Signed on: 21 November 2011

AGREEMENT

BETWEEN THE GOVERNMENT OF

THE UNITED ARAB EMIRATES

AND

THE GOVERNMENT OF THE

REPUBLIC OF KENYA

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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The Government of the United Arab Emirates and the Government of the Republic of Kenya:

Desiring to further enhance the existing economic cooperation by concluding an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, local governments, county governments or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which this Agreement shall apply are:

(a) In the case of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470;
(hereinafter referred to as "Kenyan tax")

(b) In the case of the United Arab Emirates:
i. the income tax;
ii. the corporate tax
(hereinafter referred to as "United Arab Emirates tax")

4. This Agreement shall apply to any other taxes of identical or substantially similar character which are imposed by a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without

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affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

(a) the terms "Contracting State" and "other Contracting State" mean United Arab Emirates or Kenya, as the context requires;

(b) the term “United Arab Emirates” when used in geographical sense, means the territory of the United Arab Emirates which is under its sovereignty as well as the territorial sea, airspace and submarine areas over which the United Arab Emirates exercises, in conformity with international law and the laws of the United Arab Emirates, sovereign rights in respect of any activity carried on in connection with the exploration for or the exploitation of natural resources;

(c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;

(d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

(e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

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(f) the term "competent authority" means:

i. in the case of Kenya, the Minister for the time being responsible for Finance or his authorized representative;
ii. In the case of the United Arab Emirates, the Minister of Finance or his authorized representative

(g) the term "international traffic" means any transport by sea or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State;

(h) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;

(i) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.

2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this Agreement.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

(a) In the case of Kenya any person who under the laws of Kenya, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar

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nature. This term does not include any person who is liable to tax in respect only of income from sources in Kenya;

(b) in the case of the United Arab Emirates:

(i) An individual who under the laws of the United Arab Emirates or of any political subdivision or local government thereof is a national;

(ii) Any person other than an individual that is incorporated or otherwise recognized under the laws of the UAE or any political subdivision;

(iii) or local government thereof.

2. For the purposes of paragraph 1, a resident of a Contracting State includes:

a) the Government of that Contracting State and any political subdivision, local Government, county Government or local authority thereof;

b) any person other than an individual owned or controlled directly or indirectly by that State or any political subdivision or local government or county government or local authority thereof;

c) a registered pension fund

d) charities or religious, educational and cultural organizations

3. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

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(c) if he has an habitual abode in both States or none of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of none of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a warehouse, in relation to a person providing storage facilities for others;
(g) a mine, an oil or gas well, a quarry or any other place of exploration for or extraction of natural resources and any other related activities including an offshore drilling site

3. The term "permanent establishment" likewise encompasses:

(a) a building site or construction, assembly project and supervisory activities in connection therewith or drilling rig used for exploration or exploitation of natural resources constitutes a permanent establishment only if the site, rig, project or activity lasts for more than 6 months;

(b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel

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engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 4 months within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 7 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if:

(a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
(b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

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ARTICLE 6

INCOME FROM HYDROCARBONS

Notwithstanding any other provision of this Agreement nothing shall affect the right of either one of the contracting States, or any of their local government of local authorities thereof to apply their domestic laws and regulations related to the taxation of income, and profits derived from hydrocarbons and its associated activities situated in the territory of the respective Contracting State, as the case may be.

ARTICLE 7

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated, but the tax so charged shall be reduced by 50% if the beneficial owner of the income derived from immovable property is the state itself or local authorities, political subdivision,

local governments, county governments or local financial institutions wholly owned by the Government of a Contracting State

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provision of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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ARTICLE 8

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment:

(a) there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, in accordance with the taxation laws of that State, whether in the State in which the permanent establishment is situated or elsewhere.

(b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

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ARTICLE 9

SHIPPING AND AIR TRANSPORT

Notwithstanding the provisions of Article 8 of this Agreement:

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Provided that where such an enterprise derives profits from such operation in the other Contracting State;

(a) Such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and

(b) The tax chargeable in that other State shall be reduced by an amount equal to fifty per cent thereof.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 10

ASSOCIATED ENTERPRISES

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that State and the profits so included are income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on that income. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

4. The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

ARTICLE 11

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged to the beneficial owner shall not exceed 5 percent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other

Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the dividends is:

a) the Government, a political subdivision, a local authority or county government of the other Contracting State; or

b) the Central Bank of the other Contracting State; or

c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from the shares by the laws of the Contracting State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other States independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 12

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

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2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest paid by a company which is a resident of a Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the interest is:

a) the Government, a political subdivision or a local authority of the other Contracting State; or

b) the Central Bank of the other Contracting State; or

c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 11 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties

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shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 7, and situated in the Contracting State shall be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, shall be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

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ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

ARTICLE 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in the State in which the employment is exercised.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

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(b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. An individual who is both a national of a Contracting State and an employee of an enterprise having its place of effective management in that Contracting State, the principal business of which consists of the operation of aircraft in international traffic, and who derives remuneration in respect of duties performed in the other Contracting State shall be taxable only in that Contracting State (place of effective management of the enterprise)

ARTICLE 17

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in the State in which the company is resident.

ARTICLE 18

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 8, 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his or her personal activities as such, may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his or her capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may, notwithstanding the provisions of Articles 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

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3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of the Contracting State or local authority.

ARTICLE 19

PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in the other Contracting State if the payment is made by a resident of the other Contracting State, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

4. Income arising in a Contracting State that is derived by a registered pension fund resident in the other Contracting State shall be taxable only in that other Contracting State.

ARTICLE 20

REMUNERATION AND PENSION IN RESPECT OF GOVERNMENT SERVICE

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political sub-division, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in the other

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Contracting State creating the funds if the services are rendered in that other State and the individual is a resident of that State and:

(a) is a national of that State; or
(b) did not become a resident solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division, local authority or statutory body thereof to an individual in respect of services rendered to that State or sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political sub-division, local authority or statutory body thereof.

ARTICLE 21

PROFESSORS, TEACHERS AND RESEARCHERS

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to the Contracting State for a period not exceeding four years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 22

STUDENTS AND BUSINESS APPRENTICES

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training or who is, or immediately before being so present was, a resident of the other Contracting State shall besides grants and scholarships be exempt from tax in the (first-mentioned State) on payments received from outside that first-mentioned State for purpose of his maintenance, education and training.

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ARTICLE 23

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

Where a resident of a Contracting State derives income which, in accordance with the provisions of this Agreement, is taxable in the other Contracting State, then the first-mentioned Contracting State shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in the other Contracting State provided that such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from the other Contracting State.

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ARTICLE 25

NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the same activities.

3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, nothing in this Article shall affect the right of either Contracting State to grant exemption or reduction of tax in accordance with its own laws, regulations or administrative practice to its own nationals and companies.

5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within two years or as stipulated by the domestic law of a Contracting State, from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above-mentioned actions and the implementation of the mutual agreement procedure.

ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement relevant or to the administration or enforcement of the domestic laws of the Contracting State concerning taxes covered by this Agreement imposed on behalf of a Contracting State, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 28

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

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ARTICLE 29

ENTRY INTO FORCE

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into force of this Agreement. The Agreement shall enter into force on the date of the last of these notifications.

2. The provisions of this Agreement shall have effect:

(a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force; and

(b) with regard to other taxes, in respect of taxable years/ years of income beginning on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force.

ARTICLE 30

TERMINATION

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.

2. This Agreement shall cease to have effect:

(a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the notice is given; and

(b) with regard to other taxes, in respect of taxable years/ years of income beginning on or after the first day of January of the calendar year immediately following the year in which the notice is given.

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PROTOCOL

At the moment of signing the Agreement this day concluded between the Government of the Republic of Kenya and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement:

1. With respect to Article 2:

It is understood that, this Article shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

a) by the laws of a Contracting State in the determination of the tax imposed by that Contracting State;
b) By any other special arrangement on taxation between the Contracting States or between one of the Contracting States and residents of the other Contracting State.

2. With respect to Article 7 (1):

It is understood that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated that these profits are related to the activities of the permanent establishment and that such sales and activities are not meant to obtain benefits under this Agreement.

3. For the purposes of Articles 7(1), 11 (3) and 12 (3):

It is understood that in the case of the United Arab Emirates, the beneficial owners of dividends and interest shall include particularly but not exclusively the State itself, political subdivision, local government, local authority, the Central Bank, pension funds , Abu Dhabi Investment Authority, Abu Dhabi Investment Council, Emirates Investment Authority, Mubadala Development Company, International Petroleum Investment Company, Dubai World, Investment Corporation of Dubai, or any other entity established by the government, a political subdivision, a local government or local authority of the United Arab Emirates.

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4. With reference to paragraph 4 of article 14:

It is understood that paragraph 4 shall include capital gains from the alienation of shares and other corporate rights, securities, bonds and other form of debentures other than those mentioned in the paragraphs 2 and 3.

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