AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH FOR THE PROMOTION OF THE INVESTMENT OF CAPITAL AND FOR THE 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 of capital by nationals and companies of one State in the territory of the other State;

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

Have, subject to prevailing laws and regulations of the countries of the respective Contracting Parties, agreed as follows:

Article 1.

For the purposes of this Agreement:

(1) The term "national" shall mean:

(a) In relation to the People's Republic of Bangladesh, any person who possesses Bangladeshi nationality under the law in force in Bangladesh;

(b) In relation to the Kingdom of Thailand, any person who possesses Thai nationality under the law in force in the Kingdom of Thailand;

(2) The term "companies" shall mean:

(a) In relation to People's Republic of Bangladesh, any partnership constituted under the Partnership Act, 1932, and any company formed and registered under the Companies Act, 1933, either private or public, irrespective of whether the liability of its members is limited by shares or by guarantee or is unlimited, having its seat in the territory of the People's Republic of Bangladesh and lawfully existing consistent with legal provisions and whether or not its activities are directed at profit;

(b) In relation to the Kingdom of Thailand, juridical persons incorporated or constituted under the law in force in the Kingdom of Thailand whether or not with limited liability and whether or not for pecuniary profit;

(3) The term "investments" 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, liens or pledges;

(b) Shares, stock 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;

(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:

(a) In respect of the People's Republic of Bangladesh, the territory in which the Constitution of the People's Republic of Bangladesh is in force, as well as any area of sea or sea-bed outside the territorial sea of Bangladesh in which Bangladesh has sovereign rights in accordance with inter-ministerial law and laws of Bangladesh;

(b) In relation to the Kingdom of Thailand, the territory over which Thailand has sovereignty or jurisdiction.

Article 2.

(1) The benefits of this Agreement shall apply only in cases where the investment of capital by the nationals and companies of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authority of the latter Contracting Party.

(2) Nationals and companies of either Contracting Party shall be free to apply for such approval in respect of any investment of capital whether made before or after the entry into force of this Agreement.

(3) When granting approval in respect of any investment the approving Contracting Party shall be free to lay down appropriate conditions.

Article 3.

(1) Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate the investment of capital in its territory by the nationals and companies of the other Contracting Party.

(2) Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party shall enjoy protection and security under the laws of the latter Contracting Party.

Article 4.

(1)

(a) Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the nationals and companies of the latter Contracting Party or of any third State.

(b) Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to its own nationals and companies or to the nationals and companies of any third State.

(2) Each Contracting Party shall observe any obligation, additional to those specified in this Agreement, into which it may have entered with regard to investments of nationals or companies of the other Contracting Party.

Article 5.

(1)

(a) In any case where investments of a national or company of one Contracting Party are subjected, directly or indirectly, to any measure of expropriation, the national or company concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment in relation to any such measure. No such measure shall be taken except for public purposes and against payment of compensation. Such compensation shall be adequate, shall be effectively realisable, shall be made without delay and shall, subject to the provisions of paragraph (2) of Article 6, be freely transferable.

(b) The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.

(2) Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which a national or company of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation as specified therein to such national or company of the other Contracting Party who is the owner of those shares.

(3) Where investments of a national or company of one Contracting Party in the territory of the other Contracting Party

suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the national or company concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than would be accorded in the same circumstances to a national or company of the other Contracting Party or to a national or company of any third State.

(4) Without prejudice to the foregoing provisions of this Article, the nationals and companies of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that accorded to the nationals and companies of the latter Contracting Party or of any third State.

Article 6.

(1) Each Contracting Party shall guarantee to the nationals and companies of the other Contracing Party the free transfer of the capital of, and the returns from, their investments, subject to its right to exercise equitably and in good faith powers conferred by its laws and consistent with its rights and obligations as a member of the International Monetary Fund.

(2) In cases where large amounts of compensation have been paid in pursuance of Article 5 the Contracting Party concerned may require the transfer thereof to be effected in reasonable instalments.

Article 7.

(1) If either Contracting Party or an agency designated by it makes payment to a national or company under a policy of insurance covering non-commercial risks, which it has given in respect of any investment of capital 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 a national or company 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 claims of such a national or company.

(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 expenditure in the territory of the latter Contracting Party. The transfer outside the territory of the amounts and credits shall be subject to the provisions of paragraph (2) of Article 6.

Article 8.

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or

(b) The adoption of an agreement designed to lead to the formation or extension of such a union or area whthin a reasonable length of time; or

(c) Any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework' of specific projects; or

(d) The grant to a particular person or company the status of a "promoted person" under the laws of Thailand on the promotion of investment; or

(e) Any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

Article 9.

(1) All the provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of any third State shall be interpreted as meaning that such treatment shall be accorded immediately and unconditionally.

(2) Wherever this Agreement makes alternative provision for the grant of national treatment or of treatment not less favourable than that accorded to the nationals or companies of any third State in respect of any matter, the option as between these alternatives shall rest with the Contracting Party beneficiary in each particular case.

Article 10.

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreememt 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 these 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-Persident 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 cost 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.

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 of capital 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 or the expiry of such longer period, as the case may be.

In withness whereof, the undersigned, duly authorised thereto by their respective Governments, have signed the Agreement.

Done in duplicate at Bangkok, this thirtieth day of March, in the nineteen hundred and eighty-eighth year of Christian era, in

the Thai, Bangla, and English languages, all texts being equally authentic. In the event of any inconsistency, the English text shall prevail.

For the Government of the Kingdom of Thailand

(Siddhi Savetsila) Minister of Foreign Affairs

For thh Government of the People's Republic of Bangladesh

(Humayun Rasheed Choudhury) Minister of Foreign Affairs