

Agreement between the Government of the Islamic Republic of Pakistan and the Government of the People's Republic of Bangladesh on the Reciprocal Promotion and Protection of Investments.

The Government of the Islamic Republic of Pakistan and the Government of the People's Republic of Bangladesh hereafter referred to as the Contracting parties.

DESIRING to strengthen the economic cooperation between both states and to create favourable conditions for Pakistan investment in Bangladesh and Bangladesh investment in Pakistan.

CONVINCED that the promotion and protection of these investments would stimulate transfer of capital and technology between the two countries in the interest of their economic development.

HAVE AGREED AS FOLLOW:

Article 1. Definitions

For the purpose of this agreement:

1.1 The term 'Investment' shall mean every kind of goods, rights and interests connected with business investment in accordance with the laws of the state in the territory of which the investment is made, in particular, though not limited to the following:

(a) Moveable and immovable property required for the purpose of business as well as any other property rights such as mortgages, liens, usufructs, pledges and similar rights;

(b) Shares, premium on shares and other kinds of interest, including direct or indirect forms of participation in companies constituted in the territory of other party;

(c) Claim to money or debentures, or claim to any legitimate performance having an economic value;

(d) Copyrights, industrial property rights (such as patents, licenses, trade marks, industrial models and markups), technical process, known how paid names and other values acquired as part of the investments;

(e) Business concessions conferred by law or under-contract, including concession to search for, cultivate, extract or exploit natural resources, including those which are located in adjacent maritime areas over which the contracting party exercise sovereign rights;

It being understood that those investments are investment which may be made subsequent to the entering into force of this agreement in accordance with the legislation of the contracting party on the territory or maritime areas of which the investment is made.

Any alteration of the form in which assets are invested shall not affect their qualification as investments provided that such alternation is not in conflict with the legislation of the state in the territory or maritime areas of which the investment is made.

1.2 The term 'nationals' means natural persons possessing the nationality of other contracting party.

1.3 The term 'company' means any body legally constituted in the territory of one contracting party in accordance with the legislation of that party having its head office in the territory of that party, or controlled directly or indirectly by the nationals of one contracting party or by legal persons having their head office in the territory of one contracting party and constituted in accordance with the legislation of that party.

1.4 The term 'returns' means all amounts produced by an investment including profits, royalties, dividends, capital gain,

technical fee and interests during a given period.

Investment returns and in case of re-investment, the re-investment returns shall enjoy the same protection as the investment.

1.5 The expression 'maritime areas' mean marine and submarine areas over which the contracting parties have sovereignty, sovereign rights or a jurisdiction in accordance with Law.

Article 2. Applicability of the Agreement

Each contracting party shall admit and encourage in its territory and in its maritime areas, in accordance with its legislation and with the provisions of this agreement, investments by nationals or companies of the other contracting party without prejudice to the claims of the Government of the People's Republic of Bangladesh and or Bangladesh Bank for obtaining value for claim from the Government of Pakistan and or State Bank of Pakistan.

Article 3. Promotion and Protection of Investment

Either Contracting party shall extend fair and equitable treatment in accordance with the principles of international law to investments made by nationals and companies of other Contracting party in its territory and in the maritime areas and shall ensure that the exercise of the rights thus recognized shall enjoy full protection and security in practice and under its laws.

Article 4. Most Favoured Nation Provisions

Each Contracting party shall in its territory and in its maritime areas accord to the nationals and companies of the other party as regard their investment treatment which is fair and equitable and not less favourable than that which it accords to the nationals and companies or any third state.

This treatment shall not include the privileges granted by one Contracting party to nationals or companies of a third state by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

Article 5. Expropriation

5.1 The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safely on the territory and in the maritime areas of the other Contracting Party.

5.2 Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party, of their investments on its territory and in its maritime areas except in the public interest and in accordance with applicable laws and regulations in such circumstances and provided that these measures are not discriminatory or contrary to a particular obligation.

Any measures of dispossessions which might be taken shall give rise to prompt and adequate compensation, the amount of which shall in any case represent the market value of the investment immediately before the date of dispossession and this compensation shall be effectively realizable and shall be paid without delay and shall be freely transferable.

The above provision shall only be applicable, after signing of the Agreement between the two Governments.

Investors of one Contracting Party whose investment have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring in the territory of in the maritime areas of the other Contracting Party that is not less favourable than that granted to those of any third nation.

Article 6. Repatriation of Investment

Within the frame of the rules and regulations as in force, each contracting party, in the territory or in the maritime areas of which the investments have been made by nationals or companies of the other Contracting Party, shall guarantee to these nationals and companies the transfer in freely convertible currency of the following without undue restriction and delay subject to payment of taxes, charge etc. if any, and after observance of necessary formalities obtaining in the respective countries:-

(a) Interests, dividends, profits and other current income.

- (b) Royalties deriving from incorporeal rights as defined in section 1.1 (d) and (e);
- (c) Repayments of loans which have been regularly contracted;
- (d) Value of partial or total liquidation of the investment including capital gains on the capital invested;
- (e) Compensation for dispossession or loss of dispossession or loss described in Section 5.2 and 5.3 above.

The nationals of either Contracting party who have been authorised to work territory or in the maritime areas of the other contracting party as the result of an approved investment shall also be permitted to transfer earnings to their country of origin as per foreign exchange regulation in force from time to time.

The transfer referred to in the foregoing paragraph shall be promptly effected at the ruling exchange rate prevailing on the date of transfer.

Article 7. Guarantees

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting party of their investment unless the following conditions are complied with:

- (a) The measures are taken in the public interest and under due process of law;
- (b) The measures are not discriminatory or contrary to any undertaking which the former Contracting party may have given;
- (c) The measures are accompanied by provision for the payment of just compensation. such compensation shall represent the genuine value of the investment affected and shall in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

Article 8. Exceptions

Investment having formed the subject of a special commitment of one Contracting party with respect to the nationals or companies of the other contracting party shall be governed, without prejudice to the provisions of this agreement, by the term of the said commitment if the latter includes provision more favourable than those of the present agreement.

Article 9. Dispute between the Contracting Parties

9.1 Dispute between the Contracting parties relating to the interpretation or application of the agreement shall, if possible, be settled through consultation or negotiation.

9.2 If a dispute cannot be settled within a period of six months from the date on which the matter was raised by one Contracting party, it shall upon the request of either Contracting party, be submitted to an Arbitral Tribunal.

9.3 Such as arbitral tribunal shall be constituted for, each individual case as follows:-

(a) Each Contracting party shall appoint one arbitrator and the two arbitrators thus appointed shall then appoint by mutual agreement a third arbitrator who must be a national of a third country and who shall be designated as Chairman of the tribunal.

(b) The said arbitrators shall be appointed within two months and the Chairman with three month from date of notification by one contracting party to the other contracting party of its intention to submit the dispute to arbitration.

9.4 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 relevant agreement, invite the president of the International Court of Justice to make the necessary appointments.

If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments.

If the vice President is a national of either Contracting party or if he, too, is prevented from discharging the said function, the member of the International court of justice next in seniority who is not a national of either Contracting party shall be invited to make the necessary appointments.

The arbitration in respect of any dispute shall be held in the territory of the Contracting party in whose country or maritime

zone such investment has been made.

9.5

(a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting parties.

(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceeding shall be borne by each Contracting party and the cost of the Chairman and the remaining cost shall be borne in equal parts by the two Contracting parties.

(c) In all respects other than those specified in sub-paragraph (a) and (b) of this paragraph, the tribunal shall determine its own procedure.

Article 10. Entry Into Force, Duration and Termination

This agreement shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

The Agreement shall come into force thirty days after the date of exchange of instruments of ratification and shall remain in force for an initial period of ten years.

It shall thereafter continue in force indefinitely subject to the right of either Contracting Party to terminate it by twelve months prior notice in writing to the other Contracting Party, which may be given at any time after the expiry of the ninth year.

HOWEVER, with respect to an investment of capital approved while the Agreement is in force, its provisions shall continue to have effect for a period of twenty years from the date of termination.

WITNESS WHEREOF, the duly authorized representations of their respective Governments have signed this Agreement.

Done in duplicate at Islamabad this 24th day of April, 1995.

For the Government of the Islamic Republic of Pakistan

For the Government of the People's Republic of Bangladesh