

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Kingdom of Thailand and the Government of the People's Republic of Bangladesh, hereinafter referred to as the Contracting Parties:

Desiring to create favourable conditions for greater economic cooperation between them and in particular, for the investment by investors of one State in the territory of the other State;

Recognizing that the encouragement of such investment and the reciprocal protection of investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "freely convertible currency" means any currency that is widely used to make payments for international transactions and is widely traded in the principal exchange markets.
2. The term "investor" refers to the following persons who invest in the territory of the other Contracting Party within the framework of this Agreement: a) Natural persons who, according to the laws of either Contracting Party, are considered to be its national;
b) Legal persons of either Contracting Party which are established under the laws of that Contracting Party and their headquarters or their real economic activities are located in the territory of that Contracting Party.
3. The term "investment" shall mean every kind of asset, including, in particular but not exclusively: a) Movable and immovable property and any other property rights such as mortgages, leases or pledges;
b) Shares, stocks and debentures of companies wherever incorporated or interests in the property of such companies;
c) Claims to money or to any performance under contract in relation to an investment having a financial value;
d) Intellectual property rights and goodwill;
e) Business concessions conferred by law or under contract.

Any alteration of the form in which assets are invested shall not affect their character as an investment.

4. The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, shall include profit, interest, capital gains, dividends, royalties or fees.

5. The term "territory" shall mean with respect to each Contracting Party, the territory of that Contracting Party including the territorial sea, as well as the continental shelf and the exclusive economic zone over which that Contracting Party exercises sovereign rights or jurisdiction in conformity with international law.

Article 2. Admission, Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investments of the investors of

the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall at all time be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in anyway impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

3. The Agreement shall apply only to investments that have been specifically approved in writing by the competent authority, if so required by the laws and regulations of that Contracting Party.

4. When an investment is admitted, each Contracting Party shall, in accordance with its laws and regulations, grant all necessary permits for the realization of such an investment.

Article 3. Treatment of Investments

1. Each Contracting party shall in its territory accord to investments or returns of investors of the other Contracting Party, treatment not less favourable than that which it accords to investments or returns of investors of any third State whichever is more favourable to the investor concerned.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investment treatment not less favourable than that which it accords to its own investors or investors of any third State whichever is more favourable to the investor concerned.

3. The treatment of the most favoured nation according to this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) Any existing or future agreed free trade area, customs union, common market, economic union or any similar international agreement on economic integration to which either Contracting Party is or may become a party;

b) Any international agreement, international arrangement or domestic legislation regarding taxation.

Article 4. Expropriation and Compensation

1. A Contracting Party shall not expropriate or nationalize directly or indirectly an investment or an investor of the other Contracting Party or take any measures having equivalent effect hereinafter referred to as "expropriation" except:

a) For a purpose which is in the public interest;

b) On a non-discriminatory basis;

c) In accordance with due process of law; and

d) Accompanied by payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the market value of the expropriated investment immediately before the impending expropriation becomes public knowledge. The compensation shall be made without undue delay and shall be effectively realizable and freely transferable.

Article 5. Compensation for Losses

Investors of one 'Contracting Party' whose investment in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt or civil disturbance in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 6. Transfers

1. Each Contracting Party shall, subject to its laws and regulations, concerning the fiscal obligations of the investments guarantee the investors of the other Contracting Party the free transfer of their investments and returns held in the Contracting Party first mentioned, including:

- a) Profits, dividends, interests and other legitimate income;
 - b) Amounts from total or partial liquidation of investments;
 - c) Payment made pursuant to a loan agreement in connection with investment;
 - d) Royalties in respect of investment;
 - e) Amounts assigned to cover expenses relating to technical assistance or technical service and management of the investments;
 - f) Amounts in connection with projects on contract undertaken for the investments;
 - g) Earnings of nationals of the other Contracting Party who work in connection with an investment;
 - h) Compensation payable in accordance with Articles 4 and 5
2. The transfers mentioned above shall be made without undue delay in a freely convertible currency at the market rate of exchange on the date of transfer.

Article 7. Subrogation

1. If either Contracting Party or an agency designated by it makes payment to an investor under a policy of insurance covering non-commercial risks, which it has given in respect of any investment or any part thereof in the territory 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 such an investor 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 claim of such an investor.
2. The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.
3. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph 1 of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditures in the territory of the latter Contracting Party.

Article 8. Consultation

1. The representatives of the two Contracting Parties shall hold meeting from time to time for the purpose of:
- a) Reviewing the implementation of this Agreement;
 - b) Exchanging legal information and investment opportunities;
 - c) Resolving dispute arising out of investments;
 - d) Forwarding proposals on promotion of investment;
 - e) Studying other issues in connection with investments.
2. Where either Contracting Party requests consultation on any matters of paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternatively in Bangkok and Dhaka

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

1. All kinds of disputes or differences, including disputes over the amount of compensation for expropriation or similar measures, between a Contracting Party and an investor of the other Contracting Party concerning an investment or return of investment of that investor in the territory of the Contracting Party first mentioned shall be settled amicably through negotiations.

2. If such disputes or differences cannot be settled according to the provisions of paragraph 1 of this Article within six months from the date of request for settlement, the investor concerned may submit the dispute to:

- a) The competent court of the Contracting Party in whose territory in the investment was made for decisions; or
- b) The International Center for the Settlement of Investments Disputes established under the Convention on the Settlement of Investment Disputes between State and National of other States, of March 18, 1965 done in Washington D.C. in case both Contracting Parties are parties to the convention; or
- c) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The arbitral tribunal established under this Article shall reach its decision on the basis of national laws and regulations of the Contracting Party, which is a party to the dispute, the provisions of the present Agreement, as well as applicable rules of international law.

4. All arbitral awards shall be final and binding on the parties to the dispute and shall be enforced in accordance with the laws of the Contracting Party to the dispute.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this agreement shall, if possible, be settled through consultation or negotiation.

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

3. Such an arbitral tribunal shall be constituted for each individual case as follows:

- a) Each Contracting Party shall appoint one member and those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal.
- b) The said members shall be appointed within three months and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

4. If, within the period specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the 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.

5.

- a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties.
- b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the costs of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.
- c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

Article 11. Entry Into Force, Duration and Termination

This Agreement shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. The Agreement shall come into force thirty days after the exchange of instruments of ratification and shall remain in force for an initial period of ten years. It shall thereafter continue in force indefinitely, subject to the right of either Contracting Party to terminate it by twelve months prior notice in writing to the other Contracting Party, which notice may be given at any time after the expiry of the ninth year. However, with respect to an investment approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of termination, or for any such

longer period as may be specified at the time of the approval of the investment, without prejudice to the application of the rules of general international law after the termination of the Agreement of the expiry of such longer period, as the case may be.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed the Agreement.

DONE in duplicate at Dhaka this 9th day of July 2002 in the English language.

For the Government of the People's Republic of Bangladesh

M.K. Anwar, Minister for Industries

For the Government of the Kingdom of Thailand

Dr. Surakiart Satbirathai, Minister of Foreign Affairs