AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

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

DESIRING to create favourable conditions for greater investment by investors of one State in the territory of the other State;

RECOGNIZING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

HAVE AGREED as follows:

Article I. Definitions

For the purposes of this Agreement:

(1) "investment" means every kind of assets acquired for the purpose of investments by the investors of each Contracting Party in the territory of the other Contracting Party in accordance with the national laws and regulations of the latter and shall include in particular but not exclusively:

(a) Movable and immovable property as well as any other rights in rem;

(b) Shares, parts or any other kinds of participation in companies or other legal entities;

(c) Claims to money or to any performance having an economic value;

(d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) Concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

(2) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and lees.

(3) "investor" means any legal entity or physical person who makes investments in the territory of the State of another Contracting Party:

(i) "physical person" means any natural person who is a national of the State of one of the Contracting Parties in accordance with its laws and regulations;

(ii) "legal entity" means in respect of both the Contracting Parties legal entity which was organized or constituted in accordance with the laws and regulations of each Contracting Party.

(4) "territory" means in respect of each Contracting Party the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, seabed and its subsoil over which each Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the oilier Contracting Party to make investments in its territory, and, subject lo its right to exercise powers conferred by its laws, shall admit such

investments.

(2) Investments of investors of each Contracting Party shall at all times lie accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

In accordance with laws, regulations and rules of the Contracting Parties:-

(1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

(3) The treatment of the most favoured nation shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future free trade agreement, a customs or economic union or a similar regional organizalion to which either of the Contracting Parties is or may become a party;

(b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. 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, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party 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 to investors of any third State. Resulting payments shall be freely transferable in accordance with national laws and regulations.

(2) Without prejudice to paragraph(1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their properly by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation. Resulting payments shall he freely transferable in accordance with national laws and regulations.

Article 5. Nationalization

(1) Investments of investors of either Contracting Party shall not be nationalized or requisitioned or subjected to measures having effect equivalent to nationalization or requisition (hereinafter referred to as "nationalization") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine value of the investment nationalized immediately before the nationalization or before the impending nationalization became public knowledge, whichever is the earlier, shall he made without delay, be effectively realizable and be freely transferable. The investor affected shall have a right, under the law of the Contracting Party making the nationalization to prompt review, by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of his investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party nationalizes the assets of a legal entity which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that

the provisions of paragraph(1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article 6. Repatriation of Investment and Returns

Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted transfer of their investments and return. Transfers shall be effected without delay in the convertible currency in which the investment was originally made or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfer shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Settlement or Disputes between an Investor and a Most State

(1) Dispute between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which has not been amicably settled shall, after a period of three months from written notification of a claim, be submitted lu international arbitration if the investor concerned so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) The International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March, 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or

(b) The Court of Arbitration of the International Chamber of Commerce; or

(c) An international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of six mouths from written notification of the claim there is no agreement to one of the above alternative procedures, the dispute shall at the request in writing of the investor concerned be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

Article 8. Dispute between the Contracting Parties

(1) Dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled, 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 three 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 who on approval by the two Contracting Parties shall appoint Chairman of the tribunal. The Chairman should be appointed within three months from 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 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.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such a decision 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 may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting

Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

(1) If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an Indemnity given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognize:

(a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and

(b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

(a) The rights and claims acquired by it by virtue of the assignment, and

(b) Any payments received in pursuance of those rights and claims,

As the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment converned and its related returns.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party of obligation under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, 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 rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 11. Entry Into Force

Each Contracting Party shall notify the other in writing of the completion of the procedures required in its territory for the entry into force of the Agreement. This Agreement shall enter into force thirty days after the date of the latter of the two notifications.

The Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notification of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination and without prejudice to the application thereafter of the rules of general international law,

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

DONE in duplicate at Minsk this 22-nd day of January 1997 in the English and Belarusian languages, each text being equally authoritative. In case of divergencies the English text shall prevail.

For the Goverment of the Islamic Republic of Pakistan

For the Goverment of theRepublic of Belarus