

AGREEMENT

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

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

desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially for investment by nationals of one Contracting Party in the territory of the other Contracting Party; and

acknowledging that offering encouragement and mutual protection to such investments, based on international Agreements, will contribute towards stimulating business ventures that will foster the prosperity of both Contracting Parties,

Hereby have agreed as follows:

ARTICLE I DEFINITIONS

For the purposes of this Agreement:

1. The term "investment" irrespective of the legal form adopted or the legal system having jurisdiction, shall be construed to mean any kind of property invested after 1st September 1954 by a natural or legal person being a national of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter.

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

- a) movable and immovable property, and any other rights "in rem" including, insofar as they may be used for investment purposes, real guarantees on others' property;

b) shares, debentures, equity holdings and any other negotiable instruments or documents of credit, as well as Government and public securities in general;

c) credit for sums of money or any right for pledges or services having an economic value connected with investments, as well as reinvested income as defined in paragraph 5 hereafter;

d) copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) any right of a financial nature accruing by law or by contract and any licence, concession or franchise issued in accordance with current provisions governing the exercise of business activities, including prospecting for cultivating, extracting and exploiting natural resources.

2. The term "investor" shall be construed to mean any natural or legal person being a national of a Contracting Party who effected, is effecting or intending to effect, investments in the territory of the other Contracting Party.

3. The term "natural person", in reference to either Contracting Party, shall be construed to mean any natural person holding the nationality of that State.

4. The term "legal person", in reference to either Contracting Party, shall be construed to mean any entity established in the territory of one of the Contracting Parties, and recognized as legal person in accordance with the respective national legislation such as public establishments, joint-stock corporations or partnerships, foundations, or associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall be construed to mean the money that has yielded or is still to yield by an investment, including in particular, profits, interest income, income from capital investment, dividends, royalties, returns for assistance and technical services and miscellaneous other considerations, including reinvested income and capital gains.

6. The term "territory" shall be construed to mean, in addition to the areas lying within the land boundaries, the "maritime zones". The latter also comprises the marine and submarine zones over which the Contracting Parties have sovereignty, or exercise sovereign or jurisdictional rights, according to the international law.

ARTICLE 2

PROMOTION AND PROTECTION OF INVESTMENTS

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory, and shall authorize these investments in accordance with their legislation.

2. Both Contracting Parties shall at all times ensure fair and equitable treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, enjoyment, transformation, cessation and liquidation of investments effected in their territory by investors of the other Contracting Party, as well as the companies and firms in which these investments have been made, shall in no way be subject to unjustified or discriminatory measures.

ARTICLE 3

NATIONAL TREATMENT AND THE MOST FAVOURED NATION CLAUSE

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States.

2. The treatment accorded to the activities connected with the investment of investors of either Contracting Party shall not be less favourable than that accorded to similar activities connected with investments made by their own investors or by investors of any Third Country.

3. The provisions of paragraphs 1. and 2. of this Article do not apply to any advantages or privileges which one Contracting Party grants or may grant at some future time to Third States by virtue of its membership in Custom or Economic Unions, Common Market associations, Free Trade Areas, regional or subregional Agreements, international multilateral economic Agreements, or economic Agreements entered into in order to prevent double taxation or to facilitate cross-border trade.

ARTICLE 4

COMPENSATION FOR DAMAGES AND LOSSES

1. Should investors of one of the two Contracting Parties incur damages or losses in their investments in the territory of the other Contracting Party, due to war or other forms of armed conflict, states of emergency or other similar events, the Contracting Party in which the affected investment has been made shall offer adequate compensation. Compensation payments shall be freely transferable in convertible currency without undue delay.
2. The investors concerned shall receive the same treatment as the nationals of the Contracting Party having liability and, at all events, shall be treated no less favourably than investors of Third States.

ARTICLE 5

NATIONALIZATION OR EXPROPRIATION

1. The investments to which this Agreement relates shall not be subject to any measure which might limit permanently or temporarily the right of ownership, possession, control or enjoyment, save where specifically provided by law and by judgements or orders issued by Courts or Tribunals having jurisdiction.
2. Investments of investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated, requisitioned or subjected to any measures having similar effects in the territory of the other Contracting Party, except for public purposes, or national interest, against immediate full and effective compensation and on 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 real market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public, and shall be calculated according to internationally acknowledged evaluation standards. Whenever there are difficulties in ascertaining the market value, the compensation shall be calculated on the basis of the fair appraisal of the establishment's constitutive and distinctive elements as well as of the firm's activities, components and results. Compensation shall include interests calculated on a six-months LIBOR basis accruing from the date of nationalization or expropriation to the date of payment.

Once the compensation has been determined, it shall be paid promptly and authorization for its repatriation in convertible currency issued.

4. The provisions of paragraph 2. of this Article shall also apply to income from an investment, and, in the event of winding-up, to the proceeds of liquidation.

5. If, after the dispossession the assets concerned have not been utilized, wholly or partially, for that purpose, the owner or his assignees are entitled to the repurchasing of the assets at market price, on the basis of reciprocity.

ARTICLE 6

REPATRIATION OF CAPITAL, PROFITS AND INCOME

1. Each of the Contracting Parties shall guarantee that, after investors have complied with all their fiscal obligations, they may transfer the following abroad, without undue delay, in any convertible currency:

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

(b) net income, dividends, royalties, payments for assistance and technical services, interests and any other profits;

(c) the proceeds of the total or partial sale or liquidation of an investment;

(d) funds to repay loans related to an investment and interest due thereon;

(e) remuneration and allowances paid to nationals of the other Contracting Party in respect of subordinate work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by current national legislation and regulations.

2. While considering the provisions of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, the same treatment that is accorded to investments effected by investors of Third States, if this is more favourable.

3. Both Contracting Parties may adopt provisions governing the manner of complying with the fiscal obligations referred to in paragraph 1. above.

ARTICLE 7

SUBROGATION

In the event that one Contracting Party or any of its Institutions has provided an insurance guarantee in respect of non-commercial risks for investments effected by one of its investors in the territory of the other Contracting Party, and has made payments on the basis of that guarantee; the other Contracting Party shall recognize the assignment of the rights of the insured investor to the Contracting Party guarantor and its subrogation shall not exceed the original rights. In relation to the transfer of payments to the Contracting Party or its Institution by virtue of such subrogation, the provisions of Articles 4, 5 and 6 of this Agreement shall apply.

ARTICLE 8

TRANSFER PROCEDURES

The transfers referred to in Articles 4, 5, 6 and 7 shall be effected without undue delay and, at all events, within six months, provided that all fiscal obligations have been met. Transfers shall be made in a convertible currency at the prevailing exchange rate applicable on the date of the transfer.

ARTICLE 9

SETTLEMENT OF DISPUTES BETWEEN INVESTORS AND THE CONTRACTING PARTY

1. Any disputes arising between a Contracting Party and the investors of the other, including disputes relating to compensation for expropriation, nationalization, requisition or similar measures, and disputes relating to the amount of the relevant payments, shall be settled amicably, as far as possible.

2. In the case that such a dispute cannot be settled amicably within six months of the date of a written application, the investor in question may submit the dispute, at his discretion, for settlement to:

a) the Contracting Party's Court, at all instances, having territorial jurisdiction;

b) an ad hoc Arbitration Tribunal in accordance with the Arbitration Rules of the "UN Commission on International Trade Law" (UNCITRAL);

c) the "International Centre for the Settlement of Investment Disputes", for the application of the arbitration procedures provided by the Washington Convention of 18th March 1965 on the "Settlement of Investment Disputes between States and Nationals of other States", whenever, or as soon as both Contracting Parties have validly acceded to it.

ARTICLE 10

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.
2. In the event that the dispute cannot be settled within three months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of them, be laid before an ad hoc Arbitration Tribunal as provided in this Article.
3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the receipt of the request for arbitration, each Contracting Party shall appoint a member of the Tribunal. These two members shall then select a national of a Third State to act as Chairman. The Chairman shall be appointed within three months from the date on which the other two members are appointed.
4. If the appointments have not been agreed within the time provided by paragraph 3. of this Article, either of the Contracting Parties, in default of any other arrangement, may apply to the President of the International Court of Justice to make the appointments within three months. In the event that the President of the Court is a national of one of the Contracting Parties or he is otherwise prevented from discharging the said function, the application shall be made to the Vice-President of the Court. If the Vice-President is a national of one of the Contracting Parties or he is equally prevented from discharging the said function for any reason, 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 appointments.
5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitrator and of their own costs at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties.

The Arbitration Tribunal shall lay down its own procedures.

ARTICLE 11

RELATIONS BETWEEN GOVERNMENTS

The provisions of this Agreement shall be enforced irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

ARTICLE 12

APPLICATIONS OF OTHER PROVISIONS

1. Whenever any issue is governed both by this Agreement and by another International Agreement to which both Contracting Parties are parties, or whenever it is governed otherwise by general international law, the most favourable provisions, case by case, shall be applied to the Contracting Parties and to their investors.
2. Whenever, as a result of laws, regulations, provisions or specific contracts, one of the Contracting Parties has adopted a more advantageous treatment for the investors of the other Contracting Party, than that provided in this Agreement, they shall be accorded that more favourable treatment.

ARTICLE 13

ENTRY INTO FORCE, DURATION AND EXPIRY DATE

1. This Agreement shall enter into force on the thirtieth day after the receiving date of the second of the two notifications by which the Contracting Parties shall have notified each other that their constitutional procedures for the entry into force of this Agreement have been fulfilled. It shall remain in force for an initial period of ten years. It shall thereafter continue to be in force for further periods of 5 years, unless either Contracting Party terminates it by giving prior written notice thereof one year before any expiry date.
2. In the case of investments effected prior to the expiry dates of the present Agreement, as provided in this Article 13, the provisions of Articles 1 to 12 shall remain effective for a further five years after the aforementioned dates.


July

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In WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE at Islamabad, the day 19th of July 1997,
in two originals, in the Italian and in English languages,
both texts being equally authentic.

FOR THE GOVERNMENT OF
THE ISLAMIC REPUBLIC OF
PAKISTAN


Aftab Ahmad Khan
Secretary
Ministry of Industries
and Production,

FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC


Patrizia Tola
Deputy Foreign Minister
Ministry of Foreign Affairs