits of this Treaty for the purposes of their own or control the company

(a) the foreign Party does not maintain normal economic relations with the territory; or

(b) the company has substantial business activities in the territory of the Party under whose laws it is constituted or organized.

## ARTICLE 13

1. No provision of this Treaty shall impose obligations with respect to tax matters, except that:

(a) Articles 3, 9 and 10 will apply with respect to expropriation;

(b) Article 9 will apply with respect to estimated agreement or estimated authorization.

2. With respect to the application of Article 3, the restorant asserts that the tax measure of expropriation may submit the dispute to arbitration pursuant to Article 9, paragraph 3, provided that the restorant cooperates with the first reference to the competent tax authorities of both Parties the issue of whether the tax measure of expropriation.

3. However, the restorant may submit the dispute to arbitration, within a month after the date of referral, the competent tax authorities of both Parties determine that the tax measure of expropriation.

## ARTICLE 14

1. This Treaty shall not preclude a Party from applying measures which it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of order to peace or security, or the protection of its essential security interests.

2. This Treaty shall not preclude a Party from prescribing special formalities connected with conferred estimates, such as requirements that such estimates be legally constituted under the laws, regulations of that Party, or requirements that transfers of current or other monetary instruments be reported, provided that such formalities shall not impair the substance of the rights set forth in this Treaty.

## ARTICLE 15

1. (a) The obligations of this Treaty shall apply to the political subdivisions of the Parties.

(b) With respect to the time it conferred by State, Territory or possession of the United States of America, to the time it measures to less favorable than the time it conferred thereon, like statutes, to estimates of the United States of America resident, companies legally constituted under the laws, regulations of, other States, Territories or possessions of the United States of America.



2. A Part ligati n under thi Treat hall appl t a tate enterpri e in the exerci e f an regulat r ,  
admini trative r ther g vernmental auth rit delegated t it that Part .

## **AR ICLE 16**

1. Thi Treat hall enter int f rce thirt da after the date f exchange f in trument f ratificati n. It hall  
remain in f rce f r a peri d f ten ear and hall c ntinue in f rce unle terminated in acc rdance with  
paragraph 2. It hall appl t c vered inve tment exi ting at the time f entr int f rce a well a t th e  
e ta li hed r acquired thereafter.

2. A Part ma terminate thi Treat at the end f the initial ten ear peri d r at an time thereafter giving  
ne ear written n tice t the ther Part .

3. F r ten ear fr m the date f terminati n, all ther Article hall c ntinue t appl t c vered inve tment  
e ta li hed r acquired pri r t the date f terminati n, except in far a th e Article extend t the  
e ta li hment r acqui iti n f c vered

inve tment .

4. The Annex hall f rm an integral part f the Treat .

5. All date and peri d menti ned in thi Treat hall e reck ned acc rding t the Greg rian calendar.

IN WITNESS WHEREOF, the re pective plenip tentiarie have igned thi Treat .

DONE at Wa hingt n, thi twent -ninth da f September, 1999, in duplicate in the Engli h and Ara ic language ,  
each text eing authentic; h wever, in the ca e f divergence, the Engli h text hall prevail.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF

THE UNITED STATES THE STATE OF BAHRAIN:

OF AMERICA:

[ ignature] [ ignature]

## **APPENDICES:**

### **ANNEX**

1. The Govern~~ment~~ f the United State f America ma ad pt r maintain excepti n t the ligati n t acc rd  
nati nal treatment t c vered inve tment in the ect r r with re pect t the matter pecified el w:

at mic energ ; cu t mh u e r ker ; licen e f r r adca t, c mmon carrier, r aer nautical radi tati n ;  
COMSAT; u idie r grant , including, ut n t limited t , g vernment- upp rted l an , guarantee and  
in urance; tate and l cal mea ure exempt fr m Article 1102 f the N rth American Free Trade Agreement  
pur uant t

Article 1108 there f; and landing f u marine ca le .

Mo t fav red nati n treatment hall e acc rded in the ect r and matter indicated a ve.

2. The Govern~~ment~~ f the United State f America ma ad pt r maintain excepti n t the ligati n t acc rd  
nati nal and mo t fav red nati n treatment t c vered inve tment in the ect r r with re pect t the matter  
pecified el w:

fi herie ; air and maritime tran p rt, and related activitie ; anking, in urance, ecuritie , and ther financial  
ervice ; and ne-wa atellite tran mi i n f direct-t -h me (DTH) and direct r adca t atellite (DBS)  
televi i n ervice and f digital audi ervice .

3. The Govern~~ment~~ f the State f Bahrain ma ad pt r maintain excepti n t the ligati n t acc rd nati nal  
treatment t c vered inve tment in the ect r r with re pect t the matter pecified el w: **T**

ownership or control of television and radio broadcasting and other forms of mass media; fisheries; privatization of exploration or drilling for crude oil.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

4. The Government of the State of Bahrain may adopt or maintain exceptions to the obligation of a national and most favored nation treatment covered investments in the sectors or with respect to the matters specified below:

air transport; ownership of land; and until 1 January 2005, ownership of shares quoted on the Bahrain Stock Exchange.

5. Each Party agrees to a national treatment covered investments in the following sectors:

leasing of minerals and intellectual property rights-of-work on government lands.

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*TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency. y*