

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of France and the Government of the Islamic Republic of Pakistan, hereinafter referred to as the Contracting Parties,

Desiring to strengthen the economic cooperation between both States and to create favourable conditions for French investments in Pakistan and Pakistani investments in France,

Convinced that the promotion and protection of these investments would stimulate transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

Article 1.

For the purpose of this agreement:

1.1. The term "Investment" shall comprise every kind of goods, rights and interests of whatsoever nature invested 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) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, usufructs, pledges and similar rights;
- b) Shares, premium on share and other kinds of interests including minority or indirect forms of participation in companies constituted in the territory of one Party;
- c) Title to money or debentures, or title to any legitimate performance having an economic value;
- d) Copyrights, industrial property rights (such as patents, licences, trademarks, industrial models and mockups), technical processes, know how, trade names and other values acquired as part of the investment;
- e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources, including those which are located in adjacent maritime areas over which the Contracting Parties exercise sovereign rights,

it being understood that those investments are investments which have already been made after September 1, 1954 or 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 alteration 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 either Contracting Party.

1.3. The term "company" means any legal person 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, such as profits, royalties and interests, during a given period.

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

1.5. The expression "maritime areas" means marine and submarine areas over which the Contracting Parties have sovereignty, sovereign rights or a jurisdiction, in accordance with International Law.

Article 2.

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.

Article 3.

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 the other Contracting Party in its territory or maritime areas, and shall ensure that the exercise of the right thus recognized shall not be hindered either in law or in practice.

Article 4.

Each Contracting Party shall apply in its territory and in its maritime areas, to the nationals and companies of the other Party, with respect to their investments and activities related to the investments, the treatment granted to the nationals or companies of the most favoured nation. In this respect, nationals authorized to work in the territory and the maritime areas of one Contracting Party shall enjoy the material facilities relevant to the exercise of their professional activities.

This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third party 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.

5.1. The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safety 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 provided that these measures are not discriminatory, or contrary to a particular obligation.

Any measures of dispossession which might be taken shall give rise to prompt and adequate compensation, the amount of which shall in any case represent the full and complete value of the investment.

The said compensation, the amount and conditions of payment, shall be set no later than the date of dispossession. This compensation shall be effectively realizable and shall be paid without delay and shall be freely transferable. Until the date of payment, it shall be subject to interest at a rate agreed to by the Contracting Parties.

5.3. Investors of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring in the territory or in the maritime areas of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to those of the most favoured nation. At all events, they shall receive adequate compensation.

Article 6.

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 free transfer of:

- (a) Interests, dividends, profits and other current income,
- (b) Royalties deriving from incorporeal rights as defined in Section 1.1. (d) and (e),
- (c) Repayment 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 described in Sections 5.2. and 5.3. above.

The nationals of either Contracting Party who have been authorized to work in the territory or in the maritime areas of the other Contracting Party as the result of an approved investment, shall also be permitted to transfer to their country of origin an appropriate proportion of their earnings.

The transfers referred to in the foregoing paragraphs shall be promptly effected at the official exchange rate prevailing on the date of transfer.

Article 7.

In the event that the regulations of either Contracting Party contain a guarantee for investments made abroad, this guarantee may be accorded after examining each particular case to investments made in the territory or in the maritime areas of the other Party by nationals or companies of this Party.

Investments made by nationals or companies of one Contracting Party in the territory or in the maritime areas of the other Contracting Party may obtain the guarantee referred to in the foregoing paragraph only if they have been previously approved by the other Party.

Article 8.

Any dispute concerning the investment occurring between one Contracting Party and a national or company of the other Contracting Party, shall be settled amicably between the two Parties concerned.

If the dispute has not been settled within a period of six months from the date at which it occurred by one or other of the Parties to the dispute, it shall be submitted at the request of either of these Parties to the arbitration of the International Center for the Settlement of Investment Dispute (ICSID) created by the Convention for the settlement of disputes in respect of investments occurring between States and nationals of other States signed in Washington on March 18, 1965.

Article 9.

If one Contracting Party, as a result of a guarantee given for an investment made in the territory of the other Contracting Party, makes payments to its own nationals or companies, the first mentioned Party has in this case full rights of subrogation with regard to the rights and actions of the said national or company

The said payments shall not affect the rights of the beneficiary of the guarantee to recourse to the ICSID or to continue proceedings submitted to it until completion of the proceedings.

Article 10.

Investments 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 terms of the said commitment if the latter includes provisions more favourable than those of the present agreement

Article 11.

11.1. Disagreements relating to the interpretation or application of this agreement should be settled by diplomatic channels.

11.2. If the disagreement has not been settled within a period of six months from the date on which the matter was raised by one Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.

11.3. The said Tribunal shall be created as follows for each specific case: Each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall 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. All the arbitrators must be appointed within two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the disagreement to arbitration.

11.4. If the periods specified in Section 11.3 above have not been met, either Contracting Party, in the absence of any other agreement, shall invite the Secretary-General of the United Nations Organization to make the necessary appointments. If

the Secretary-General is a national of either Contracting Party, or if he is otherwise prevented [from] discharging the said function, the Under-Secretary next in seniority to the Secretary-General, who is not a national of either Contracting Party, shall make the necessary appointments,

11.5. The Tribunal shall arrive at its decisions by a majority of votes. The decisions of the said Tribunal shall be final and legally binding upon the Contracting Parties.

The Tribunal shall set its own rules of procedure. It shall interpret its judgement at the request of either Contracting Party. Unless otherwise decided by the Tribunal, in special circumstances, the legal costs, including the fees of the arbitrators, shall be shared equally between the two Governments,

Article 12.

Each Contracting Party shall notify the other of the completion of its constitutional procedures required concerning the entry into force of this agreement, which shall enter into force one month after the date of receipt of the final notification.

The agreement shall be in force for an initial period of ten years. It shall remain in force thereafter unless one of the Contracting Parties gives one year's written notice of termination through diplomatic channels.

In case of termination of the period of validity of this agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

SIGNED in Paris on June 1, 1983, in duplicate in the French and English languages, both texts being equally authentic.

For the Government of the Republic of France:

Jean-Claude Trichet

For the Government of the Islamic Republic of Pakistan:

Jamesheep Ka-Marker

EXCHANGES OF LETTERS

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Your Excellency,

I have the honour to refer to the Agreement signed today between the Government of the Islamic Republic of Pakistan and the Government of the Republic of France on the Reciprocal Promotion and Protection of Investments, and wish to inform you that the interpretation of this Agreement is the following:

1. With respect to article 3:

a) We shall consider as de jure or de facto impediments to fair and equitable treatment any discriminatory restriction on the purchase or transport of raw materials and auxiliary materials, energy and fuels, as well as the means of production and operation of all types, any discriminatory hindrance of the sale or transport of products within the country and abroad, as well as any other measures that have a similar effect.

b) Within the framework of their respective legislation, the Contracting Parties shall favourably examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment in the territory of the other Contracting Party.

2. With respect to article 5: The rate of interest agreed by the Contracting Parties is the Official rate of interests of the special drawing rights as set by the I.M.F.

I would appreciate receiving from you a declaration of the agreement of your Government to the contents of this letter.

With compliments of my highest esteem,

Yours sincerely,

Jean-Claude Trichet

The Chairman of the French Delegation

Ila

Your Excellency,

I have the honour to acknowledge the terms of your letter of this day:

[See letter I a] I have the honour to confirm my agreement on these terms.

With compliments of my highest esteem,

Yours sincerely,

Jamesheep Ku- Marker

The Chairman of the Pakistani Delegation

Ib

Your Excellency,

I have the honour to refer to Article 3 of the Agreement signed today, and as regards the investments carried out by a company controlled directly or indirectly by the nationals of one Contracting Party or legal persons having their head office in the territory of one Contracting Party, I am to confirm that the interpretation of this article is that the Agreement applies only when, in the exercise of its own discretion, the other Contracting Party has given its approval to such an investment.

Indeed the Agreement will fully apply to investments implemented by a company not mentioned in Article 1.3 in the territory or maritime area of one Contracting Party when the company comes under the control of the other Contracting Party or of legal persons having their head office in the territory of the other Contracting Party.

I would appreciate receiving from you a declaration of the Agreement of your Government to the contents of the letter.

With compliments of my highest esteem,

Yours sincerely,

Jamesheep Ku- Marker

The Chairman of the Pakistani Delegation

Ib

Your Excellency,

I have the honour to acknowledge the terms of your letter of this day:

[See letter Ib]

I have the honour to confirm my agreement on these terms,

With compliments of my highest esteem,

Yours sincerely,

Jean-Claude Trichet

The Chairman of the French Delegation