

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS (TOGETHER WITH THREE ANNEXES)

The Government of the People's Republic of Bangladesh and the Government of the Republic of France, hereinafter called the Contracting Parties.

Desiring to create favourable conditions for Bangladeshi investments in France and French investments in Bangladesh.

Recognising that promotion and protection in such investments are apt to stimulate the flow of capital and technology between both states for their mutual benefit.

Have agreed as follows :

Article 1.

For the purpose of this agreement :

1. The term "investment" means the property, rights and interest of any nature and, more particularly but not exclusively :

- a) Movable or imovable property as well as any other real rights such as mortgages, liens, usufructs, sureties and similar rights ;
- b) Shares, premiums on shares and other forms of participation, even minority or indirect forms, in the companies formed in the territory of one of the Parties ;
- c) Debentures, titles to money and titles to any performance having an economic value ;
- d) Copyrights, industrial property rights (such as patent for invention, licences, trademarks and industrial designs), technical processes, registered trademarks and goodwill ;
- e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources ;

It is being understood that such investments must have been made in conformity with the laws and regulations of the Contracting Party in the territory and or maritime areas in which the investments have been made, and in accordance with the provisions of this agreement. Any alteration of the form of investments, with the approval of the Government of the Contracting Party in the territory and or maritime areas of which the investments have been made, shall not affect their classification as an investment.

2. The term "nationals" means in respect of each Contracting Party a natural person who is a citizen of that state under its Constitution or Nationality Law.

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 or companies of one Contracting Party.

4. The term "returns" means the amounts yielded by an investment, such as net profit or interests for a specific period, and in case of re-investment, the amounts yielded by the re-investment.

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 the legislation of each Contracting Party and with international Law.

Article 2.

This agreement applies to the territory and the maritime areas of each Contracting Party.

Article 3.

Each Contracting party shall promote, as far as possible within its territory and or maritime areas investments made by the nationals or companies of the other Contracting Party, in accordance with its rules and regulations.

Article 4.

Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment, and shall enjoy full protection and security in the territory and or maritime areas 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 made in its territory and or maritime areas by nationals or companies of the other Contracting Party.

Article 5.

1. Neither Contracting Party shall accord within its territory and or maritime areas to the nationals and companies of the other Contracting Party, as regards their investments and activities related to such investments, a less favourable treatment than that granted to nationals or companies of any third state. In this respect, nationals authorised to work in the territory and or maritime areas of one Contracting Party shall enjoy the material facilities relevant to the exercise of their professional activities in accordance with the rules and regulations of each Contracting Party.

2. This treatment shall, however, not extend to the privileges that a Contracting Party grants to nationals, or companies of a third country as a result of its participation or its association in a free trade area, a custom union, a common market, any other form of regional economic organisations or any other type of co-operation within the framework of any multilateral regional economic arrangement.

Article 6.

1. Neither of the Contracting Party shall take measures of expropriation or nationalization, or any other measures the effect of which would be to dispossess, directly or indirectly, the nationals and the companies of the other Contracting Party of any investment belonging to them in its territory and or maritime areas except on the ground of public purpose and against prompt, adequate and effective compensation. Such compensation shall be equivalent to the market value of the investment expropriated immediately before the expropriation became known, shall be made, without delay, be effectively realizable and freely transferable.

2. The investors of one Contracting Party whose investments have suffered losses due to war or to any other armed conflict, revolution, national emergency or revolt occurring in the territory and or maritime areas of the other Contracting Party shall receive from the latter Party a treatment no less favourable than that granted to nationals or companies of any third country.

Article 7.

1. Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party free transfer of their capital, of their returns from it, and of the repayment of loans which have been normally contracted as per rules and regulations of each Contracting Party.

2. Each Contracting Party shall issue the authorisations required to ensure that the transfer can be effected without undue delay, at the official rate of exchange prevailing on the date of the transfer.

3. The treatment referred to in paragraphs (1) and (2) of this article may not be less favourable than that accorded to nationals or companies of a third State who are in a similar situation.

Article 8.

1. Any investment dispute shall be notified by the investor of one Contracting Party, to the other Contracting Party, by a

written notification, accompanied by a sufficiently detailed claim.

Such dispute shall preferably be settled by amicable arrangement between the Parties to the dispute and failing such arrangement by pursuit of local remedies, by conciliation between the Parties through the diplomatic channels or otherwise.

2. In the absence of an agreement between the parties to the dispute within six months of the date of its notification, the dispute shall, upon the request of either of the parties concerned be submitted to the International Center for Settlement of Investment Disputes (hereinafter referred to as "The Centre") established by the Convention of the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on March 18, 1965.

For this purpose, each Contracting Party hereby consents to submit any such dispute to the Centre.

3. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise as an objection the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance policy an indemnity in respect of some or all of its losses.

Article 9.

1. If either Contracting Party (or its designated Agency) makes payment, to its own nationals or companies, under a guarantee it has given in respect of an investment or any part thereof in the territory and or maritime areas of the other Contracting Party, the latter Contracting Party shall recognise :

a) The assignment, whether under law or pursuant to a legal transaction, of any right or claim from the party indemnified to the former Contracting Party (or 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 such a party.

2. Any such payment made by one Contracting Party, or any public institution of this Party, to its national or companies in pursuance of this Agreement shall not affect the right of the nationals or companies to take proceedings to the International Centre for Settlement of Investment Disputes in accordance with Article 8 of this Agreement, nor shall it affect the right of the said nationals or companies to carry on the proceedings until the dispute is settled.

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.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible by means of diplomatic negotiations.

2. If a dispute cannot be thus settled within a period of six months it shall be submitted, upon the request of either Contracting Party to an arbitral tribunal.

3. Such tribunal shall be composed for each particular case as follows;

Each Contracting Party shall designate one member, and the two members shall designate, by mutual agreement, a national of a third State who shall be appointed Chairman by the two Contracting Parties. All members shall be appointed within two months from the date of which one of the Contracting Parties shall have notified the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the period set forth in paragraph 3 above has not been complied with either Contracting Party, in the absence of any other applicable agreement, shall request the Secretary General of the United Nations to make the necessary appointments. If the Secretary General is a national of either Contracting Party or if he is otherwise unable to discharge this function, the Assistant Secretary General next in seniority who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitral tribunal shall make its decision by a majority of votes. These decisions shall be final and legally binding. Each

Contracting Party shall bear the cost of its own member and of its counsel during the arbitral proceedings. The cost of the Chairman and the remaining costs shall be shared equally by both Contracting Parties. The arbitral tribunal may make different arrangements as regards the costs. In all other respects, the tribunal of arbitration shall determine its own rules of procedure.

Article 12.

This Agreement shall be approved in accordance with the constitutional requirements applicable in both States. The instruments of ratifications or approval shall be exchanged as soon as possible.

This Agreement shall enter into force one month after the date of the exchange of the instruments of ratification or approval.

This Agreement shall be in force for an initial period of ten years. It shall remain in force after that period unless denounced through diplomatic channels by either Contracting Party with one year prior notice.

After the expiry of the period of validity of this Agreement, the investments made while this Agreement was in force will continue to enjoy the protection of its provisions for an additional period of ten years.

Done at Paris On the 10th of September, 1985 in two original copies each in Bengali, English and French all the three texts being equally authentic.

On behalf of the Government of the People's Republic of Bangladesh

On behalf of the Government of the Republic of France

Exchange of letters no 1

Your Excellency,

I have the honour to refer to the Agreement signed today between the Government of the People's Republic of Bangladesh 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) Matters of taxation in the territories and or maritime areas of both Parties fall outside the scope of the said Agreement.
- 2) Notwithstanding the provisions of this Agreement, returns and investments shall be subject to taxation in accordance with the tax laws of each Party.

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,

On behalf on the Government of the People's Republic of Bangladesh

Your Excellency,

I have the honor to acknowledge receipt of your letter of today which reads as follows :

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

I confirm the above understanding between the two Parties.

With compliments of my highest esteem.

Yours sincerely,

On behalf of the Government of the Republic of France

Exchange of letters no 2

Your Excellency,

I have the honour to refer to the Agreement signed today between the Government of the People's Republic of Bangladesh 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 :

With respect to Article 7 :

a) Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party free transfer of their capital, of their returns from it and of the repayments of loans, subject to the right of each Contracting Party in exceptional difficulties as regards its balance of payments, to exercise, for a limited period of time and on a non discriminatory basis, the powers conferred by its laws and in accordance with its responsibilities and commitments as a member of the International Monetary Fund.

b) The nationals of either Contracting Party who have been authorized to work in the territory and or 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 a portion of their salaries in accordance with the rules and regulations of each Contracting Party.

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,

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Yours sincerely,

On behalf of the Government of the Republic of France

Exchange of letters no 3

Your Excellency,

I have the honour to refer to the Agreement signed today between the Government of the People's Republic of Bangladesh 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 :

With respect of Article 5 :

a) The following shall more particularly, though not exclusively, be deemed activities within the meaning of paragraph 1 of Article 5 : the management maintenance, use and enjoyment of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of paragraph 1 of Article 5 : restricting the purchase of raw or auxiliary materials, of power or fuel or means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects, within the broad framework of the rules and regulations of each Contracting Party. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 5.

With respect of Article 9 :

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

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

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,

On behalf of the Government of the People's Republic of Bangladesh

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

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