AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE

PEOPLE'S REPUBLIC OF BANGLADESH

FOR

THE PROMOTION AND PROTECTION

OF INVESTMENTS

The Government of Republic of India and the Government of the People's Republic of Bangladesh (hereinafter referred to as the "Contracting Parties;)

Desiring to create conditions favourable for fostering greater investment by investors of one State in the territory of the other State;

Recognizing that the encouragement and reciprocal protection under international agreement of such investment 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:

(a) "Companies" means:

(i) In respect of India: Corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;

(ii) In respect of Bangladesh: Corporations, Firms and associations incorporated or constituted or established by or under the law in force in any part of Bangladesh;

(b) "investment" mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made or acquisition by such investor of any asset so invested, including changes in the form of such investment and, in particular, though not exclusively, includes:

(i) movable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other similar forms of participation in a company;

(iii) rights to money or to any performance under contract having a financial value;

(iv) intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;

(v) business concession conferred by law or under contract, including concessions to search for and extract oil and other minerals

(c) "investor" means any national or company of a Contracting Party;

(d) "nationals" means:

(i) In respect of the Republic of India: persons deriving their status as Indian nationals from the laws in force in India;

(ii) In respect of Bangladesh: persons deriving their status as Bangladeshi nationals from the laws in force in Bangladesh;

(e) "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

(f) "territory" means:

(i) in respect of the Republic of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations convention on the Law of the Sea and International Law;

(ii) in respect of Bangladesh: the territory of the People's Republic of Bangladesh including its territorial waters and air space above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the People's Republic of Bangladesh has sovereignty rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

ARTICLE 2

Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party accepted as such in accordance with its laws and regulations after coming into force of this Agreement and to investments which have been made after January 01, 1980.

ARTICLE 3

Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and policy.

(2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

ARTICLE 4

National Treatment and Most-Favoured-Nation Treatment

(1) Each Contracting Party shall accord to investments of investors of the other Contracting Party and to the return in respect of their investments, treatment which shall not be less favourable than that accorded either to investments of its own or investments of investors of any third State.

(2) In addition, each Contracting Party shall accord to investors of the other Contracting Party, treatment which shall not be less favourable than that accorded to investors of any third State.

(3) The provisions of paragraphs (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs unions or similar international agreement to which it is or may become a party; or

(b) any matter pertaining wholly or mainly to taxation.

ARTICLE 5

Expropriation

(1) Investments of investors of either Contracting party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the

earlier, shall include interest at the prevailing normal market rate until date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

(2) A national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right under the law of the Contracting Party making the expropriation to prompt review by the appropriate judicial or administrative authorities of other party to determine whether any such expropriation has occurred and, if so, whether such expropriation and any compensation thereof, conforms to the principles set out in paragraph (1).

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 6

Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances 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 7

Repatriation of Investment and Returns

(1) Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely

transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

(a) Capital and additional capital amounts used to maintain and increase investments;

(b) Net operating profits including dividends and interest in proportion to their share-holdings;

(c) Repayments of any loan including interest thereon, relating to the investment;

(d) Payment of royalties and service fees relating to the investment;

(e) Proceeds from sale of their shares;

(f) Proceeds received by investors in case of sale or partial sale or liquidation;

(g) The earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

(2) Nothing in paragraph (1) of this Article shall effect the transfer of any compensation under Article 6 of this Agreement.

(3) Unless otherwise agreed to between the parties, currency transfer under paragraph (1) of this article shall be permitted in the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

ARTICLE 8

Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claim of such investors.

ARTICLE 9

Settlement of Disputes between an Investor and a Contracting Party

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) Any such dispute which has not been amicably settled within a period of six months may, if both Parties agree, be submitted:

(a) for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies; or

(b) to the international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.

(3) Should the Parties fail to agree on a dispute settlement procedure provided under paragraph (2) of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to Arbitration. The Arbitration procedure shall be as follows:

(a) If the Contracting Party of the Investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment disputes such a dispute shall be referred to the Centre; or

(b) If both parties to the dispute so agree, under the International Centre for the Settlement of Investment Disputes Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings governed by Additional Facility Rules, 1979; or

(c) To an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:

(i) The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.

(ii) The parties shall appoint their respective arbitrators within two months.

(iii) The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding for the parties in dispute.

(iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

(4) Neither Contracting Party shall pursue through diplomatic channels any dispute submitted to a body or conciliation forum under paragraph(2), or referred to arbitration under paragraph (3) until the proceedings have terminated and a contracting Party has failed to abide by or to comply with the award or decision rendered by such body or conciliation Forum or Arbitration Forum.

ARTICLE 10

Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible, be settled through negotiation.

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

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. 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. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any 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) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedures.

ARTICLE 11

Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

ARTICLE 12

Applicable Laws

(1) Except as otherwise provided in this Agreement, all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) Notwithstanding paragraph (1) of this Article, nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis.

ARTICLE 13

Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE 14

Entry into Force

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

ARTICLE 15

Duration and Termination

(1) This agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

(2) Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of ten years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

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

Done at Dhaka on this 9th day of February 2009 in two originals in English.

For the Government of the Republic of India

Sd/-

(Pranab Mukherjee)

External Affairs Minister

For the Government of the People's Republic of Bangladesh

Sd/-

(Dilip Barua)

Minister of Industries

Joint Interpretative Notes on the Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh for the Promotion and Protection of Investments

Preamble

Recognizing the uncertainties and ambiguities that may arise regarding interpretation and application of the standards contained in the Bilateral Investment Protection and Promotion Agreement entered into between the Government of the Republic of India and the Government of the People's Republic of Bangladesh , done at Dhaka on 9th day of February, 2009 (the "Agreement");

Taking into account the power of the Contracting Parties to provide clarification on the object and purpose of the Agreement; and

Recalling the requirement under customary international law, that any interpretation of the Agreement take into account the Contracting Parties' subsequent statements and practice reflecting their shared understanding of the meaning of that Agreement,

The Contracting Parties, while recognizing that additional uncertainties and ambiguities may remain and need to be further clarified at a future date, issue the following notes (the "**Notes**") to resolve certain questions regarding, and affirm their understanding of, the scope and meaning of several of the Agreement's provisions.

General principles applicable for interpretation of the BIPA

1.	This interpretative note shall be read together with the Agreement and shall form an integral part of the Agreement.
2.	The term of this interpretative note shall be co-terminus with the Agreement.
3.	Interpretation of this Agreement shall be done in accordance with the high level of deference international law accords to states with regard to their development and implementation of domestic policies. Interpretation and application of the Agreement shall also reflect the strong presumption of legitimacy and regularity international law provides to domestic legislative, administrative and judicial determinations made by the Contracting Parties.

Note on definition of "investor" - Article 1 (c)

1.	For greater certainty regarding the definition of an "investor":

a) the term "company" referred to in Article 1 (c) of this Agreement means only a company, corporation, firm or association of a Contracting Party that is incorporated or constituted or otherwise duly established pursuant to the laws and regulations of that Contracting Party, and that has its seat in that Contracting Party and is engaged in substantial business activities in the territory of that Contracting Party.[1]

b) In the case of dual nationals, the term "national", refers to his or her dominant and effective nationality.

2. The Contracting Parties affirm that the Agreement aims to protect investors that have direct, real and transparent links with the economies of both Contracting Parties. The term "investor", therefore, does not include persons of one Contracting Party that (a) invest in another Contracting Party through a person of a non-Party, or (b) are owned or controlled by persons of a non-Party, or persons of the other Contracting Party.

Note on definition of "investment" – Article 1 (b)

1. The Contracting Parties confirm their understanding that nothing in this Agreement covers pre-establishment or pre-investment activities.
2. The existence, scope and nature of the different assets that may be deemed an "investment" shall be determined by the laws and regulations of the Contracting Party in the territory in which the investment is made.
3. In accordance with Article 1 (b) , the minimum characteristics of an "investment" are (a) the lasting contribution of capital or other resources; (b) the expectation of gain or profit; (c) the assumption of risk by the investor; and (d) significance for development of the Contracting Party receiving the investment.[2]
4. For the avoidance of doubt, an investor of one Contracting Party must make its investments "in the territory of" the other Contracting Party.

[1] "Substantial business activities" do not include activities such as (a) strategies/arrangements, the main purpose or one of the main purposes of which is to avoid tax liabilities, (b) the passive holding of stock, securities, land, or other property; or (c) the ownership or leasing of real or personal property used in a trade or business, unless the owner or lessor performs significant services with respect to the operation and management of the property.

[2] Interests or assets that do not typically possess the characteristics of "investments" include portfolio investments, claims to payment resulting from a sale of goods or services by an individual or entity in one Contracting Party to an individual or entity in the other, or an order or judgment sought or entered in a judicial, administrative, or arbitral action.

This means, for example, that claims to money arising solely from cross-border commercial contracts for the sale of goods or services, or the extension of trade financing in connection with a cross-border commercial transaction, or other relationships or instruments not involving an investor's actual investment project in the territory of the other Contracting Party, do not constitute covered investment. Furthermore, the mere fact that an investment "benefits" the Contracting Party in which it is made is insufficient to establish that it is an investment "in territory of" that Contracting Party.

Scope - Exclusion of taxation measures – Article 2

It is clarified that this Agreement does not apply to any law or measure regarding taxation including measures taken to enforce taxation obligations.

Note on "fair and equitable treatment" – Article 3(2)

1. The concept of "fair and equitable treatment" under Article 3(2) does not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and does not create additional substantive rights.[3]

   For greater certainty, a measure shall constitute a violation through customary international law minimum standard of treatment in case of:

   (i) Denial of justice in any judicial or administrative proceedings; or
   (ii) fundamental breach of due process; or
   (iii) targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief; or
   (iv) manifestly abusive treatment, such as coercion, duress and harassment.
2. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
3. For further clarification, the "fair and equitable treatment" standard under Article 3(2) does not require compensation for measures designed or applied to further public policy objectives including but not limited

[3] "*Customary international law*" is law that results from evidence of general and consistent practice of States when acting out of a sense of legal obligation. The burden to establish the existence and applicability of a binding obligation under customary international law that meets the requirements of State practice and *opinio juris* is always on the claimant. Once a rule of customary international law has been established, a claimant must show that the Contracting Party has engaged in conduct that violated that binding obligation.

to:

a) protection or improvement of natural resources and the environment;
b) protection or improvement of human, animal or plant life or health;
c) protection or improvement of human capital, conditions of work and human rights;
d) protection or improvement of economic conditions and the integrity of the financial system;
e) implementation of fiscal policy measures, including taxation

4. For the avoidance of doubt, "*measures*" referred to under sub-paragraph(3) herein include new laws and regulations, amendments to existing laws and regulations, as well as changes in interpretation and application of existing laws and regulations, provided such changes or amendments are in accordance with the law of the Contracting Party taking the measure.

5. a) The "fair and equitable treatment" requirement does not, alone, elevate alleged representations, contractual promises or other undertakings by the Contracting Party where the investment is made to the investor or investment to commitments binding or enforceable under the Agreement. The legal significance of those representations, contractual promises or other undertakings to the investor or investment are to be determined, (i) in the case of a written contract between the investor or investment and Contracting Party that specifies the applicable law, under that law; and (ii) in all other cases, under the law of the Contracting Party in which the investment is made. For greater certainty, the "law of the Contracting Party" in which the investment is made means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

b) Subparagraph (a) is without prejudice to the question of whether a Contracting Party has inappropriately interfered with representations, contractual promises or other undertakings in breach of the Agreement through, in particular, willful and egregious abuse of law amounting to a violation of Article 3(2) and Article 5.

Note on interpretation of national treatment and MFN – Article 4

1. The most-favoured nation (MFN) and national treatment provisions under Article 4 are designed to protect against illegitimate and

intentional discrimination against an investment, or investor with respect to its investment, on the basis of nationality.

2. a) The Contracting Parties further affirm that the MFN obligation is not intended to alter the Agreement's substantive content by, for example, permitting piecemeal incorporation of and reliance on provisions found in other treaties, investment or otherwise;

   b) For greater certainty, the Contracting Parties note their agreement that the MFN obligation provided under Article 4 does not apply to the mechanism for settlement of investment disputes contained in this Agreement or to other procedural and jurisdictional issues under any circumstance.

3. a) Establishing a breach under Article 4 requires a comparison between investors and investments that are in "*like circumstances*".

   b) Determining whether investors or investments are in "like circumstances" is a fact-specific inquiry that is highly dependent on context. It requires a case-by-case examination of all relevant factors, including:

   i. the sectors and industries in which the investors and investments are operating;
   ii. the activities and operations of the investors and investments;
   iii. the nature of the enterprise in question, i.e., whether it is a public, private or a state-owned or -controlled enterprise.
   iv. the nature of goods or services involved;
   v. the legal and regulatory regimes governing the investors and investments and their activities;
   vi. the actual and potential effects of the investments on third persons and the local community;
   vii. the actual and potential effects of the investments on the local, regional or national environment, including the cumulative effects of all investments within a jurisdiction on the environment;
   viii. the aim of the policies or measures concerned; and
   ix. other factors directly relating to the investors and investments in relation to the policies or measures concerned.

4. For greater certainty, legitimate exercises of prosecutorial discretion, including decisions regarding whether, when and how to enforce or not enforce a law or regulation, are not a violation of Article 4 provided such decisions are taken to further a policy, law or regulation that is not

inconsistent with the Agreement.

Note on interpretation of expropriation – Article 5

1. Article 5 addresses two situations. The first is direct expropriation, where an investment is nationalized or expropriated. The second is where a measure or series of measures have the effect of a nationalization or expropriation.
2. The determination of whether a measure or series of measures have an effect equivalent to nationalisation or expropriation requires a case-by-case, fact-based inquiry, considering the following factors, including whether:
   a) the measures result in a total or near total and permanent destruction of the value of the investment;
   b) the measures deprive the investor of its rights of management and control over the investment[4]; and
   c) there is an appropriation of the investment by a Contracting Party which results in transfer of the investment, in whole or significant part, to that Contracting Party or to an agency or instrumentality of the Contracting Party or a third party.
3. Notwithstanding paragraph 2, legislative, executive, regulatory, administrative or judicial measures or actions of general applicability that are designed or applied to further a Contracting Party's public policy objectives shall not constitute expropriation. These public policy objectives include, but are not limited to:
   a) protection and improvement of natural resources and the environment;
   b) protection and improvement of human, animal or plant life or health;
   c) protection and improvement of human capital, conditions of work and human rights;
   d) protection and improvement of economic conditions and the integrity of the financial system;
   e) implementation of fiscal policy measures, including taxation.

Note on "essential security interests" – Article 12

Where the Contracting Party asserts as a defence that the measure alleged to be a breach of its obligations under this Agreement is for the protection of its

[4] This does not prohibit a Contracting Party from interfering with management or control when done in good faith and in compliance with the law of the Contracting Party where the investment is made. This would cover, for example, requirements under financial or insolvency law of the relevant Contracting Party, or law regarding senior management positions in sensitive industries that the Contracting Party considers necessary.

"essential security interests" or in "circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis" as set out in Article 12, any decision of such Contracting Party taken on such security considerations shall be non-justiciable in that it shall not be open to any arbitral tribunal to review the merits of any such decision, even where the arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the tribunal.

Note on Settlement of Disputes between an Investor and a Contracting Party – Article 9

1. For purposes of this Agreement, "any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement" is a dispute between a Contracting Party and an investment, or an investor with respect to its investment, arising of an alleged breach of an obligation of a Contracting Party under this Agreement. The Contracting Parties further confirm their understanding that to establish the existence of a dispute actionable under Article 9, a claimant bears the burden of demonstrating that the respondent has breached an obligation owed under the Agreement, and the claimant or, in the case of an investor bringing a claim on behalf of an enterprise pursuant to Article 9, an enterprise has:
    a) suffered actual and non-speculative damages,
    b) as a direct and foreseeable result of that breach, and
    c) its claims are ripe for adjudication under the Agreement.[5]
2. Absent express language to the contrary, nothing in this Agreement shall be interpreted to constitute a waiver or limitation of any rights or defenses of either of the Contracting Parties under international law, including rights to regulate within their respective borders, and abilities to invoke defenses of necessity, force majeure and sovereign

[5] To be "ripe", claims must be based on government conduct that is final and legally binding, and inflicts a definitive and concrete injury capable of being assessed as a breach. It is related to, and serves similar functions as the requirement of "exhaustion", but the two are separate doctrines: Whereas ripeness addresses whether issues are fit for review, exhaustion relates to the process that must be followed. Where the challenge is one for a denial of justice, the "ripeness" **requirement** means that unless there are extremely exceptional circumstances, such as where a claimant proves that continuing to pursue domestic relief would be manifestly and wholly ineffective or obviously futile, the claimant must have exhausted all local legal remedies.

immunity.

3. Any interpretation of this Agreement, including any interpretation contained in these Notes, which is jointly agreed to and issued as such by the Contracting Parties shall be binding on tribunals established under Article 9 upon issuance of that interpretation. In accordance with the customary international law, other evidence of the Contracting Parties' agreement and practice regarding interpretation or application of this Agreement, including subsequent agreement and practice manifested through submissions made to tribunals on issues of treaty interpretation, shall similarly constitute authoritative interpretations of this Agreement and must be taken into account as such by tribunals constituted under Article 9 and Article 10 on Disputes between the Contracting Parties.[6]

In witness whereof the undersigned, duly authorized by their respective Governments, have signed this Joint Interpretative Note (JIN).

Signed in Dhaka on October 04, 2017, in two original copies in English, all texts being equally valid.

For the Government of the Republic of India	**For the Government of the People's Republic of Bangladesh**
Secretary, Department of Economic Affairs, Ministry of Finance	**Secretary, Ministry of Industries**
Subhash Chandra Garg	Mohammad Abdullah

[6] The failure of a non-disputing Contracting Party to make such a submission, however, shall not be interpreted to constitute agreement or disagreement with any issue of interpretation.