

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

The Government of the Islamic Republic of Pakistan and the Government of the Republic of Tajikistan hereafter referred to as "Contracting Parties",

DESIRING to establish favorable conditions to enhance economic co-operation between the two Countries, and especially in relation to capital investments by investors of one Contracting Party in the territory of the other Contracting Party, and

ACKNOWLEDGING that the mutual encouragement and protection of such investments on the basis of international Agreements will contribute to stimulate economic relations which will foster the prosperity of both Contracting Parties;

HAVE agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term "activities connected with an investment" shall include, inter alia, the organization, control, operation, maintenance and disposal of companies, branches, agencies, offices or other organizations for the conduct of business; the access to the financial markets; the borrowing of funds; the purchase, sale and issue of shares and other securities and the purchase of foreign exchange for imports necessary for the conduct of business affairs; the marketing of goods and services; the procurement, sale and transport of raw and processed materials, energy, fuels and production means and the dissemination of commercial information, in accordance with the relevant laws of the respective Contracting Party.
2. The expression 'denial of justice' insofar as it relates to the decisions of the national courts of the Contracting Parties means gross unfairness arising out of a palpable, flagrant and inexcusable violation of law caused by bad faith and not judicial error.
3. The expression of 'fair and equitable treatment' means the obligation under customary international law not to deny justice in criminal, civil or administrative adjudicatory proceedings".
4. The term "investment" shall mean any kind of asset, connected with business, invested after the entry into force of this Agreement, by an investor of a Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of that Party.

Without limiting the generality of the foregoing, the term "investment" shall include in particular, but not exclusively:

- a) movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;
- b) shares, debentures, equity holdings and any other instruments of credit, as well as Government and public securities in general;
- c) claims to money connected with an investment as well as reinvested incomes and capital gains having an economic value as integral part of an investment,
- d) copyrights, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;
- e) any economic right accruing by law and any license and franchise granted in respect of the rights to prospect for, extract and exploit natural resources;
- f) any increase in value of the original investment;

Any alteration in the legal form chosen for an investment shall not affect its classification as an investment.

Provided that nothing contained in this Agreement shall be deemed to mean that any property, shares, debentures, equity holdings, instruments of credit, securities, claims to money, capital gains having an economic value, intellectual and industrial property rights, any economic right accruing by law, any license or franchise and any increase in the value of the original investment; acquired, purchased, accrued or secured from, in connection with, arising out of or under a contract for services or a construction contract constitutes, falls within the definition of or is included in the meaning of the term "investment".

5. The term "investor" shall mean any natural or legal person of a Contracting Party making an investment in the territory of the other Contracting Party as well as any foreign subsidiaries, affiliates and branches controlled in any way by the above natural and legal persons.

6. The term "investment agreement" shall mean an agreement executed between a Contracting Party and an investor of the other Contracting Party or an agreement executed between the investor of one Contracting Party with a natural or legal person of the other Contracting Party in order to regulate the specific relationship concerning the investment.

7. The term "income" shall mean the money accrued or accruing to an investment, including in particular profits or interests, dividends and royalties, as well as any considerations in kind.

8. The term "legal person", with reference to either Contracting Party, shall mean any entity having its head office in the territory of one of the Contracting Parties and recognized by it, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

9. The term "natural person", with reference to either Contracting Party, shall mean any natural person having the nationality of that Party in accordance with its laws.

10. The term "right of access" shall mean the right to be admitted to invest in the territory of the other Contracting Party, without prejudice to the limitations stemming from international agreements which are binding on either Contracting Party.

11. The term "territory" shall mean in addition to the zones ' comprised within land borders also the "maritime zones". The latter shall include also marine and submarine zones over which the Contracting Parties exercise sovereignty and sovereign or jurisdictional rights under international law.

Article II. Promotion and Protection of Investments

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory.

2. Investors of either Contracting Parties shall have the right of access to investment activities in the territory of the other Contracting Party, which shall be not less favorable than that under paragraph 1 of Article III.

3. Both Contracting Parties shall accord fair and equitable treatment to investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or disposal of the investments effected in their territory by investors of the other Contracting Party, as well as by companies and enterprises in which these investments have been effected, shall in no way be the object of discriminatory measures.

4. Each Contracting Party shall create and maintain in its territory a legal framework capable of guaranteeing to investors the continuity of legal treatment, including compliance in good faith to all undertakings entered into with regard to each individual investor, in accordance with customary international law.

5. Neither Contracting Party shall set any conditions, with respect to the investment agreement, for the establishment, expansion or continuation of investments which might imply taking over or imposing any obligations on export production and specifying that goods must be procured locally or other similar conditions. However each Contracting Party shall reserve the right to determine economic fields and areas of activity where activities of foreign investors shall be excluded or restricted.

6. In accordance with its laws and regulations, each Contracting Party shall grant to nationals of the other Contracting Party, who are in its territory in connection with an investment under this Agreement, adequate working conditions for carrying out their professional activities. Each Contracting Party shall regulate as favorably as possible the problems connected with the entry, stay, work and movement in its territory of the above nationals of the other Contracting Party - and members of their families. The citizens of another country who are officers and employees of a company constituted under the laws and regulations of one Contracting Party and which are owned or controlled by investors of the other Contracting Party shall enjoy the same rights and benefits as the citizens of the country of the investor, regardless of nationality, in accordance with

the laws of the host Contracting Party.

Article III. Principle of More Favourable Regime

1. Both Contracting Parties, within their own territory, shall not discriminate against the investments effected by, and income accruing to, investors of the other Contracting Party as compared to investments effected by, and income accruing to, its own nationals. The same treatment will be granted to the activities connected with an investment.

2. If the legislation of either Contracting Party in addition to this Agreement contains a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

The provisions under paragraphs 1 and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to investors of Third States by virtue of their membership to a Customs or Economic Union, a Common Market, to a Free Trade Area, to a regional or sub-regional Agreements, to an international multilateral economic Agreement or under Agreements to avoid double taxation or to facilitate cross border trade.

Provided that nothing contained in this Article or in Paragraph 2 of Article I of any other 'provision of this Agreement shall be deemed to make an umbrella clause or clauses relating to the settlement of disputes in any other agreement or bilateral or multilateral treaty applicable to the settlement of disputes under this Agreement.

Article IV. Compensation for Damages or Losses

Should investors of either Contracting Parties incur losses or damages in their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the "Contracting Party in whose territory the investment has been" effected shall offer adequate compensation in respect of such losses or damages, in accordance with customary international law.

The investors concerned shall receive in this regard fair and equitable treatment.

Article V. Nationalization and Expropriation

1. Investments covered by this Agreement shall not be subjected to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, unless specifically provided for by current, national or local law and regulations and in accordance with orders issued by Courts or Tribunals having jurisdictions.

2. Investments and the activities connected with an investment of investors of one of the Contracting Parties shall not be, de jure or de facto, directly or indirectly, nationalized, expropriated, requisitioned or subjected to any measure having an equivalent effect, including measures adversely affecting the assets controlled by an investor in the territory of the other Contracting Party, except for a public purpose or in the national interest and in exchange for immediate, full and effective compensation, and on the condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3. The just compensation shall be equivalent to the fair market value of the expropriated investment immediately prior to the moment at which the decision to nationalize or expropriate was announced or made public. Whenever there are difficulties in ascertaining the fair market value, it shall be determined according to the internationally acknowledged evaluation standards. Compensation shall be calculated in a convertible currency at the applicable exchange rate on the date on which the decision to nationalize or expropriate was announced or made public and shall include interests calculated on the basis of EURIBOR standards from the date fixed for such payment by the Contracting Party to the date of payment and shall be freely collectable and transferable.

4. In case the object of the expropriation is a joint-venture constituted in the territory of either Contracting Party, the compensation to be paid to the investor of a Contracting Party shall be calculated taking into account the value of the share of such investor in the joint-venture, in accordance with its relevant documents and adopting the same evaluations criteria referred to in paragraph 3 of this Article.

5. If, after the expropriation, the expropriated investment does not, serve the anticipated purpose, wholly or partially, the former owner or its assignees shall be entitled to repurchase it subject to willingness of the host country. The price of such expropriated investment shall be calculated with reference to the date on which the repurchasing takes place, adopting the same evaluation criteria taken into account when calculating the compensation referred to in paragraph 3 of this Article.

Article VI. Repatriation of Capital, Profits and Income

1. Each Contracting Party shall ensure that all payments relating to investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without undue delay after the fiscal obligations have been met. Such transfers shall include, in particular, but not exclusively:

- a) capital and additional capital, including reinvested income, used to maintain and increase investment;
- b) the net income, dividends, royalties, payments for assistance and technical services, interests and other profits;
- c) income deriving from the total or partial sale or the total or partial liquidation of an investment;
- d) funds to repay loans connected to an investment and the payment of relevant interests;
- e) remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner provided for by national legislation and regulations in force;
- f) compensation payments under Article IV.

2. The fiscal obligations under paragraph 1 above are deemed to be complied with when the investor has fulfilled the procedures provided for by the legislation of the Contracting Party in whose territory the investment has taken place.

3. Without restricting the scope of Article TIT of this Agreement, 'both Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, fair and equitable treatment.

4. In the event that, due to very serious balance of payments problems, one of Contracting Party were to temporarily restrict transfer of funds, these restriction shall be applied to the investments related to this Agreement, only if the Contracting Party implements the relevant recommendations adopted by the - International Monetary Fund in the specific case. These restrictions shall be adopted on an equitable and non- discriminatory basis and in good faith.

Article VII. Subrogation

In the event that one Contracting Party or an Institution thereof has provided a guarantee in respect of non-commercial risks for the investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to said investor on the basis of that guarantee, the other Contracting Party shall recognize the assignment of the rights of the investor to the former Contracting Party. In relation to the transfer of payment to the Contracting Party or its Institution by virtue of this assignment, the provisions of Articles IV, V and VI of this Agreement shall apply.

Article VIII. Transfer Procedures

The transfers referred to in Articles IV, V, VI and VII shall be effected without undue delay and, in any case, in not more than 3 months. All transfers shall be made in a freely convertible currency at the applicable exchange rate on the date on which

the investor applied for the relevant transfer, with the exception of the provision under paragraph 3 of Article V concerning the exchange rate applicable in case of nationalization or expropriation.

Article IX. Settlement of Disputes between the Contracting Parties

1. Any dispute, which may arise between the Contracting Parties, relating to the interpretation and application of this Agreement shall, as far as possible, be settled through consultation and negotiation.

2. In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies the other Contracting Party in writing, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided for in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The President shall be appointed with the mutual consent of the Contracting Parties within three months from the date on which the other two members are appointed.

4. If, within the period specified in paragraph 3 of this Article, the appointment has not been made, each of the two

Contracting Parties can, in default of other arrangements, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or if, for any reason, it is impossible for him to make the appointment, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties or, for any reason, is unable to make the appointment the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decision shall be binding. Both Contracting Parties shall pay the cost of their own arbitration and of their representatives at the hearings. The President's fees and any other cost shall be divided equally between the Contracting Parties. The Arbitration Tribunal shall lay down its own procedure.

Article X. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and the investor of the other Contracting Party including disputes relating to the amount of compensation, shall as far as possible be settled through mutual consultations and negotiation.

2. In the event that such dispute cannot be settled as provided for in paragraph 1 of this Article then the investor in question may submit the dispute for settlement to:

a) the Contracting Party Court having territorial jurisdiction,

b) an ad hoc Arbitration Tribunal, in compliance with the arbitration regulations of the UN Commission on International Trade Law (UNCITRAL); and the host Contracting Party undertakes hereby to accept reference to such arbitration;

3. Under paragraph (2) sub-para (b), of this Article, arbitration shall be conducted pursuant to the following provisions:

the Arbitration Tribunal shall be composed of three arbitrators; who will not be nationals of either Contracting Party, but they shall be nationals of States having diplomatic relations with both Contracting Parties, the Contracting Parties will appoint one arbitrator each and the President of the Arbitration Tribunal will be appointed by the Chairman of the London Court of International Arbitration in his capacity as Appointing Authority. The arbitration will take place in London, unless the parties agree otherwise. When delivering its decision, the Arbitration Tribunal shall apply the provisions contained in this Agreement, as well as the principles of international law recognized by the two Contracting Parties. The arbitration decision in the territory of the Contracting Parties shall be implemented in compliance with their respective national legislation and the relevant international conventions they are parties to. The language of the arbitration shall be English and the applicable law will be the law of the Contracting Party which is a party to the dispute.

4. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedure underway until these procedures have been concluded, and if one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the international or domestic law provision which can be applied to the case

5. That notwithstanding anything contained in this Article or in any other provision of this Agreement where the investment agreement contains a dispute resolution mechanism the investor cannot invoke the settlement of disputes mechanisms provided under this Agreement unless the contractual remedies have been exhausted and the result has been a denial of justice.

Article XI. Application of other Provisions

1. After the date when the investment has been made, any substantial modification in the legislation of the Contracting Party with respect to the investment shall not be applied retroactively and the investments made under this Agreement shall be protected.

2. The provisions of this Agreement shall not, however, limit the application if the national provisions aimed at preventing fiscal evasion and elusion. To this purpose the competent authorities of each Contracting Party commit themselves to provide any useful information upon request by the other Contracting Party.

3. This Agreement may be amended with mutual consent and additions through separate protocols, which will form an integral part of this Agreement.

Article XII. Entry Into Force

This Agreement shall enter into force on the date of the receipt of the last of the two notifications by which the two Contracting Parties shall officially have communicated to each other that their respective ratification procedures have been completed.

Article XIII. Duration and Expiry

1. This Agreement shall remain in force for an indefinite period.
2. In case either of the parties intends to terminate it, it will be bound to serve a six months advance notice to this effect to the other party.
3. In case of investments effected prior to the termination of the Agreement, as provided for under paragraph 2 of this Article, the provisions of Articles 1 to XI shall remain effective for a further period of ten years.

In witness thereof the undersigned Representatives duly authorized by their respective Governments, have signed the present Agreement.

DONE at Islamabad on 13th May, 2004 in two originals each in the Tajik and English languages, both texts been equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the Islamic Republic of Pakistan

For the Government of the Republic of of Tajikistan