

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT**

The Government of the People's Republic of Bangladesh and The Government of the United Arab Emirates hereinafter referred to as the "Contracting Parties,"

Desiring to expand and strengthen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to protect investment by investors of both Contracting Parties and to stimulate the flow of investment and individual business initiative with a view to promoting the economic prosperity of both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(a) "Investment", subject to the laws, regulations and national policies in place of the Contracting Parties, means every kind of assets and in particular, though not exclusively includes: (i) Movable and immovable property and any other property rights such as mortgages, liens and pledges;

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

(iii) A claim to money or a claim to any performance having financial value;

(iv) Intellectual and industrial property rights, including rights with respect to copyrights, patents, trade marks, trade names, industrial designs, trade secrets, technical process and know-how and goodwill etc.

(v) Business concessions conferred by law or under contract excluding natural resources;

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively includes profits, interests, capital gains, dividends, royalties or fees;

(c) "investor" means: (i) Government of either contracting party, any natural person possessing the citizenship of or permanently residing in the territory of a Contracting Party in accordance with its laws; or

(ii) Any corporation, partnership, trust, joint-venture, organization, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party;

(d) "territory" means: (i) With respect to the People's Republic of Bangladesh, the territory of the People's republic of Bangladesh including its territorial waters and the airspace over it and other maritime zones including Exclusive Economic Zone and continental shelf over which the People's Republic of Bangladesh exercises sovereign and jurisdictional rights in respect of any activity carried on water, sea bed, subsoil n in connection with the exploration for or the exploitation for or the exploitation of natural resources by virtue of its law and international law;

(ii) With respect to the United Arab Emirates, the territory of the United Arab Emirates including its territorial waters and the airspace over it and other maritime zones including Exclusive Economic Zone and continental shelf over which the United Arab Emirates exercises sovereign and jurisdictional rights in respect of any activity carried on water, sea bed, subsoil n in connection with the exploration for or the exploitation for or the exploitation of natural resources by virtue of its law and international law;

(e) "freely usable currency" means the United States dollar, euro, Japanese yen, Saudi riyal or any other currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets.

## **Article 2. Scope of the Agreement**

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement but shall not apply to any dispute concerning an investment that has arisen before the entry into force of this Agreement or to any claim that was settled before the entry into force of this Agreement.

## **Article 3. Promotion and Protection of Investment**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory in accordance with its laws, regulations and national policies, and shall admit such investments.
2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full and adequate protection and security in the territory of the other Contracting Party.
3. Each Contracting Party shall endeavour in its territory to the necessary measures as may be applicable for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting Party.
4. The Contracting Party according to the laws and regulations shall admit the employment of the top managerial staff connected to the investment made in the territory of the other Contracting Party from the countries that the Contracting parties have diplomatic relations with.
5. Investor of a Contracting Party as far as possible shall comply with the international laws and regulations of the other Contracting Party in relation to public health and/ or environmental policies.

## **Article 4. Treatment of Investments**

1. Investment made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by own investors or investors of any third State, whichever is the most favourable.
2. Each Party shall accord to the investment treatment no less favourable than it accords to investments in its territory of investors of any non-party with respect to the establishment, expansion, acquisition, transfers, management, conduct, operation, and sale or other disposition of investments.
3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from:
  - (a) Any customs union, economic union, free trade area, monetary union or other form of regional economic arrangement or other similar international agreement, to which either of the Contracting Parties, is or may become a Party, or
  - (b) Any international or regional agreement or any other matter relating wholly or mainly to taxation.
4. Neither Contracting Party shall impose any additional requirement as a condition for the expansion or maintenance of the instrument, export goods produced or, purchase goods or services from the local market.
6. With regard to Most Favoured Nation (MFN) treatment, it is understood that MFN shall not apply to judicial and procedural matters .

## **Article 5. Expropriation**

1. Investments of investors of each Contracting Party shall not be nationalized, expropriated or subjected to measures, having effect equivalent to nationalization or expropriation, hereinafter referred to as expropriation, in the territory of the other Contracting Party except for expropriations made in the public interest, on a basis of non-discrimination, carried out under due process of law, and against prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the investment expropriated immediately before the

expropriation or impending expropriation became known in such a way as to affect the value of the investment, hereinafter referred to as the "valuation date".

3. Such compensation, in whose territory the investment is made, shall be paid promptly on the basis of the rate of exchange existing for that currency on the valuation date and include interest at a commercial rate established on a market basis (e.g. LIBOR).

4. Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested the nature and duration of the investment, replacement value, book value and good will. The amount of compensation finally determined shall expeditiously be paid to the investor in a freely convertible currency and allowed to be freely transferable without delay.

5. The investor affected shall have a right to prompt review under the law of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph 1 of this Article.

6. When a Contracting Party expropriates the assets of a company or an enterprise in its territory, which is incorporated or constituted under its law, and in which investors of the other Contracting Party have an investment, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the fair market value of such investment resulting from the expropriation.

## **Article 6. Repatriation of Investment**

1. Each Contracting Party shall, subject to its laws, regulations and national policies allow without unreasonable delay the transfer in any freely usable currency:

(a) The net profits, dividends, royalties, technical assistance and technical fees, interest and other current income accruing from any investment in general including major investments such as income and profits of airlines, energy and mineral resources, construction etc. of the investors of the other Contracting Party;

(b) The proceeds from the total or partial liquidation of any investment made by investors in the territory of the other Contracting Party;

(c) Funds in repayment of borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognized as investment; and

(d) The earnings and other compensations of national of the other Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. The exchange rates applicable to transfer referred to in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfer referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfer originating from investments made by investors of any third state.

## **Article 7. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolutions, state of national emergency, revolt, insurrection, or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever of these standards is the more favourable from the point of view of the investor.

2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situation referred to in that paragraph, suffers a loss in the area of the other Contracting Party resulting from:

a) Requisitioning of its investment or part thereof by the latter's forces or authorities, or

b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, shall be accorded, restitution or compensation which in either case shall be prompt, adequate and effective and shall be freely transferable.

## **Article 8. Subrogation**

1. If one Contracting Party or its designated agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting party shall recognize:

- a) The assignment, whether under the law or pursuant to a legal transaction, of any right or claim by the investor to the former Contracting party or to its designated agency and
- b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor.

2. The rights or claims so subrogated shall not exceed the original rights or claims of the investor.

3. Subrogation the rights and obligations of the indemnified investor shall also apply to the transfer of payments affected in accordance with Article 7 of this Agreement.

4. Notwithstanding the provisions of paragraph 1, 2 and 3 of this Article subrogation shall only be taken place after the prior consent of the Contracting Party in whose territory the investment is made.

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment under this Agreement shall, as far as possible, be settled amicably through negotiations between the Parties to the dispute.

2. In case that a government institution or the government by itself or through any agency designated by the government enters into an agreement regarding an investment, this Agreement shall be binding upon the Contracting Parties.

3. With respect to paragraph 1 of this Article, if the dispute cannot be settled amicably within the period of three months, the Parties to the dispute should pursue the following procedures:

a) If the dispute is not amicably settled within three (3) months as referred to in paragraph 1 then it shall be filled to the competent authorities or arbitration centres thereof, constituted under the laws of the Contracting Party, in whose territory the investment was made exhausting all local remedies;

b) If the dispute is not settled according to the provisions of subparagraph(a) of this Article within six months from the date of submission, either party to the dispute may submit the dispute to the International Centre for the Settlement of Investment Disputes (the Centre);

c) At any stage during the cooling off period or the proceeding of the tribunals, the Parties to the dispute shall withdraw the case if they come to an agreement for settlement of the dispute amicably.

## **Article 10. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through consultation and negotiation.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute has arisen, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, with whom both the Contracting Parties have diplomatic relations, who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within four months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party and belongs to a State with whom both the Contracting Parties have diplomatic relations, shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedures.

## **Article 11. Entry and Sojourn of Personnel**

A Contracting Party shall, subject to its laws applicable from time to time, sympathetically consider the entry and sojourn of senior staffs for the purpose of engaging in activities connected with investments, from such countries with whom the Contracting Parties have diplomatic relations, employed by companies of the other Contracting Party.

## **Article 12. Entry Into Force**

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

## **Article 13. Duration and Termination**

1. This agreement shall remain in force for a period of ten (10) years and thereafter it shall be deemed to have been automatically extended for a similar period unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date on receipt of such written notice.

2. Notwithstanding termination of this Agreement pursuant to paragraph 1 of this Article, the Agreement shall continue to be effective for a further period of fifteen (15) years from the date of its termination in respect of investments made before the date of termination of this Agreement.

## **Article 14. Consultation**

Each Contracting Party may propose to the other Party to consult on any matter affecting the application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon mutually.

## **Article 15. Amendment**

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties, Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

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

Done in duplicate at Abu Dhabi on the 17th day of January 2011 in the Arabic and English languages, both the texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Abdullah bin Zayed Al Nahyan

Dr. Dipu Moni, MP

Minister of Foreign Affairs

Foreign Minister

The Government of the United Arab Emirates"

The Government of the People's Republic of Bangladesh