

AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN AND THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation between both States, particularly with regard to investments of investors of either Contracting Party in the territory of the other Contracting Party,

Recognizing that the agreement on the treatment of investors contributes to the increased flow of capital and thus contributes to technology and economic development of both Contracting Parties, and

Understanding that the objective of the fair and equitable treatment of the investors is to maintain a stable framework for investment and to maximize the effective utilization of economic resources of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means, in accordance with the national laws and regulations of the host Contracting Party, every kind of asset in particular:

- a. Shares or any kind of participation in companies;
- b. The reinvested returns, claims to any performance having an economic value;
- c. Money or to movable and immovable property as well as rights related thereto, such as mortgages, liens, pledges or usufruct;
- d. Industrial and intellectual property rights, such as copyright, patents, licensing rights, industrial designs, technical processes as well as trademarks and trade names, know-how and goodwill.
- e. Special rights conferred by the law, an agreement or a decision of the competent authority to search for, extract or exploit natural resources in the territory of either Contracting Party.

2. The term "investor" of a Contracting Party refers to the following:

- a. Natural persons possessing the nationality of one of the Contracting Parties in accordance with its laws;
- b. Legal persons of either Contracting Party including companies, corporations or businesses which are established under the national laws of that Contracting Party, and their headquarters and their real economic activities are located in the territory of that Contracting Party.

3. The term "returns" means the amounts yielded by an investment and in particular though not exclusively, includes profits, loans, capital gains, dividends, royalties and fees.

Article 2. Promotion, Protection, Treatment of Investments

1. Each Contracting Party shall promote and create favourable conditions for investors of the other Contracting Party to

invest and shall admit such investments in accordance with its laws and regulations.

2. In accordance with national laws and regulations of Contracting Parties, with regard to entry, residence and employment of aliens.

a. Nationals of either Contracting Party shall be permitted to enter the territory of the other Contracting Party with the objective to establish, develop, administer or advice on investment operations.

b. Companies that have legally been established under the laws and regulations of one Contracting Party to invest in the territory of the other Contracting Party, shall be permitted to employ qualified and experienced staff for technical and managerial ranks of their own choice in conformity with the laws and regulations of the host Contracting Party.

3. Each Contracting Party shall in its territory guarantee the fair and equitable treatment of the investments of the investors of the other Contracting Party. This treatment from either Contracting Party shall not be less favourable than that accorded to the investments of investors of its own, or investments of investors of the Most-Favoured-Nation in its territory.

4. The provisions of this Article do not apply to Contracting Parties' existing and future agreements concerning customs union, regional economic organizations or similar agreements as well as any convention for the avoidance of double taxation.

Article 3. More Favourable Provisions

Notwithstanding the terms set forth in this Agreement, more favourable provisions which have been or may be agreed upon by either Contracting Parties with an investor of the other Contracting Party are applicable.

Article 4. Expropriation and Compensation

1. Investments shall not be confiscated, nationalized or expropriated, or subjected to similar measures by the other Contracting Party, except such measures are taken for a public purpose, in a non-discriminatory manner, and upon payment of prompt, effective and adequate compensation and in accordance with Article 2 of this Agreement.

2. The amount of compensation shall be equivalent to the value of the investment immediately before the act of nationalization, confiscation or expropriation was taken or became public knowledge. Compensation shall be paid without delay and shall be freely transferable in accordance with paragraph 2 of Article 5 of this Agreement.

3. Investors of either Contracting Party whose investments suffer losses due to war, any armed conflict, revolution or similar state of emergency in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of any third State, whichever is more favourable to the investor with regard to restitution and compensation.

Article 5. Repatriation and Transfer of Capital

1. Each Contracting Party shall ensure in good faith the transfers related to investments, to be made freely and without delay into and out of its territory. Such transfers are:

a. Returns;

b. Proceeds from the sale and/or liquidation of all or part of an investment;

c. Royalties and fees related to transfer of technology agreement;

d. Compensation pursuant to Article 4 of this Agreement;

e. Loan installments which are related to an investment and paid out of such investment activities;

f. Monthly salaries, wages and other remuneration received by employees who have obtained the corresponding work permits related to that investment;

g. Payments arising out of investment disputes.

2. The transfers shall promptly be effected in a convertible currency and at the applicable rate of exchange on the date of transfer.

Article 6. Subrogation

1. If the investment of an investor of a Contracting Party is insured by an insurance company of that Contracting Party against non-commercial risks, within the framework of a legal system, any subrogation of the insurer that arises from the terms of the insurance contract shall be recognized by the other Contracting Party.
2. This insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise;
3. Disputes between a Contracting Party and such insurance shall be settled in accordance with Article 10 of this Agreement.

Article 7. Non-derogation

This Agreement shall not derogate from:

- a. Laws and regulations, administrative practices and procedures or administrative or judicial decisions of each Contracting Party;
- b. Obligations under international law; or
- c. Obligations of each Contracting Party, including the obligations contained in an investment agreement or a licensed investment which provide investments or activities of Contracting Parties in similar situations treatment more favourable than those provided under this Agreement.

Article 8. Observance of Commitments

Either Contracting Party shall guarantee the observance of the commitments it has entered into with respect to investments of investors of the other Contracting Party.

Article 9. Scope of the Agreement

This Agreement shall only apply to investments that are approved by the competent authorities of the host Contracting Party. The competent authority in the Islamic Republic of Iran is Organization for Investment, Economic and Technical Assistance. Address is Islamic Republic of Iran, Tehran, 15 Khordad Roundabout.

The competent authority in the Republic of Azerbaijan is the Ministry of Foreign Economic Relations. Address is Republic of Azerbaijan, Baku, Gorbanov Street.

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

1. If any dispute arises between the host Contracting Party and an investor or investors of the other Contracting Party with respect to an investment, the host Contracting Party and the investor(s) shall primarily endeavour to settle the dispute in an amicable manner through negotiation and consultation.
2. In the event that the dispute between the host Contracting Party and the investor(s) cannot be settled within six months from the date of the written application for settlement, each of them may submit the dispute for settlement to the competent courts of the host Contracting Party; or with due regard to its national laws and regulations to an Arbitral Tribunal referred to in paragraph 5 below.
3. Any dispute primarily referred to the competent court of the host Contracting Party, as long as it is pending, cannot be referred to arbitration except with parties' agreement.
4. National courts shall not have jurisdiction over any dispute referred to arbitration. However, the provisions of this paragraph do not bar the winning party to seek the enforcement of the arbitral award before national courts.
5. The host Contracting Party or the investor(s) of the other Contracting Party who desires to refer to arbitration shall appoint an arbitrator through a written notice sent to the other party. The other party shall appoint an arbitrator within sixty days from the date of receipt of the said notice and the appointed arbitrators shall within sixty days from the date of the last appointment, appoint the Chairperson. In the event that either party fails to appoint its arbitrator within the mentioned period and/or the appointed arbitrators fail to agree on the Chairperson, either party may request the Secretary-General of the International Arbitration Tribunal of the International Chamber of Commerce.

Article 11. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall in good faith and in cooperation find a fair and prompt solution to any dispute concerning the interpretation or the application of the Agreement. In this regard, the Contracting Parties shall engage in direct negotiations to achieve a solution. If the Contracting Parties are not able to settle the dispute between them through the foregoing procedure within 12 months from the start of the dispute, the dispute may be referred to a three-member Arbitral Tribunal at the request of either party.
2. Each of the two Contracting Parties shall appoint an arbitrator within two months from the date on which the request for arbitration is received. The arbitrators appointed by the Contracting Parties shall appoint a Chairman who is a national of a third State having diplomatic relations with both Contracting Parties at the time of the appointment. If the necessary appointments of arbitrators have not been made in the period specified, either party may invite the President of the International Court of Justice to make the necessary appointments.
3. If both arbitrators fail to agree on the appointment of a Chairperson within two months from the receipt of the establishment of the second arbitrator, either party may invite the President of the International Court of Justice to make the appointment for the Chairperson.
4. In cases referred to in paragraph 2 and 3, if the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President of the International Court of Justice, and if the Vice-President is also prevented from carrying out the said function or he is a national of either Contracting Party, the appointment shall be made by the senior member of the said court who is not a national of either Contracting Party.
5. The Tribunal shall have three months from the date the Chairperson is chosen to agree on the procedures and in accordance with other provisions of the Agreement. In the event of disagreement, the Tribunal shall request the President of the International Court of Justice to consider the provisions of the International Chamber of Commerce Rules of Arbitration.
6. Unless the Contracting Parties otherwise, within eight months from the date of the selection of the third arbitrator, all submissions and bills shall be completed, and the Tribunal shall take its decision within two months from the date of the last bills or the end date of maturity, whichever is adopted later.
7. The costs of the Chairperson, other arbitrators as well as the costs of arbitration shall be divided equally between the Contracting Parties.
8. If the dispute is referred to another international Tribunal in accordance with Article 10 and the proceedings continue in that court, a dispute shall not be referred to international arbitration in accordance with this Article. This does not prevent direct negotiations between the Contracting Parties.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall be in force from the date the exchange of notifications of ratification is completed. This Agreement shall enter into force for a period of ten years. This Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party pursuant to paragraph 2 of this Article to terminate it. This Agreement shall apply to investments made before and after the Agreement entered into force.
2. Either Contracting Party may terminate this Agreement at the end of the first period of ten years or any moment after that, by giving one year notice the other Contracting Party in writing of its intention.
3. This Agreement may be amended by a written agreement of both Contracting Parties. Any amendment, after informing the other Contracting Party and after completing other internal requirements, will be applicable.
4. After the expiration of the validity or termination of this Agreement its provisions shall apply to investments under this Agreement for a further period of ten years.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Baku on October 28, 1996 corresponding to 7th Aban 1375 in Azeri, Persian and English languages. In case of divergence of interpretation, the English text shall prevail.

(Signature)

For the Government of the Islamic Republic of Iran

(Signature)

For the Government of the Republic of Azerbaijan