

AGREEMENT BETWEEN THE ISLAMIC REPUBLIC OF PAKISTAN AND THE AZERBAIJAN REPUBLIC ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Islamic Republic of Pakistan and the Government of the Azerbaijan Republic hereinafter referred to as the Parties;

Desiring to promote greater economic cooperation between them, particularly with respect to investments by investors of one Party in the territory of the other Party:

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilisation of economic resources

Have agreed on the following;

Article 1. Definitions

For the purposes of the present Agreement:

1. The term "investment" shall in particular, but not exclusively, include the rights, assets, claims, concessions acquired in conformity with laws and regulations of the host country for the purpose of business investment;

(i) Shares, stocks or any other form of participation in companies,

(ii) Returns reinvested, claims to money or any financial value related to an investment,

(iii) Movable and immovable property, as well as any other rights in terms such as mortgages, liens and pledges,

(iv) Copyrights, industrial and intellectual property rights such as patents, licenses, industrial designs, technical processes, as well as trademarks, goodwill and know-how,

(v) Business concessions conferred by law or by contract, including concessions to search for, cultivate, extract or exploit natural resources in the territory of each Party as defined hereafter.

2. The term "investor" refers with regards to either Party to;

(a) Natural persons who, according to the law of that Party, are considered to be its nationals,

(b) Corporations, firms and business associations incorporated or constituted under the law in force of either Party and having their headquarters in the territory of that Party.

3. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest and dividends.

4. The term "territory" means the territory of the Party, including its sea area and any area which in accordance with international law and the domestic legislation of the Party has been or may hereafter be designated as area within which the rights of that Party with respect to subsoil, sea-bed, continental shelf and natural resources may be exercised.

Article 2. Promotion and Protection of Investment

1. Each Party shall encourage and create favourable conditions for investments of the investors of the other Party and

admits such investments in accordance with its laws and regulations.

2. Each Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable.

3. Subject to the laws and regulations of the Parties relating to the entry sojourn and employment of aliens:

(a) Nationals of either Party shall be permitted to enter and remain in the territory of the other Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources,

(b) Companies that are legally constituted under the applicable laws and regulations of one Party, and which are investments of investors of other Party, shall be permitted to engage managerial staff and technical personnel possessing the necessary qualification and experience (not locally available) of their choice, regardless of nationality.

4. The provisions of this Article shall have no effect in relation to following agreements entered into by either of the Parties.

(a) Relating to any existing or future customs unions, regional economic organization or similar international agreements,

(b) Relating wholly or mainly to taxation.

Article 3. Expropriation and Compensation

1. Investments shall not be expropriated, nationalized or subject directly or indirectly, to measures of similar effects except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article 2 of this Agreement.

2. Compensation should be equivalent to the market value of the expropriatory investment before the expropriator action was taken or became known. Compensation should be paid without delay and be freely transferable as described in para 2 Article 4.

3. Investors of either Party whose investments suffer losses due to a war or any other armed conflict, revolution, state of emergency or rebellion or other similar events in the territory of the other Party shall be accorded by such other Party treatment no less favourable than that accorded to its own investors or to investors of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses.

Article 4. Repatriation and Transfer

1. In accordance with its laws and regulations, each Party shall permit in good faith all transfers related to an investment to be made freely and without unreasonable delay into and out of its territory. Such transfers include:

(a) Returns,

(b) Proceeds from the sale or liquidation of all or any part of an investment.

(c) Compensation pursuant to Article 3,

(d) Reimbursements and interest payments deriving from loans in connection with investments,

(e) Salaries, wages and other remunerations received by the nationals of one Party who have obtained in the territory of the other Party the corresponding work permits relative to an investment,

(f) Payments arising from an investment dispute.

2. Transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency at the rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Party.

Article 5. Subrogation

1. If the investment of an investor of one Party is insured against non-commercial risks under a system established by law, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other

Party.

2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been titled to exercise.
3. Disputes between a Party and an insurer shall be settled in accordance with the provisions of Article 7 of this Agreement.

Article 6. Derogation

This Agreement shall not derogate from:

- (a) Laws and regulations, administrative practices or procedures, or administrative, or adjudicatory decisions of either Party,
- (b) International legal obligations, or
- (c) Obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

That entitle investments or associated activities to treatment more favourable than that accorded by this Agreement in like situation.

Article 7. Disputes between One Party and Investor of the other Party

1. For the purpose of solving disputes concerning the investments between a hosting Party and an investor of the other Party, consultations will be held between the Parties concerned with a view to solving the case, as far as possible, amicably.
2. If these consultations do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:
 - (a) The competent court of the hosting the investments Party.
 - (b) The international Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes Between States and Nationals of other States" (in case both Parties become signatories of this Convention).
 - (c) An adhoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCTRAL).
 - (d) The Court of Arbitration of the Paris International Chamber of Commerce.

Provided that, if the investor concerned has brought the dispute before the courts of justice of the Party that is a party to the dispute and a final award has not been rendered within one year.

3. The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.

Article 8. Disputes between the Parties

1. The Parties shall seek in good with and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Parties can not reach an agreement within twelve months after the beginning of dispute between themselves through the foregoing procedure, the dispute may be submitted, upon the request of either Party, to an arbitral tribunal of three members.
2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman who is a national of a third State. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.
3. This agreement may be amended by written agreement between the Parties. Any amendment shall enter into force whenh each Party has notified the other that it has completed all internal requirements for entry into force of such amendment.
4. If both arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment, the Chairman shall be appointed upon the request of either Party by the President of the International Court

of Justice.

5. If in the cases specified under paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Party, the appointment shall be made by the most senior member of the Court who is not a national of either Party.

6. The tribunal shall have three months from the date of the selection of the Chairman to agree upon rules of procedure consistent with the other provisions of this agreement. In the absence of such agreement, the tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognised rules of International arbitral procedure.

7. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the third arbitrator, and the tribunal shall render its decision within two months after the date of final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes.

7. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Parties.

Article 9. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date on which the exchange of instruments of ratification has been completed. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

3. This agreement may be amended by written agreement between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for entry into force of such amendment.

4. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

In witness thereof the undersigned duly authorized thereto by their respective Governments have signed this Agreement.

Done in duplicate at Baku this ninth day of October 1995 in English and Azerbaijani languages, both texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Islamic Republic Pakistan

For the Government of the Azerbaijan Republic