

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF CAMBODIA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN ON THE PROMOTION AND PROTECTION OF INVESTMENT

The Islamic Republic of Pakistan and the Kingdom of Cambodia hereinafter referred to as the "Contracting Parties";

Desiring to create favorable conditions for greater economic co-operation between them and in particular for investments by investors of one State in the territory of the other State based on the principles of equality and mutual benefit;

Recognising that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiative and increasing prosperity in both States;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and foster economic prosperity;

Having resolved to conclude the Agreement on the Promotion and Reciprocal Protection of Investments;

Have agreed as follows:

Article 1. Definitions

For the purpose of this agreement:

1. The term "Investment" means;

(a) The assets or money invested in connection with economic activities connected with business by an investor of one Contracting Party in the territory of the other Contracting Party for setting up, establishment or control of Industry, undertaking or establishment engaged in the production, distribution or processing of any goods or the development and extraction of such mineral resources and products as may be specified in this behalf by the Contracting Party.

(b) The term "investment" does not include contracts to provide a service and the construction contracts.

(c) In case of contract(s) between the resident of one party and the resident of the other party, the terms and conditions of the contract(s) signed between them will over-ride the clauses of this agreement and will be governed by the terms and conditions of that contract(s).

(d) Time bound contract(s) will not be treated as investment.

2. The term "Returns" means monetary returns yielded by an investment including any profits, interest, capital gains, dividends, royalties or fees.

3. The term "Investors" means in respect of either Contracting Party:

a) A natural person, a national of a Contracting Party who makes an investment in the territory of the other Contracting Party.

b) A legal person incorporated constituted or, otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its seal and performing real business activity in the territory of the same Contracting Party and making an investment in the territory of the other Contracting Party.

4. The term "freely convertible currency" means any currency that is widely used to make payments for international transactions and widely traded in the principal international exchange markets.

5. The term "territory" means;

(a) In respect of the Islamic Republic of Pakistan, the territories as defined in Article 1(2) of the Constitution of Islamic Republic of Pakistan.

(b) In respect of the Kingdom of Cambodia, the territory over which the Kingdom of Cambodia has sovereignty or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.
2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of that other Contracting Party, on the investment opportunities in its territory.
3. Each Contracting Party shall consider in good faith whenever necessary in accordance with its laws and regulations without delay the request for permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.
4. Each Contracting Party shall subject to its laws regulations and procedures affecting the entry stay and work of natural persons, examine in good faith and give consideration to request of key personnel (nationals of the contracting parties) including top managerial and technical persons who are employed for the purpose of investments in its territory to enter, remain temporarily and work in its territory. Immediate family members (spouse and minor children) of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

Article 3. Protection of Investments

1. Each Contracting Party shall extend in its territory full protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall impair by arbitrary or discriminatory measures the development, management, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments.

A Contracting Party shall observe any other obligation it may have entered into with regards to investments of investors of the other Contracting Party.

2. Investment or returns of investors of a Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with the laws and regulations of the latter Contracting Party and the provisions of this Agreement.

Article 4. National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall accord in its territory to investment and returns of investors of the other Contracting Party a treatment no less favourable than that which it accords to investments and returns of its own investors or investments and returns of investors of any third State, whichever is more favourable to the investors concerned.

2. Contracting Party shall accord in its territory to investors of the other Contracting Party as regards management, maintenance, employment, use or disposal of their investment, a treatment which is no less favourable than that which it accords to the investors of any third State.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend the investors of the other Contracting Party the benefit of any treatment, preference or privilege, which may be extended by the former Contracting Party by virtue of: paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend the investors of the other Contracting Party the benefit of any treatment, preference or privilege, which may be extended by the former Contracting Party by virtue of:

a) Any existing or future customs union or economic union, free trade area or similar international agreements to which either of the Contracting Party is or may become a party in the future;

b) Any international agreement or arrangement completely or partially related to taxation.

Article 5. Expropriation

1. A Contracting Party shall not expropriate or nationalize, directly or indirectly, an investment in its territory of an investor

of the other Contracting Party or take any measure or measures having equivalent effect (hereinafter referred to as "expropriation") except:

- a) For a purpose which is in the public interest;
- b) On a non-discriminatory basis;
- c) In accordance with due process of law; and
- d) Accompanied by payment of prompt, adequate and effective compensation.

2. Such compensation shall be paid without delay.

3. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

4. Such compensation shall be fully realizable and freely transferable.

5. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article by a judicial authority or other competent and independent authority of the latter Contracting Party.

Article 6. Compensation of Damage or Loss

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, revolution, riot or similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment as regards restitution, indemnification, compensation or any other settlement, not less favourable than that accorded by the latter Contracting Party to its own investors or to investors of any third State, whichever is more favourable to the investors concerned. However, the losses which are covered under normal business risks will not qualify for payment of compensation on this account.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- a) requisitioning of their property or part thereof by its forces or authorities;
- b) destruction of their property by its force or authorities, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded a prompt restitution, and where applicable prompt, adequate and effective compensation for damage or loss, sustained during the period of requisitioning or as a result of destruction of the property.

Resulting payments shall be made in freely convertible currency without delay.

Article 7. Transfers

Each Contracting Party shall permit that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include in particular, though not exclusively:

- a) the initial capital and additional amounts to maintain or increase an investment;
- b) returns as defined in paragraph 2 of Article I of this Agreement;
- c) payments made under contract including a loan agreement relating to the investment;
- d) proceeds from the sale or liquidation of all or any part of investments;
- e) payments of compensation under Articles 5, 6 and 8 of this Agreement;
- f) payments arising out of the settlement of an investment dispute;
- g) Earnings and other remuneration of personnel engaged from abroad in connection with an investment in accordance with Article 2 of this Agreement.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article are made in a freely convertible currency at the prevailing rate of exchange quoted by Authorised Dealers valid on the date of transfer in the territory of the Contracting Party in which the investment is made.

3. Each Contracting Party shall ensure that the interest, if any, on payments/ compensation delayed or not made after the date fixed for payment is calculated together with compensation for the period starting with the occurrence of events under Articles 5, 6, and 8 until the date of transfer of payment and payment will be effected in accordance with provisions of paragraphs 1 and 2 of this Article.

Article 8. Subrogation

1. If their Contracting Party or its designated agency makes a payment under an indemnity guarantee or contract of insurance against non-commercial risks given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any rights or claims of such investor to the former Contracting Party or its designated agency and right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim of the same extent as its predecessor in title.

Article 9. Application of other Legal Provisions

1. If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties, in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall, to the extent that it is more favourable, prevail over the present Agreement

Article 10. Settlement of Disputes between the Contracting Party and an Investor of the other Contracting Party

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting should be settled amicably between the two parties concerned.

2. If the dispute has not been settled within six (6) months from the date on which it was raised in writing, the dispute may, at the choice of investor, be submitted:

(a) To the competent courts of the Contracting Party in whose territory the investment is made; or

(b) To any ad hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), provided that there can be no automatic recourse to such international arbitration unless the Contracting Party or its agency or instrumentality concerned specification in its agreement with an investor.

3. An Agreement to settle the dispute between one Contracting Party and an investor of the other Contracting Party will override this Agreement and the mode of dispute settlement, if any, provided therein shall bind the Parties irrespective of this Agreement.

4. An investor who has submitted the dispute to a national court cannot have recourse to one of the arbitral tribunals mentioned in paragraph 2(b) and (3) of this Article.

5. Neither of the Contracting Party, which is a party to a dispute can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

6. The award shall be final and binding on the parties to the dispute and shall be enforced in accordance with national law.

7. In dispute between an investor and a Contracting Party, the law of the Contracting Party will govern the resolution of such disputes.

8. The law of limitation of the host country will be applicable to any claim or request made for arbitration by the investor except where the relevant arbitration rules provide for a shorter period of limitation in which case those rules will apply.

Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled

as far as possible by negotiations.

2. If a dispute cannot be settled under paragraph 1 of this Article within six (6) months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted ad-hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal the chairman of which shall be appointed within two (2) further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice President or in case of his inability, the member of the International Court of Justice next in seniority shall be invited under the same conditions to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The place of arbitration proceedings shall be determined by the Contracting Parties.

6. The arbitral tribunal shall make its award in accordance with the provision of this Agreement and pursuant to the rules of international law. It shall make its award by a majority of votes. The award shall be final and binding.

7. Each Contracting Party shall bear the costs of its own arbitrator and of its legal representation in the arbitration proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by both the Contracting Parties. The tribunal may however, in its award determine another distribution of costs.

Article 12. Application of the Agreement

This Agreement shall apply to investments made prior to or after the entry into force of this Agreement but shall not apply to any investment dispute that may have arisen before its entry into force.

Article 13. Entry Into Force

This Agreement shall enter into force on the date of receipt of the last of the two notifications through diplomatic channels by which either Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 14. Duration and Termination

1. This Agreement shall remain in force for the period of ten (10) years and shall be extended thereafter for the following ten (10) years period unless, one year before the expiry of that period or any subsequent period, one Contracting Party notify the other Contracting Party of its intention to denounce the Agreement. In that case, the notice of denunciation shall become effective by the expiration of the current period of ten (10) years.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective and applicable for a period of ten (10) years from the date of termination of this Agreement.

Done at Phnom Penh on 27th April 2004 in the two originals, each in English and Khmer, all texts being equally authentic. In case of difference of interpretation, the text in the English language shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA

CHAM PRASIDH

Minister of Commerce

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

Dr. Abdul Hafeez Sheikh

Minister for Privatisation