AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Kazakhstan and the Government of the Islamic Republic of Pakistan (hereinafter referred to as Contracting Parties).

Desiring to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Taking into account that reciprocal promotion and protection of investment between the two countries, shall encourage development of mutually beneficial trade, economic, scientific and technical cooperation;

Recognizing that promotion and reciprocal protection of investment in accordance with this Agreement shall stimulate entrepreneurial initiative and further to economical growth of states of the Contracting Parties;

Hereby agreed as follows;

Article 1. Definitions

For the purposes of present Agreement:

1. The term "Investor" with respect to each Contracting Party shall mean;

a) a physical person being citizen of either Contracting Party in accordance with its legislation;

b) A legal entity established under the national legislation of the state of one Contracting Party located on its territory and making investments on the territory of the other Contracting Party.

2. The term "Investment" may include any types of property which is owned by the investors of one Contracting Party and are invested on the territory of the other Contracting Party in conformity with national legislation of its state and in particular but not exclusively:

(a) Movable or immovable property and any other related property rights except goods, imported and designated for realization without processing;

(b) Shares, contributions, bonds, securities and other forms of participation in companies, or other legal entities registered in accordance with the national legislation of state of the Contracting Parties;

(c) reinvestment of returns and installments of the main debt and interest In the credit agreements;

(d) rights of pledging for money invested to operate economic values or for services having economic value;

(e) rights to results of intellectual property including copyrights, patents, trade marks, industrial designs, service marks, know-how and goodwill;

(f) rights for economic activity rendered according to the national legislation of state or contracts, including, in particular, the rights for exploration, extraction and processing of natural resources.

Any further changes in the form of investments in which they were made shall not influence their qualification as investment subject to the condition that such change shall not contradict to the national legislation of state of Contracting Parties on the territory of which the investments are made.

3. The term "returns" shall mean the amounts yielded by an investment in monetary or natural form including profits, dividends, interest, and remuneration from management, technical assistance and other amounts yielded in accordance with national legislation of state of the Contracting Parties.

4. The term "territory" shall mean the sovereign territory of the Republic of Kazakhstan or the Islamic Republic of Pakistan respectively in which one of the Contracting Parties exercises rights and jurisdiction according to international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party, in accordance with national legislation of its state shall encourage and create in its territory, favourable conditions for realization of investments by investors of the other Contracting Party.

2. Each Contracting Party guarantees fair and equitable treatment to the investments of the investors of the other Contracting Party, in accordance with its national legislation of its state and shall not infringe through arbitrary or discriminatory measures the management, use, functioning or disposal ol investments.

3. Returns from the reinvestment have the same protection as the initial investments.

Article 3. Legal Regime of Investments

1. Each Contracting Party in its territory shall provide to investments of investors of the other Contracting Party treatment not less favourable than that which it provides to its own investors or investors of third countries.

2. The treatment under this Agreement is not extended on:

(a) The advantages which either Contracting Party accords or may accord to the investors of other countries in connection with participation in custom or economic union, free trade zones;

(b) the advantages which either Contracting Party extends or may extend to the investors of other countries on the basis of Agreements on the avoidance of double taxation or other Agreements on tax matters.

Article 4. Principle of More Favourable Regime

If national legislation of state of Contracting Party contains a provision entitling investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provision shall prevail over this Agreement.

Article 5. Guarantees Against Expropriation

1. Investment of investors of either Contracting Party shall not be expropriated, nationalized, requisitioned or subjected to other measures, which have such consequences as expropriation, nationalization, requisition (further - expropriation) except for cases when such measures are taken for the state purpose, in accordance with the established legislation order in a non-discriminatory manner upon payment of prompt, adequate and effective compensation. The compensation shall be equal to the market value of the expropriated investment at the moment when expropriation became known to the investor.

2. The compensation shall include interest at current rate calculated in accordance with national legislation of stafe of the Contracting Party starting from the date of expropriation until the dale of payment. The compensation shall be paid in the currency, in which investments were made by investor or in any other currency, as agreed with the investor. The compensation shall be effectively realizable and freely transferable without restrictions and unnecessary delay.

3. In case of expropriation the investor affected shall have a right to address in accordance with the legislation of state of the Contracting Party its case to judicial or other bodies of this Contracting Party for the determination of value of its investment in accordance with the provisions set out in this Article.

4. When a Contracting Party expropriates the assets of a company which is registered or constituted in accordance with the legislation of state in force in territory of Contracting Party and in which investors of the other Contracting Party own shares, it shall ensure the application of provisions of this Article to the extent necessary to provide prompt, adequate and effective compensation in respect of the investments of investors of the other Contracting Party who are owners of shares.

Article 6. Compensation for Damages

Investors of one Contracting Party, whose investments was damnified on the territory of the other Contracting Party as a result of war or any other armed conflict, revolution, a state of national emergency or civil disturbance shall be offered a treatment that is no less favourable than is accorded to its own investors or investors of the third countries in regard to restitution, indemnification, compensation or other settlement.

Article 7. Transfers of Payments Connected with the Investments

1. The Contracting Parties guarantee that all transfers of funds connected with the investments are made freely and without any restriction or unnecessary delay in conformity with the procedures established under the legislation of the Contracting Party, which can be stipulated with:

(a) registration rules of such transfers taking into account that the right of free transfer shall not he violated;

(b) taxes, fees and deductions from the transferred amount;

(c) protection of creditors legal rights or guarantee of fulfilment of the decisions pronounced in the course of trials.

The procedure mentioned in the present Article shall be fair and non discriminatory.

2. In the present Agreement transfers include, in particular, but not exclusively:

(a) initially invested capital and any additional amounts for maintenance and expansion of the investment;

(b) profits, interest, dividends royalties or fees and other current incomes;

(c) compensation in accordance with Articles 5 and 6 of this Agreement;

(d) payments, ensuing on the settlement of investment disputes;

(e) payments in accordance with the credit contracts;

(f) proceeds from sales or liquidation of part or of all investment on condition that proceeds can be freely transferred;

(g) wages or other payments received by citizens of one Contracting Party for work and services performed in connection with investment on the territory of the other Contracting Party in currency and order provided in the national legislation of its state;.

(h) amounts needed for covering expenses accrued from investment as repayments of loans including interest thereon or payments in connection with intellectual property rights.

3. The transfer of payments indicated in paragraph 2 of this Article, shall be made without delay in a freely convertible currency at the official rate, on the date of transfer, of the Contracting Party in the territory of which the investments are made.

4. In accordance with the national legislation of state of the Contracting Party, all transfers which are object of this Article, shall be accorded treatment not less favourable than that accorded to investors of third countries.

Article 8. Subrogation

1. If a Contracting Party or any of its authorized institution makes payment to any of the investors of its country in the form of guarantee or insurance in connection with the investment, the other Contracting Party shall consider it to be transfer of rights and commitments to the other Contracting Party and its institution of any rights and requirements, related to the investor, which obtain right of investment will have the same rights as an investor.

2. In case of subrogation stipulated in paragraph 1 of this article the investor cannot make any claim if he has not been authorized by the Contracting Party or any of its authorized institution.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute, between a Contracting Party and an investor of the other Contracting Party, arising in connection with investment, including disputes over measures, conditions or procedures of compensation, payments, shall be settled as far as possible through negotiations.

2. In case a dispute is not resolved in accordance with paragraph 1 of this article within six months from the time of its origin, the investor may submit the dispute to:

(a) arbitration or competent court of the Contracting Party, hosting the investment or,

(b) one of the internationally recognized centers of arbitration as mutually agreed by the parties, or

(c) an ad hoc arbitration tribunal established in accordance with the Arbitration Rules of Procedure of the United Nations Commission on International Trade Law (UNCITRAL).

3. The Arbitration tribunal will be established for every individual case. If the Parties to the dispute, have no other agreement, each of them will appoint one arbitrator. The two appointed arbitrators shall elect the Chairman, who will be a citizen of a third State. Arbitrators shall ire appointed within two months after the demand to submit a dispute to the arbitration tribunal is received and the Chairman in the course of the next (two months.

4. If the above terms and procedures are not observed, any of the parties to the dispute when, no other arrangements has been made, can apply to the Chairman of the Arbitration Court at the International Chamber of Commerce in Paris with the request to make necessary appointments.

5. If the Parties to the dispute have no other agreement, the Arbitration Tribunal shall establish its own rules of procedure.

6. Decisions of the arbitration tribunal shall be final and binding. Each of the Contracting Parties shall ensure recognition and enforcement of the awards of the Arbitration Tribunal in accordance with national legislation of its state.

7. During the arbitration procedure or the enforcement of award a Contracting Party involved in a dispute cannot refer, to the fact that compensation for losses (full or part) has been received by the investor according to the insurance contract.

Article 10. Settlement of Dispute between the Contracting Parties

1. At the request of either Contracting Party consultations concerning the issues of the interpretation or application of the present Agreement can be conducted.

2. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through negotiations.

3. If a dispute between the Contracting Parties cannot be settled in accordance with paragraph 1 of this article within six months from the dale when one Contracting Party notified another Contracting Party, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

4. Such an arbitral tribunal shall be established 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 arbitrator of the arbitral tribunal. Those two arbitrators shall then select a citizen of a third Slate who on approval by the two Contracting Parties shall be appointed as Chairman of the arbitral tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two arbitrators.

5. If within the terms specified in paragraph (4) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, can invite the President of the International Court of Justice to make necessary appointments. If the President is a citizen of one of the Contracting Parties or due to other reasons cannot comply the said function, in this case the necessary appointments shall be made by the Vice-President. If the Vice-President is a citizen of either Contracting Party or if he too cannot comply the said function then 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.

6. The arbitral tribunal shall make decisions on the basis of the provisions of this Agreement as well as principles and norms of international law. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding on both the Contracting Parties. The arbitral tribunal independently shall determine its own procedure.

7. Each Contracting Party shall bear the cost connected with activity oi arbitrator appointed by it and of its representation in the arbitral proceedings. The costs connected with activity of the Chairman and the remaining costs shall be borne by the Contracting Parties in equal parts. However, the arbitral tribunal may in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties, and this award shall be binding on both Contracting Parties.

Article 11. Final Provisions

This Agreement shall he applicable lo investments made after its entry into force.

With the mutual consent of the Contracting Parties this Agreement may be amended and additions through separate protocols can be made, which will form integral part of this Agreement.

This Agreement shall enter into force from the date of last written notification through the diplomatic channels about the fulfillment by the Contracting Parties of the domestic procedures, which is necessary for its entry into force.

This Agreement is valid for a period of ten years. After expiry of period of ten-years it may be extended for indefinite period with mutual consent of the Contracting Parties. Either Contracting Party may terminate this Agreement at any time, after the expiry of period of ten-years, by giving a written notice of termination to other Contracting Party about its intention to terminate the same.

The present Agreement shall stand terminated after six months from date of such written notice of respective Contracting Party.

In respect of investments made whilst the Agreement was in force, its provisions shall continue to apply for a period of five years after the date of termination.

Done at Islamabad on this 8th day of December, 2003 in two originals, each in Kazakh and English languages, both texts being equally authentic.

In case of divergences in interpretation, of the language of texts, between the Contracting parties, the English version shall prevail.

For the Government of the Republic of Kazakhstan

Adilhek Dzhaksybekov

Minister for Industry and Trade

For the Government of the Islamic Republic of Pakistan

Dr. Abdul Hafeez Shaikh

Minister for Investment and Privatization