

Agreement between the Government of the People's Republic of Bangladesh and the Government of the Socialist Republic of Romania on mutual promotion and guarantee of investments of capital

The Government of the People's Republic of Bangladesh and the Government of the Socialist Republic of Romania, hereinafter referred to as "Contracting Parties",

Desiring to develop the relations of economic co-operation existing between the two States,

Preoccupied to create favourable conditions for the investments of capital which shall be made by investors from the People's Republic of Bangladesh in the territory of the Socialist Republic of Romania and by investors from the Socialist Republic of Romania in the territory of the People's Republic of Bangladesh,

Recognizing that the guarantee of the investments of capital, according to the present Agreement, stimulates the initiative in this field and increases the economic prosperity of both States,

Have agreed as follows:

Article 1. Promotion and Guarantee of Investments

(1) Each Contracting Party shall promote in its territory the investments of capital of the investors of the other Contracting Party.

(2) Investments of capital, direct and indirect, admitted according to the legal provisions of the Contracting Party in the territory of which the investments are made, enjoy the protection and guarantees provided for in the present Agreement.

Article 2. Definitions

In the meaning of this Agreement:

(l) "Investment of capital" means any participation, direct or indirect, or the contribution of any kind to an economic enterprise or activity, including all goods and financial means brought by the investors as participation to the investment, as well as any increase of value and in particular, but not exclusively: (a) Shares, parts or any other forms of participation in companies incorporated in the territory of one Contracting Party;

(b) Profits reinvested, claims to money or other rights relating to services having a financial value;

(c) Goods movable and immovable as well as any other real rights as mortgages privileges, guarantees and any other similar rights, as defined in conformity with the law of the Contracting Party in the territory of which the goods in question is situated;

(d) Copyrights, industrial property rights, technological processes, know-how, trade-marks and any other similar rights;

(e) Concessions conferred by law or by virtue of a contract, particularly the concessions related to prospection, extraction and exploitation of natural riches, including those in the sea-areas under the jurisdiction of either of the Contracting Parties.

(2) "Profits" means the amounts yielded by an investment in the form of dividends, earning quotas and other income.

(3) "Investors" means: (a) In respect of the Socialist Republic of Romania, Romanian economic units having legal personality and which, under the law of Romania, are entitled to trade abroad and undertake international economic co-operation activities;

(b) In respect of the People's Republic of Bangladesh, natural and juridical persons and firms and associations incorporated or registered under any law for the time being in force in Bangladesh.

(4) For the application of the present Agreement: (a) The term "direct participations" designates the shares owned by an investor of one Contracting Party/or economic activity situated in the territory of the other Contracting Party;

(b) The term "indirect participations" designates the shares owned by a company having its functional head office in the territory of one Contracting Party, in another company or economic activity also situated in that territory, when the first company is established with participation to capital of an investor of the other Contracting Party.

Article 3. Most Favoured Nation Treatment

(1) Each Contracting Party shall accord, in its territory to the investments of capital and investors of the other Contracting Party, a treatment not less favourable than that which it accords to investments and investors of any third State.

(2) The provisions of the present Agreement, relating to the most favoured nation treatment, shall not be applied to advantages that either of the Contracting Parties accords to the investors of any third State, on the basis of its participation to an economic or customs union, free trade area or regional economic organization.

(3) The provisions of the present Agreement, relating to the grant of most favoured nation treatment shall not be construed so as to oblige one of the Contracting Parties to accord to investors of the other Contracting Party the advantages resulting from an international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(4) Each Contracting Party shall observe any other obligation entered into with regard to investments of capital made in its territory by investors of the other Contracting Party.

Article 4. Expropriation and Compensation

(1) Investments of capital made by investors of one Contracting Party in the territory of the other Contracting Party cannot be expropriated or subjected to other measures having a similar effect, but only when the following conditions are fulfilled:

(a) The measures are not discriminatory;

(b) The measures are adopted in the public interest and through a legal procedure;

(c) There is established a proper procedure to determine the amount and method of payment of compensation. The compensation should correspond to the value of the investment on the date of expropriation, to be effectively realizable, freely transferable and paid without delay.

Upon the request of the interested party, the amount of compensation can be reassessed by a tribunal or other competent body in the country in which the investment has been made. (2) If a dispute between an investor and the Contracting Party in the territory of which the investment has been made, with regard to the amount of compensation, continues to exist after the final decision of the national tribunal or of another competent body in the country in which the investment has been made, either of them is entitled to submit the dispute, for conciliation or arbitration, within two months after the exhaustion of domestic remedies or after the expiry of the term provided on the next paragraph, to the International Centre for the Settlement of Investment Disputes, according to procedure provided for in the Convention opened for signature at Washington on 18 March 1965.

(3) However, the condition relating to the exhaustion of the ways of remedies provided for in the legislation of the Contracting Party in the territory of which the investment has been made, cannot be opposed by this Contracting Party to the investor of the other Contracting Party after a term of six months running from the date of the first act of judicial procedure for the settlement of this dispute by the tribunal.

(4) Investors of one Contracting Party whose investments suffered losses owing to war or other armed conflict, revolution, state of national emergency or revolt in the territory of the other Contracting Party, shall receive from the latter Contracting Party such compensation as may be determined in accordance with the laws of the latter Contracting Party. Such compensation shall be freely transferable.

Article 5. Repatriation of Capital and Profits

(1) Each Contracting Party guarantees to the investors of the other Contracting Party, in respect of the investment, of capital, transfer, subject to its laws and regulations, of:

(a) The invested capital or the proceeds of total or partial liquidation or alienation of the investment;

(b) The profits realized and of other current income resulting from the investment of capital;

(c) The payments made for the reimbursement of the credits for investment and interests due;

(d) The earnings of the citizens who are allowed to work in an investment made in the territory of the other Contracting Party.

(2) Each Contracting Party shall issue, after fulfilment of the legal obligations pertaining to the investors, the necessary licenses in order to ensure the execution without delay of the transfers mentioned in paragraph 1 of the present Article.

Article 6. Subrogation

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory of the other Contracting Party, makes payments to its own investors, it is subrogated in the rights, obligations and actions of said investors. The subrogation in the rights and obligations of the ensured investor extends also to the rights of transfer mentioned in the above Articles 4 and 5. The paying Contracting Party cannot obtain rights or assume obligations greater than those of the ensured investor.

Article 7. Transfers of Currency

(1) Transfers of currency according to Articles 4, 5 and 6 shall be made without delay in the convertible currency in which the investment of capital has been made or in any other freely convertible currency, if so agreed, at the rate of exchange in force at the date of transfer.

(2) "Without delay", in the meaning of the paragraph 1, are the transfers which are made within a period normally required to prepare the formalities of transfer.

Article 8. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties, concerning the interpretation and application of the present Agreement, should, as far as possible, be settled through negotiations between the two Parties.

If such a dispute cannot be settled within a time of six months after the commencement of negotiations, then, upon the request of either Contracting Party, the dispute shall be submitted to an arbitral tribunal. (2) The arbitral tribunal is constituted in the following way; each Contracting Party appoints one arbitrator; the two arbitrators propose, by mutual agreement, to both Parties, a Chairman who should be a citizen of a third State, designated by the two Contracting Parties. The arbitrators are appointed within three months and the Chairman within five months, from the date one of the Contracting Parties informed the other that it intends to submit the dispute to an arbitral tribunal. If the arbitrators are not appointed within the agreed period, the Contracting Party failing to appoint its arbitrator agrees that he would be appointed by the Secretary General of the United Nations. If the two Contracting Parties cannot reach agreement on the appointment of the Chairman, they also agree that he were appointed by the Secretary General of the United Nations.

(3) The arbitral tribunal reaches its decisions on the basis of the provisions of the present Agreement and of other similar agreements concluded by the Contracting Parties as well as on the general principles and rules of the international law. The arbitral tribunal reaches its decisions by a majority of votes and its decision is final and binding. Only the two Contracting Parties can submit suits to the arbitral tribunal and participate in the proceedings.

(4) Each Contracting Party bears the costs of the arbitrator it has appointed and on its representations in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

(5) The arbitral tribunal determines its own procedure,

Article 9. Entry Into Force, Duration and Termination

(1) The present Agreement shall be subject to ratification, according to the constitutional procedures of each country and the instruments of ratification shall be exchanged as soon as possible.

(2) The Agreement comes into force one month after the exchange of the instruments of ratification. This 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 notice of termination to the other.

(3) In respect of investments of capital made until the date of expiry of the validity of the Agreement, the provisions of this

Agreement shall continue in effect for a period of ten years, beginning with the date of its termination.

Signed at ..Dhak.....on..13th..March,1987 in two original copies, each in the Romanian, Bengali and English Languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA

Dated.13th. March.. 1987

Your Excellency,

On the occasion of signing the Agreement between the Government of the Socialist Republic of Romania and the Government of the People's Republic of Bangladesh on the mutual promotion and guarantee of investments of capital, I have the honour to propose to Your Excellency that the investments made by investors of one Contracting Party in the territory of the other Contracting Party during the period between the date of the signature of the above-mentioned Agreement and the date of entry into force thereof be subjected to provisions of the said Agreement.

In case Your Excellency will agree with my proposal the present letter and Your Excellency's reply will form part of aforementioned Agreement,

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Yours Sincerely,

Government of the Socialist Republic of Romania.

His Excellency

Mr.

Government of the People's Republic of Bangladesh.

Dated.13th March 1987'

Your Excellency,

I have the honour to acknowledge the receipt of Your Excellency's letter dated.....19 which reads as under:

"Your excellency,

On the occasion of signing the Agreement between the Government of the Socialist Republic of Romania and the Government of the People's Republic of Bangladesh on the mutual promotion and guarantee of investments of capital, I have the honour to propose to Your Excellency that the investments made by investors of one Contracting Party in the territory of the other Contracting Party during the period between the date of the signature of the abovementioned Agreement and the date of entry into force thereof be subjected to provisions of the said Agreement.

In case Your Excellency will agree with my proposal the present letter and Your Excellency's reply will form part of aforementioned Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration."

Concerning the abovementioned subject I have the honour to inform that the Government of the People's Republic of Bangladesh has agreed that your abovementioned letter and this reply will form part of the abovementioned Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration .

Yours Sincerely,

Government of the People's Republic of Bangladesh.

His Excellency

Mr.

Government of the Socialist Republic of Romania.