

International Investment Instruments:

A Compendium

Volume VI

PART FIVE

PROTOTYPE BILATERAL INVESTMENT TREATIES



UNITED NATIONS

**AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF CAMBODIA
AND THE GOVERNMENT OF _____ CONCERNING THE PROMOTION AND
PROTECTION OF INVESTMENTS***

The Government of the Kingdom of Cambodia and The Government of
(hereinafter referred to as “Contracting Parties”);

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Intending to create favourable conditions for investments by nationals of one Contracting Party on the basis of sovereign equality and mutual benefit, and

Recognizing that the Agreement on the Promotion and Protection of such Investments will be conducive to the stimulation of investment activities in both countries;

Have agreed as follows:

**ARTICLE I
DEFINITIONS**

For the purpose of this Agreement:

1. The term “investment” shall mean any kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, but not exclusively:

- a. movable and immovable property as well as other rights such as mortgages, privileges, and guarantees and any other similar rights;
- b. rights derived from shares, bonds or any other form of interest in companies or joint venture in the territory of the other Contracting Party;
- c. claims to money or to any performance having a financial value;
- d. intellectual property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, goodwill and know-how;
- e. business concessions having an economic value conferred by law or under contract related to investment including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as an investment, provided that such alteration has also been approved or admitted under Article II.

* *Source:* The Government of Cambodia, Ministry of Foreign Affairs. [Note added by the editor.]

2. The term “investor” means national of one Contracting Party who invests in the territory of the other Contracting Party. The term “national” shall comprise with regard to either Contracting Party;

- (i) natural person having the nationality of that Contracting Party in accordance with its law; and
- (ii) legal persons constituted under the law of that Contracting Party.

3. The term “without delay” shall be deemed that to be fulfilled if a transfer is made within such period as is normally required by international finance practices.

4. “Territory” shall mean:

- a. In respect of:
The territory of the as defined in its laws.
- b. In respect of the territory of the Kingdom of Cambodia as defined in its laws.

**ARTICLE II
PROMOTION AND PROTECTION OF INVESTMENTS**

1. Either Contracting Party shall encourage and create favourable conditions for investors of the other Contracting party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

**ARTICLE III
MOST-FAVOURED-NATION PROVISIONS**

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investment adequate physical security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded to investments of investors of any third state.

3. If a Contracting Party has accorded special advantages to investors of any third state by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. The provision of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by any Avoidance of Double Taxation Treaty between the two Contracting Parties and the domestic laws of each Contracting Party.

ARTICLE IV EXPROPRIATION

Each Contracting Party shall not take any measures of expropriation, nationalization, or otherwise subjected to any other measures having effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”) against the investments of an investor of the other Contracting Party except under the following conditions:

- a. the measures are taken for a lawful purpose, for public interest and under due process of law;
- b. the measures are non discriminatory;
- c. the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the investments affected immediately before the measures of expropriation became a public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Parties hereto, and it shall be freely transferable in freely usable currencies from the Contracting Party.

ARTICLE V COMPENSATION FOR LOSSES

1. Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of investor emergency, revolt, insurrection or riot 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.

2. The treatment shall not be less favourable than that which the latter Contracting Party accords to investors or investors of any third state.

ARTICLE VI TRANSFER

1. Each Contracting Party shall, subject to its laws and regulations, allow without unreasonable delay the free transfer of investments made by investors of the other Contracting Party. Such transfer shall include, in particular, though not exclusively:

- a. profits, interests, dividends and other current income accruing from investments;
- b. funds necessary:

- (i) for the acquisition of raw or auxiliary materials, semi fabricated or finished products; or
 - (ii) to replace capital assets in order to safeguard the continuity of an investment;
- c. additional funds necessary for the development of an investment;
 - d. funds in repayment of loans related to investments;
 - e. royalties or fees;
 - f. earning of natural persons;
 - g. proceeds accruing from sale or liquidation of the investment;
 - h. compensation for losses pursuant to Article 5;
 - i. compensation for expropriation pursuant to Article 4;
2. The exchange rate applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

ARTICLE VII SUBROGATION

If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided, however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

ARTICLE VIII SETTLEMENT OF DISPUTES BETWEEN INVESTORS AND THE CONTRACTING PARTY

1. Any dispute between a Contracting Party and an investor of the other Contracting Party, concerning an investment of the latter in the territory of the former, shall be settled amicably through consultations and negotiations.
2. If such a dispute cannot be settled within a period of six months from the date of the written notification by either party requested amicable settlement, the dispute shall, at the request of the investor concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.
3. In case that the dispute is submitted to arbitration or conciliation the investor shall be entitled to refer the dispute to:

- (a) The International Center of Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C, on 18 March 1965, in case both Contracting Parties have become the Parties to the Convention; or
- (b) An ad hoc tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). An arbitral award shall be final and binding on both parties to the dispute.
- (c) Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceeding have terminated or a contracting Party has failed to abide by or comply with the award rendered by an arbitral tribunal.

ARTICLE IX
SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES
CONCERNING INTERPRETATION AND APPLICATION OF THE AGREEMENT

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
2. If dispute between the Contracting Parties cannot thus be settled, 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 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 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 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 Agreement, invite the President of the International Court of Justice to make any necessary appointment. 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 a necessary appointment. If the Vice-President is a national of either Contracting Party or he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority that is not a national of either Contracting Party shall be invited to make the necessary appointment.
5. An 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 an 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 its award shall be binding on both Contracting Parties. The Tribunal shall determine its own procedure.

**ARTICLE X
APPLICABILITY OF THIS AGREEMENT**

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws and regulations concerning foreign investment any law amending or replacing it, but shall not apply to any dispute, claim or difference which arose before its entry into force.

**ARTICLE XI
APPLICATION OF OTHER PROVISIONS**

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 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 the present Agreement, such regulation shall be the extent that it is more favourable prevail over the present Agreement.

**ARTICLE XII
CONSULTATION AND AMENDMENT**

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties.

**ARTICLE XIII
ENTRY INTO FORCE, DURATION AND TERMINATION**

1. The present Agreement shall enter into force thirty (30) days after the later date on which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten (10) years and shall continue in force thereafter for another period of ten years and so forth unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

2. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.

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

Done in duplicate atonin Khmer, and English languages. All texts are equally authentic. If there is any divergence concerning the interpretation, the English text shall prevail.

FOR THE GOVERNMENT
OF THE KINGDOM OF CAMBODIA

.....

FOR THE GOVERNMENT
OF

.....

* * *

March 1998

**AGREEMENT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE
_____ ON THE RECIPROCAL PROMOTION AND
PROTECTION OF INVESTMENTS***

The Government of the Republic of Croatia and the Governemnt of the _____
(hereinafter the "Contracting Parties");

Desiring to promote greater economic cooperation between them, with respect to investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and increase prosperity;

Having resolved to conclude the Agreement on the reciprocal promotion and protection of investments;

Have agreed as follows:

**ARTICLE 1
Definitions**

For the purposes of the Agreement:

1. The term "investment" means every kind of asset established or acquired by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular, though not exclusively:

- a) movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructs and similar rights;
- b) stock, shares, debentures and other forms of participation in companies;
- c) claims to money or to any performance having economic value, including every loan granted for the purpose of creating economic value;
- d) intellectual property rights including, but not limited to, copyrights and neighbouring rights, industrial property rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

* *Source:* The Government of Croatia, Ministry of Foreign Affairs. [Note added by the editor.]

- e) rights to engage in economic and commercial activities conferred by law and by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which asset is invested or reinvested shall not affect its character as an investment.

2. The term "investor" means in respect of either Contracting Party:

- a) a natural person, a national of a Contracting Party who makes an investment in the territory of the other Contracting Party;
- b) a legal person incorporated, constituted or otherwise duly organised in accordance with the laws and regulations of one Contracting Party, having its seat and performing real business activity in the territory of the same Contracting Party and making an investment in the territory of the other Contracting Party;

3. The term "returns" means income deriving from an investment and includes, in particular though not exclusively, profits, dividends, interests, capital gains, royalties, patents licence fees, and other fees. Reinvested returns shall enjoy the same treatment as the original investment.

4. The term "without delay" shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

5. The term "freely convertible currency" means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

6. The term "territory" means:

- with respect to the Republic of Croatia: the territory of the Republic of Croatia as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil over which the Republic of Croatia exercises, in accordance with international law, its sovereign rights and jurisdiction.
- with respect to the _____:

ARTICLE 2

Promotion and admission of investments

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

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of either Contracting Party, on the investment opportunities in its territory.

3. Each Contracting Party shall grant, whenever necessary, within the framework of its legislation, permits in connection with the investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice, regardless of nationality.

4. Each Contracting Party shall permit, subject to its laws, regulations and procedures affecting the entry, stay and work of natural persons, regardless of nationality, key personnel including top managerial and technical persons who are employed for the purposes of investments by an investor of the other Contracting Party, to enter, stay and work in its territory. Immediate family members (spouse and minor children) of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

ARTICLE 3

Protection of investments

1. Each Contracting Party shall extend in its territory full protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary, unreasonably or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments. Either Contracting Party shall observe any other obligation it may have entered into with regard to specific investments of investors of the other Contracting Party.

2. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with international law and provisions of this Agreement.

3. Each Contracting Party shall in its territory not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

4. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of one Contracting Party in the territory of the other Contracting Party.

ARTICLE 4

National treatment and most favoured nation treatment

1. Neither Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party a treatment less favourable than that which it accords to investments and returns of its own investors, or investments and returns of investors of any other third State, whichever is more favourable to the investors concerned.

2. Neither Contracting Party shall accord in its territory to the investors of the other Contracting Party, as regards management, maintenance, enjoyment, use or disposal of their investment, a treatment which is less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

3. The provisions of paragraph 1 and 2 of this Article 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 which may be extended by the former Contracting Party by virtue of:

- a) any existing or future customs union or economic union, free trade area or similar international agreement,
- b) any international agreement or arrangement, completely or partially related to taxation,

to which either of the Contracting Party is or may become a Party in the future.

ARTICLE 5 Expropriation

1. A Contracting Party shall not expropriate or nationalise directly or indirectly an investment in its territory of an investor of another Contracting Party or take any measure or 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. Compensation shall be paid without delay.

3. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or became publicly known, whichever is earlier.

4. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency at the moment referred to in paragraph 2. of this Article. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.

5. The investor, whose investments are expropriated, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party, valuation of its investments and payment of compensation in accordance with the principles set out in this Article.

ARTICLE 6 Compensation for damage or loss

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict which is not a result of the activities of the Contracting Party to which the investors belong, civil disturbances, revolution, riot or similar events in the territory of the latter Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, not less

favourable than that that the latter Contracting Party accords to its own investors or to investors of any third State, whichever is most favourable to the investors concerned.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- a) requisitioning of their property or part thereof by its forces or authorities;
- b) destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded a prompt restitution, and where applicable prompt, adequate and effective compensation for damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be made in freely convertible currency without delay.

3. Investor whose investments suffer damage or loss in accordance to paragraph 2. of this Article, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party and of valuation of its investments and payment of compensation in accordance with the principles set out in paragraph 2. of this Article.

ARTICLE 7

Transfers

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

- a) the initial capital and additional amounts to maintain or increase an investment;
- b) returns;
- c) the amounts required for payment of expenses which arise from the operation of the investment under contract, loan repayments, payment of royalties, management fees, licence fees or other similar expenses;
- d) proceeds from the sale or liquidation of all or any part of an investment;
- e) payments of compensation under Article 5 and 6 of this Agreement;
- f) payments arising out of the settlement of an investment dispute;
- g) earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. The nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings to their country of origin.

3. Transfers shall be made in a freely convertible currency at the rate applicable on the day transfers are made to spot transactions in the currency used.

4. Each Contracting Party shall ensure that the interest at the commercial rate established on the a market basis for the currency in question is calculated together with compensation for the period starting from the occurrence of events under Articles 5 and 6 until the date of transfer of payment and payment will be effected in accordance with provisions of paragraphs 1 and 2 of this Article.

5. Each Contracting Party shall ensure that the transfers will be made without delay, with no other expenses than the usual taxes and costs.

ARTICLE 8

Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

ARTICLE 9

Application of other legal provisions

If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, 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 rule shall, to the extent that it is more favourable, prevail over the present Agreement.

ARTICLE 10

Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall be upon the request of the investor settled as follows:

- a) by a competent court of the Contracting Party, or
- b) by conciliation or arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18th, 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this Centre. This consent implies the

renunciation of the requirement that the internal administrative or judicial remedies should be exhausted; or

- c) by arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned.; or
- d) by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

3. The award shall be final and binding; it shall be executed according to the national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and other regulations.

4. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

ARTICLE 11 **Settlement of disputes between** **the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

ARTICLE 12

Application of the Agreement

This Agreement shall apply to investments made prior to or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen or any claim, which was settled before its entry into force.

ARTICLE 13

Entry into force

This Agreement shall enter into force on the thirtieth day following the date of receipt of the latter notification through diplomatic channels by which one Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

ARTICLE 14

Duration and denunciation

1. This Agreement shall remain in force for a period of twenty (20) years and shall be extended thereafter for the following twenty (20) year periods unless, one year before the expiration of the initial or any subsequent period, one Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement. In that case, the notice of denunciation shall become effective by the expiration of current period of twenty (20) years.

2. In respect of investments made prior to the date when the notice of denunciation of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of denunciation of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE at _____, on _____, in two originals, each in the Croatian, _____ and English language, both text being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF CROATIA**

**FOR THE GOVERNMENT OF
THE _____**

* * *

IN THE NAME OF GOD

**AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF
INVESTMENTS BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN
AND THE GOVERNMENT OF _____***

PREAMBLE

The Government of the Islamic Republic of Iran and the Government of the
hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States;

Intending to utilize their economic resources and potential facilities in the area of investments as well as to create and maintain favourable conditions for investments of the nationals of the Contracting Parties in each others' territory and;

Recognizing the need to promote and protect investments of nationals of the Contracting Parties in each others' territory;

Have agreed as follows:

ARTICLE 1
DEFINITIONS

**For the purpose of this Agreement, the meaning of the terms
used therein are as follows:**

1. The term "investment" refers to every kind of property or asset, including the following, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party (hereinafter referred to as the host Contracting Party):

- (a) movable and immovable property as well as rights related thereto ;
- (b) shares or any kind of participation in companies ;
- (c) money and/or receivables;
- (d) industrial and intellectual property rights such as patent, utility models, industrial designs or models, trade marks and names, know-how and goodwill ;
- (e) rights to search for, extract or exploit natural resources.

* *Source:* The Government of the Islamic Republic of Iran, Ministry of Foreign Affairs. [Note added by the editor.]

2. The term "investors" 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 and have not the nationality of the host Contracting Party.
- (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 "returns" refers to the amounts legally yielded by an investment including profit derived from investments, dividends, royalties and fees.

4. The term "territory" refers to areas under the sovereignty or jurisdiction of either Contracting Party, as the case may be, including their maritime areas.

ARTICLE 2

PROMOTION OF INVESTMENTS

1. Either Contracting Party shall encourage its nationals to invest in the territory of the other Contracting Party.

2. Either Contracting Party shall, within the framework of its laws and regulations, create favourable conditions for attraction of investments of nationals of the other Contracting Party in its territory.

ARTICLE 3

ADMISSION OF INVESTMENTS

1. Either Contracting Party shall admit investments of natural and legal persons of the of the other Contracting Party in its territory in accordance with its laws and regulations.

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

ARTICLE 4

PROTECTION OF INVESTMENTS

1. Investments of natural and legal persons of either Contracting Party effected within the territory of the other Contracting Party, shall receive the host Contracting Party's full legal protection and fair treatment not less favourable than that accorded to investors of any third state who are in a comparable situation.

2. If a Contracting Party has accorded or shall accord in future special advantages or rights to investor(s) of any third state by virtue of an existing or future agreement establishing a free trade area, a customs union, a common market or a similar regional organization and/or by virtue of an arrangement on the avoidance of double taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

ARTICLE 5
MORE FAVOURABLE PROVISIONS

Notwithstanding the terms set forth in this Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

ARTICLE 6
EXPROPRIATION AND COMPENSATION

1. Investments of natural and legal persons of either Contracting Party shall not be nationalized, confiscated, expropriated or subjected to similar measures by the other Contracting Party except such measures are taken for public purposes, in accordance with due process of law, in a non-discriminatory manner, and effective and appropriate compensation is envisaged. The amount of compensation shall be paid without delay.

2. The amount of compensation shall be equivalent to the value of the investment immediately before the action of nationalization, confiscation or expropriation was taken.

ARTICLE 7
LOSSES

Investors of either Contracting Party whose investments suffer losses due to war, any armed conflict, revolution or similar state of emergency in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of any third country.

ARTICLE 8
REPATRIATION AND TRANSFER

1. Each Contracting Party shall, in accordance with its laws and regulations, permit in good faith the following transfers related to investments referred to in this Agreement, to be made freely and without delay out of its territory:

- (a) returns;
- (b) proceeds from the sale and/or liquidation of all or part of an investment ;
- (c) royalties and fees related to transfer of technology agreement ;
- (d) sums paid pursuant to Articles 6 and /or 7 of this Agreement ;
- (e) loan installments related to an investment provided that they are paid out of such investment activities ;
- (f) monthly salaries and wages received by the employees of an investor who have obtained in the territory of the host Contracting Party, the corresponding work permits related to that investments ;
- (g) payments arising from a decision of the authority referred to in Article 12.

2. The above transfers shall be effected in a convertible currency and at the current rate of exchange in accordance with the exchange regulations prevailing on the date of transfer.

3. The investor and the host Contracting Party may agree otherwise on the mechanism of repatriation or transfers referred to in this Article.

ARTICLE 9
SUBROGATION

If a Contracting Party or its designated agency, within the framework of a legal system, subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non-commercial risks:

- (a) such subrogation shall be recognized by the other Contracting Party ;
- (b) the subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise ;
- (c) disputes between the subrogee and the host Contracting Party shall be settled in accordance with Article 12 of this Agreement.

ARTICLE 10
OBSERVANCE OF COMMITMENTS

Either Contracting Party shall guarantee the observance of the commitments it has entered into with respect to investments of natural or legal persons of the other Contracting Party.

ARTICLE 11
SCOPE OF THE AGREEMENT

This Agreement shall apply to investments approved by the competent authority of the host Contracting Party.

The competent authority in the Islamic Republic of Iran is “Organization for Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I.)” or any other authority which will succeed to it.

The competent authority in the is the “Ministry of Foreign Affairs”.

ARTICLE 12
SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY
AND INVESTOR (S) OF THE OTHER CONTRACTING PARTY

1. If any dispute arises between the host Contracting Party and investor(s) of the other Contracting Party with respect to an investment, the host Contracting Party and the investor(s) shall primarily endeavour to settle the dispute in an amicable manner through negotiation and consultation.

2. In the event that the host Contracting Party and the investor(s) can not agree within six months from the date of notification of the claim by one party to the other, either of them may

refer the dispute to the competent courts of the host Contracting Party or with due regard to their own laws and regulations to an arbitral tribunal of three members referred to in paragraph 5 below.

3. A dispute primarily referred to the competent courts of the host Contracting Party, as long as it is pending, cannot be referred to arbitration save with the parties agreement; and in the event that a final judgment is rendered, it cannot be referred to arbitration.

4. National courts shall not have jurisdiction over any dispute referred to arbitration. However, the provisions of this paragraph do not bar the winning party to seek for the enforcement of the arbitral award before national courts.

5. The host Contracting Party or the investor(s) of the other Contracting Party who desires to refer the dispute to the arbitration shall appoint an arbitrator through a written notice sent to the other Party. The other Party shall appoint an arbitrator within sixty days from the date of receipt of the said notice and the appointed arbitrators shall within sixty days from the date of the last appointment, appoint the umpire. In the event that each party fails to appoint its arbitrator within the mentioned period and/or the appointed arbitrators fail to agree on the umpire, each of the parties may request the Secretary General of the Permanent Court of Arbitration to appoint the failing party's arbitrator or the umpire, as the case may be. However the umpire shall be appointed from amongst nationals of a state having diplomatic relations with both Contracting Parties, at the time of appointment.

6. The arbitration shall be conducted according to the United Nations Commission on International Trade Law (UNCITRAL) rules.

ARTICLE 13
SETTLEMENT OF DISPUTES BETWEEN THE
CONTRACTING PARTIES

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall, in the first place, be settled amicably by consultation. In case of disagreement, either Contracting Party may, subject to its laws and regulations, while sending a notice to the other Party, refer the case to an arbitral tribunal of three members consisting of two arbitrators appointed by the Contracting Parties and an umpire.

In case the dispute is referred to the arbitral tribunal, either Contracting Party shall appoint an arbitrator within sixty days from the receipt of the notification and the arbitrators appointed by the Contracting Parties shall appoint the umpire within sixty days from the date of last appointment. If either Contracting Party does not appoint its own arbitrator or the appointed arbitrators do not agree on the appointment of the umpire within the said periods, each Contracting Party may request the President of the International Court of Justice, to appoint the arbitrator of the failing party or the umpire, as the case may be.

However the umpire shall be a national of a state having diplomatic relations with both Contracting Parties at the time of the appointment.

2. In case the umpire is to be appointed by the President of the International Court of Justice, if the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by

the vice-president of the International Court of Justice, and if the vice-president is also prevented from carrying out the said function or he is a national of either Contracting Party, the appointment shall be made by the senior member of the said court who is not a national of either Contracting Party.

3. Each Contracting Party shall bear the costs of its own member of the tribunal or its representation in the arbitral proceedings; the cost of the umpire and remaining costs shall be borne by the Contracting Parties in equal parts. However, the tribunal may decide different proportions of costs to be borne by the two Contracting Parties.

4. Subject to other provisions agreed by the Contracting Parties, the arbitral tribunal shall determine its procedure and the place of arbitration.

5. The decisions of the arbitral tribunal shall be binding on the Contracting Parties.

ARTICLE 14
VALIDITY OF THE AGREEMENT

1. This Agreement shall be approved/ratified by the competent authorities of each Contracting Party in accordance with their laws and regulations.

2. This Agreement shall enter into force for a period of ten years after 30 days from the date of the last notification of either Contracting Party to the other Contracting party that it has fulfilled necessary measures in accordance with its laws and regulations for the entry into force of this Agreement. After the said period, this Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party in writing of its unwillingness to continue with it, six months prior to the expiration or termination thereof.

3. After the expiration of the validity or termination of this Agreement its provisions shall apply to investments under this Agreement for a further period of ten years.

ARTICLE 15
LANGUAGE AND NUMBER
OF THE TEXTS

This Agreement is done in duplicate in the Persian, and languages, all texts being equally authentic. In case of divergence of interpretation the text shall prevail.

Signed in on corresponding to by representatives of the Government of the Islamic Republic of Iran and the Government of the

For the Government of the
Islamic Republic of Iran

For the Government of
.....

* * *

**AGREEMENT FOR THE ENCOURAGEMENT AND PROTECTION OF INVESTMENT
BETWEEN _____ AND THE OPEC FUND FOR
INTERNATIONAL DEVELOPMENT*
AND
LIST OF AGREEMENTS SIGNED BY THE OPEC FUND FOR INTERNATIONAL
DEVELOPMENT WITH THIRD COUNTRIES**

AGREEMENT, between the _____ (hereinafter called the Host Country) and the OPEC Fund for International Development (hereinafter called the OPEC Fund).

Whereas OPEC Member States, being conscious of the need for solidarity among all developing countries and aware of the importance of financial cooperation between them and other developing countries, have established the OPEC Fund to provide financial support to the latter countries, in addition to the existing bilateral and multilateral channels through which OPEC Member States extend financial assistance to other developing countries;

And whereas the OPEC Member States have, in addition, empowered the OPEC Fund to partake in the stimulation of capital flows thereto and, specifically, to assist in financing private sector activities involving entities located in the territories of other developing countries, including the Host Country, with a view to optimizing the aforementioned objective of financial cooperation;

And whereas the Host Country and the OPEC Fund being mindful that a stable framework for the envisaged investments will conduce to the effective utilization of economic resources and contribute towards the improvement of living standards; and, accordingly, have resolved to conclude an agreement for the encouragement and protection of such investment activities;

Now, therefore, the parties hereto hereby agree as follows:

**ARTICLE I
DEFINITIONS**

1.01 Wherever used in this Agreement, and unless the context otherwise requires, the following terms have the following meanings:

- (a) Investment” means every kind of investment owned or controlled directly or indirectly by the OPEC Fund in the territory of the Host Country and, without prejudice to the generality of the foregoing, includes investment consisting or taking the form of:
 - (i) shares, stock, and other form of equity participation, and bonds, credits, debentures, and other forms of debt interests, in a company;
 - (ii) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens, pledges and rights to payment arising under any form of debt instrument of whatever nature;

* *Source:* OPEC Fund for International Development (2001). [Note added by the editor.]

- (iii) contractual rights, such as those under construction or management contracts, production or revenue-sharing contracts, concessions, or other forms of contracts;
 - (iv) rights conferred by or pursuant to law, such as licenses and permits; and
 - (v) intellectual property, including copyrights and related rights, patents, industrial designs, as well as advisory services and confidential business information.
- (b) "Company" means any entity established under or pursuant to the Host Country's laws and regulations, whether or not wholly or partially owned or controlled privately or by the state or any organ thereof, including a corporation, partnership, sole or joint venture or proprietorship, association or any other organization.
- (c) "OPEC Fund" means the OPEC Fund for International Development established by the Member States of the Organization of the Petroleum Exporting Countries (OPEC) by virtue of the Agreement signed in Paris on January 28, 1976, as amended.
- (d) "Host Country" means the _____, including all political or administrative subdivisions, and any agency or instrumentality thereof.
- (e) "Territory" means the territory of the Host Country, including its territorial sea as well as the exclusive economic zone over which the Host Country exercises sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea bed and of the sea bed and its sub-soil.

ARTICLE II GENERAL PRINCIPLES

2.01 With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments, the Host Country shall accord treatment thereto no less favourable than that it accords, in like situations, to investments in its territory by any other multilateral development finance institution operating in the Host Country (hereinafter referred to as "most favoured party").

2.02 The Host Country shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect investments are promptly published or otherwise made publicly available.

2.03 The Host Country shall provide effective means of asserting claims and enforcing rights with respect to investments and shall not in any way impair, by unreasonable or discriminatory measures, the management, conduct, operation, sale or other disposition of any such investment.

2.04 The Host Country shall at all times accord to investments in its territory fair and equitable treatment and full protection and security, and shall in no case accord less favourable treatment than that required by or under international law.

2.05 The Host Country shall pursuant to its laws and regulations accord to the OPEC Fund and its investments or, as the case may require, the officials, agents and other representatives of the OPEC Fund, treatment no less favourable than the Host Country accords to the most favoured party and its investments (hereinafter referred to as “most favoured party treatment”), and such treatment shall extend but not be limited to the issuance of visas or permits to enter and remain in its territory for the purpose of initiating, appraising, establishing or administering, winding up or otherwise terminating any investment or any other activity connected therewith located in its territory.

2.06 The most favoured party treatment shall not be construed so as to oblige the Host Country to extend to investments the advantages resulting from:

- (a) any existing or future customs or economic union, a free trade area or regional economic organization of which the Host Country is or becomes a member; or
- (b) without prejudice to Article VII, any international or bilateral agreement or arrangement relating wholly or mainly to taxation.

ARTICLE III PRIOR NOTIFICATION OF INVESTMENT PROPOSAL

3.01 The OPEC Fund shall prior to each investment inform the Government of the Host Country about the envisaged investment in the form of a written project proposal. Such a proposal will contain a summary statement regarding the envisaged investment and will be forwarded by the OPEC Fund to the Minister of Finance, or other representative of the Host Country designated in that behalf, for further consideration.

3.02 The OPEC Fund shall not finance any investment in the territory of the Host Country if the Government of the Host Country objects to such financing.

ARTICLE IV EXPROPRIATION

4.01 The Host Country shall not expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II above.

4.02 Compensation shall be paid without delay and shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken; and be fully realizable and freely transferable. The fair market value of such investment shall not be adversely affected by any change in value occurring because the expropriatory action had become known before the date of expropriation or its implementation.

ARTICLE V
COMPENSATION FOR LOSSES

5.01 The Host Country shall accord most favoured party treatment to investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or similar events.

5.02 The Host Country shall effect restitution, or pay compensation in accordance with Section 4.02 above, in the event that investments suffer losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:

- (a) requisitioning of all or part of such investment by the Host Country's forces or authorities; or
- (b) destruction of all or part of such investments by the Host Country's forces or authorities that was not required by the necessity of the situation.

ARTICLE VI
PAYMENTS AND TRANSFERS

6.01 The Host Country shall permit all transfers relating to an investment to be made without restrictions and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (c) principal, interest, royalty payments, management fees, technical assistance and other fees;
- (d) payments made under a contract; and
- (e) compensation pursuant to Articles IV and V.

6.02 The Host Country shall permit transfers to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

6.03 Notwithstanding sections 6.01 and 6.02, the Host Country may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

6.04 Notwithstanding Sections 6.01 and 6.02, transfers and other payments receivable by the OPEC Fund in respect of an investment may be subject to any generally applicable foreign exchange restrictions, regulations and controls in force in the Host Country arising from exceptional balance of payments difficulties of limited duration and in consonance with the exercise in good faith of powers conferred in that behalf by law.

ARTICLE VII
EXEMPTION FROM TAXATION

7.01 In compliance with the general principles set out in Article II and, in particular, the stipulations relating to most favoured party treatment, the OPEC Fund, its assets, property, operations, and any obligation or security issued or guaranteed by the OPEC Fund, and any other transactions undertaken by the OPEC Fund in connection with any investment in the territory of the Host Country, authorized by or pursuant to this Agreement, shall be immune from all taxation, levies or duties chargeable or otherwise imposed by, or in the territory of, the Host Country; and references in this Article to the OPEC Fund shall, *mutatis mutandis*, be construed as including references to the officials, agents and other representatives of the OPEC Fund specified in Section 2.05 above.

7.02 Notwithstanding Section 7.01, the reference therein to the officials, agents and other representatives of the OPEC Fund shall not include nationals and other third parties resident in the Host Country.

ARTICLE VIII
CONSULTATION

8.01 The parties to this Agreement agree to consult promptly, on the request of either, to resolve any dispute, controversy or claim in connection with this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement or the realization of the objectives of this Agreement.

ARTICLE IX
ARBITRATION CLAUSE

9.01 Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement, that is not resolved through consultations, shall be submitted upon request of either party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the parties to the contrary, the UNCITRAL Arbitration Rules, in force and effect on the date of this Agreement, shall govern.

9.02 The Host Country and the OPEC Fund will each appoint one arbitrator and the two arbitrators so appointed shall together appoint the third arbitrator as chairman, failing which such third arbitrator shall be appointed by the International Court of Arbitration in Paris, France. Where the UNCITRAL Arbitration Rules do not provide for a particular situation, the arbitrators shall in their absolute discretion determine what course of action should be followed and the arbitrator's decision shall be final.

9.03 Any arbitration under this Agreement shall be held in a state (not being the Host Country or any Member State of the OPEC Fund) that is a party to the United Nations Convention on the

Recognition and Enforcement of Foreign Arbitral Awards, done in New York, United States of America, on June 10, 1958; and the English Language shall be used throughout the arbitral proceedings.

9.04 Each party to this Agreement hereby waives any right of sovereign immunity as to it and its property in respect of the enforcement and execution of any award rendered by an arbitral tribunal constituted under or pursuant to this Agreement.

ARTICLE X
GOVERNING LAW

10.01 This Agreement and all documents executed in connection therewith as well as their validity, enforcement, and interpretation, and all disputes arising thereunder, shall be governed by the applicable provisions of this Agreement and shall be supplemented by the applicable principles of international law and *ex aequo et bono*.

ARTICLE XI
MAINTENANCE OF OTHER RIGHTS
AND OBLIGATIONS

11.01 This Agreement shall not be construed so as to derogate from any obligations of the Host Country under the following measures, especially in cases where such measures entitle investments to treatment more favourable than that accorded by this Agreement, that is to say:

- (a) the laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of the Host Country;
- (b) international legal obligations; or
- (c) any other obligations assumed by the parties to this Agreement, including those contained in an investment authorization or an agreement or other legally enforceable undertaking for or in connection with an investment.

ARTICLE XII
COMMUNICATIONS

12.01 Any notice or other communication required or permitted to be given or made under this Agreement shall be in writing. Such notice or communication shall, as appropriate for the concerned requirement, be deemed to have been duly given or made when it has been delivered by hand, mail, telex or telefax or other electronic means to the party to which it is required to be given or made, at the party's address specified below or at any other address as the party shall have specified in writing to the party giving the notice or making the communication.

For the Host Country:

The Minister of _____
Ministry of _____

For the OPEC Fund:

The Director-General
The OPEC Fund for International Development

ARTICLE XIII
ENTRY INTO FORCE,
DURATION AND TERMINATION

13.01 This Agreement shall enter into force following the receipt by the OPEC Fund of the instrument of ratification, a legal opinion or certification, or other documentary evidence of approval by the Host Country of this Agreement and upon the written certification by the OPEC Fund that all its internal legal requirements for the entry into force of this Agreement have been fulfilled.

13.02 This Agreement shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with Section 13.03.

13.03 Each Party may terminate this Agreement at the end of the initial ten years period or at any time by giving one year's written notice to the other Party.

13.04 Notwithstanding the termination of this Agreement, all other provisions thereof, except those relating to the establishment of a new investment, shall continue to apply to any investments established or acquired prior to the date of its termination and remain in force for an additional period of ten years from the said date.

IN WITNESS whereof, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in two copies in the English language, each considered an original and both to the same and one effect.

FOR THE _____ :

FOR THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT:

LIST OF AGREEMENTS SIGNED BY THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT WITH THIRD COUNTRIES*

List of agreements signed by the OPEC Fund for International Development with third countries, 1 September 2001		
Country/territory	Date of signature	Date of entry into force
<i>OPEC fund for International Development</i>		
Mauritania	27 October 1999	30 June 2000
Turkmenistan	10 December 1999	Not yet in force
Cape Verde	8 February 2000	22 January 2001
Togo	4 April 2000, 26 April 2000 ^a	26 January 2001
Bangladesh	19 May 2000	12 December 2000
Uganda	8 June 2000	7 August 2001
Yemen	23 June 2000	Not yet in force
Uzbekistan	11 August 2000	23 July 2001
Lebanon	23 September 2000	15 August 2001
Pakistan	24 October 2000	16 February 2001
Mali	7 November 2000	Not yet in force
Sudan	7 November 2000	29 June 2001
Cambodia	10 November 2000	Not yet in force
Bolivia	24 October 2000	Not yet in force
Mozambique	24 October 2000, 21 November 2000 ^a	Not yet in force
Mauritius	13 December 2000, 12 January 2001 ^a	27 August 2001
Burundi	22 January 2001, 30 January 2001 ^a	Not yet in force
Jamaica	15 January 2001, 8 February 2001 ^a	Not yet in force
Egypt	20 December 2000, 6 March 2001 ^a	Not yet in force
Albania	20 February 2001, 9 March 2001 ^a	Not yet in force
Syria	21 March 2001	Not yet in force
Palestine	17 May 2001	Not yet in force
Belize	4 May 2001, 14 May 2001 ^a	Not yet in force
Gambia	19 December 2000, 22 January 2001 ^a	23 July 2001
Paraguay	14 March 2001, 30 May 2001 ^a	Not yet in force
Benin	4 May 2001, 20 June 2001 ^a	Not yet in force
Maldives	4 May 2001, 28 June 2001 ^a	Not yet in force
Seychelles	4 May 2001, 23 May 2001 ^a	Not yet in force
Senegal	4 July 2001, 24 July 2001 ^a	Not yet in force

^a Signed by postal exchange.

* * *

* Source: OPEC Fund for International Development (2001). [Note added by the editor.]

**AGREEMENT BETWEEN THE REPUBLIC OF PERU AND
THE _____ ON THE PROMOTION AND RECIPROCAL
PROTECTION OF INVESTMENTS***

The Government of the Republic of Peru and the Government of, hereinafter designated as the ‘Contracting Parties’,

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties,

For the purpose of creating and keep fair, equitable and favorable conditions for the investment made by investors of one of the Contracting Parties within the territory of the other Contracting Party, and

Recognizing that the subscription of an Agreement for the Promotion and Reciprocal Protection of Investments may encourage private economic initiative and increase the welfare of both peoples,

HAVE AGREED AS FOLLOWS:

**Article 1
Definitions**

For the purposes of this Agreement:

1. “Investment” designates any kind of assets owned by an investor of one of the Contracting Parties, in the territory of the other Contracting Party and, in particular, though not exclusively, includes:

- a. Shares, stocks and any other forms of equity participation in a company and in joint ventures; in accordance with domestic legislation;
- b. Movable and immovable property as well as any other rights in rem, acquired or used to obtain economic benefits or other business purposes;
- c. Loans, securities, rights to money or any other performance having an economic value directly related to an specific investment;
- d. Intellectual and industrial property rights, such as copyrights and related rights, trademarks or trade brands, geographical indications, designs and industrial models, patents, layout designs (topographies) of integrated circuits and plant breeder rights.
- e. Concessions granted by law or under contract for the exercise of an economic activity, including concessions to prospect, search or exploit natural resources.

* *Source:* The Government of Peru, Ministry of Foreign Affairs. [Note added by the editor.]

- f. Reinvestments of profits, understood as investment of the profits in the same company where they were generated.

Any change in the form of an investment does not affect its character as an investment.

Investment does not mean:

- a. a payment obligation, or granting of a loan to the State or to a State-owned company;
- b. Loans to a company, when the due date thereof is under three years ;
- c. claims to money exclusively derived from:
 - commercial contracts for the sale of goods or services by a national or company in the territory of one Party to a company in the territory of the other Party; or
 - any type of trade financing.

“Investor” designates:

- a. individuals who have the citizenship of any of the Contracting Parties, according to their legislation; or
 - b. corporate bodies, including civil and commercial companies and other associations, which are incorporated or duly constituted in accordance with the applicable laws and regulations of one Contracting Party.
2. “Earnings” designates the sums obtained or produced from an investment made in accordance with this Agreement, such as profits, interests, dividends and royalties.
 3. “Territory” designates, in addition to the areas contained within the land boundaries, the adjacent maritime zones and air space in which the Contracting Parties exercise sovereign rights and jurisdiction in accordance with their respective legislation.

Article 2

Investment Promotion and Protection

1. Each Contracting Party shall promote within its territory investments made by investors of the other Contracting Party and shall admit them in accordance with its laws and regulations.
2. Investments made by investors of one of the Contracting Parties within the territory of the other Contracting Party, in accordance with the laws and regulations of the latter, shall be entitled to the full protection and juridical security of this Agreement, in accordance with principles of international law.
3. Each Contracting Party shall publicize and disseminate laws and regulations related to investments of investors of the other Contracting Party. Likewise, the Contracting Parties shall exchange information on investment opportunities in their territory in order to increase investment flows.

Article 3

Investment Treatment

1. Each Contracting Party shall ensure fair and equitable treatment for investments made, in accordance with this Agreement, by investors of the other Contracting Party and shall not impair by arbitrary or discriminatory measures, the free management, utilization, use, enjoyment or disposal of such investments by investors of that Contracting Party.
2. Each Contracting Party shall specifically grant to those investments a treatment that shall not be less favorable than that granted to investments of their own investors or to investments of investors of a third State, whichever may be more favorable to the investments of investors of the other Contracting Party.
3. If from the legal provisions of one of the Contracting Parties or from any other agreed upon by the Contracting Parties beyond what was stipulated in this Agreement, contains a general or special regulation in accordance with which the investments of the investors of the other Contracting Party shall be granted a most favorable treatment than what was provided for in this Agreement, these regulations shall prevail over this Agreement, insofar as they are more favorable.
4. The treatment agreed upon by this Article shall not extend to the benefits and advantages that one of the Contracting Parties grants to the nationals or companies of third States by virtue of agreements to avoid double taxation or other agreements on taxation matters.
5. This treatment shall not extend to the privileges that either of the Contracting parties may grant to nationals or companies of third States because they are members of a customs or economic union, a common market or a free trade area or similar international agreements entered into with third States, including integration and border development agreements.

Article 4

Transfers

1. Each Contracting party shall guarantee to the investors of the other Contracting Party the free transfer of payments related to an investment registered with the national competent agency, in particular but not exclusively:
 - a. the capital of the investment and of the reinvestments made in accordance with the laws and regulations of the receiving State;
 - b. all net profits;
 - c. the repayment of loans and other lendings defined in section c) of paragraph 1 of article 1 of this Agreement;
 - d. the proceeds of the sale or partial or total liquidation of the investment;
 - e. indemnities and compensations by virtue of Articles 5 and 6 of this Agreement;
 - f. payment resulting from settlement of disputes by virtue of Articles 8 and 9.

2. Transfers shall be made in a freely convertible currency, without restriction or delay.
3. Nevertheless the agreed in paragraphs 1 and 2, the Contracting Parties may hinder the transfer by the equitable and non discriminatory application of their legislation in the following cases:
 - a. bankruptcy, insolvency or protection of creditor's rights;
 - b. issuance, trade and transactions of securities;
 - c. criminal or administrative infringements;
 - d. guarantee of enforcement of decisions in administrative proceedings;
 - e. Non-compliance of obligations under prevailing tax laws;
 - f. Non-compliance of obligations under prevailing labour laws.
4. Paragraphs 1 and 2 are subject to reasonable measures to be adopted or hold by each Party, by reasons of prudence in order to ensure the integrity and stability of its financial system.
5. Notwithstanding paragraphs 1 and 2 of this Article, in cases of exceptional or serious difficulties in the balance of payments, each Contracting party shall have the right, to temporary limit transfers, in equitable and non discriminatory way and in accordance with principles internationally accepted.

Article 5 Expropriations

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measures that have equivalent effects to expropriation or nationalization (hereinafter called "expropriation") except for reasons of national security or, public necessity, in a non-discriminatory basis and under due legal process.
2. Such measures shall be taken along with provisions for the payment of a prompt, adequate and effective compensation. The amount of such compensation shall correspond to the fair value of the expropriated investment immediately before the date on which the expropriation is carried out or is declared, whichever occurs first. Such a fair value shall be expressed in a freely convertible currency at the exchange rate of the market in that moment. Compensation shall also include the interests at the banking rate in force, from the expropriation date up to the date of its effective payment.
3. The investor whose investment is expropriated shall have the right to submit to review of judicial authorities or other competent authorities of the Contracting Party, its case and the compensation valuation, under the principles contained in this Article.

Article 6
Compensation for losses

The investors of one of the Contracting Parties whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency, state of siege, rebellion or other similar events in the territory of the other Contracting Party shall be treated by the latter not less favorable, than its own investors with regards to restitutions, compensations and indemnifications.

Article 7
Subrogation

1. If one of the Contracting Parties or an authorized agent makes payments to its investors in accordance with a guarantee granted against non-commercial risks in regard to an investment in the territory of the other Contracting Party, the latter, without prejudice of the rights granted in Article 9, shall recognize the rights of the former Contracting Party or its agent or agency, authorized or designated, whether by legal provisions or by means of a juridical measure.

2. Likewise, the other Contracting Party shall acknowledge the cause and scope of the subrogation by the former Contracting Party or agent authorized, in all these rights of the previous holder, granted in accordance with this Agreement.

Article 8
**Settlement of Disputes between a Contracting Party and
an Investor of the other Contracting Party**

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party relating to investments made within the meaning of this Agreement shall, if possible, be settled in a friendly manner between the parties to the dispute.

2. If a dispute that is within the meaning of paragraph 1 cannot be settled within a term of six months, counted from the date in which one of the parties to the dispute has delivered a notice in writing to the other Contracting Party, it shall be submitted at the request of one of them to:

- a. The competent tribunal of the Contracting Party within whose territory the investment was made.
- b. The international arbitration of the International Center for Settlement of Investment Disputes (ICSID), established pursuant the "Convention on the Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington 18 March, 1965.

3. Once the dispute has been submitted to the competent tribunal of the Contracting Party within whose territory the investment was made or to international arbitration, the choice of one or the other procedure shall be definitive.

4. The arbitral decision shall be final and binding and each Party shall comply with it in accordance with its laws.

Article 9
Settlement of Disputes between the Contracting Parties

1. Disputes between Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall, if possible, be settled by the Contracting Parties through their diplomatic channels.
2. If a dispute cannot be settled this way within a term of six months from the date in which one of the Parties to the dispute has notified on the dispute to the other Party, it shall be submitted, at the request of one of them, to an Arbitral Tribunal.
3. The Arbitral Tribunal shall be constituted ad hoc. Each Contracting Party shall appoint one member and these two members shall agree to elect as Chairman a national of third State who shall be appointed by the both Contracting Parties. The members shall be appointed within a term of two months, and the Chairman, within a term of three months, after one of the Contracting Parties has notified the other Party that it wishes to submit the dispute to an Arbitral Tribunal.
4. If the terms stipulated in paragraph 3 have not been met, and in the absence of any other agreement, either Contracting Party may 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 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 is prevented from discharging the said function, the Member of the International Court of Justice who is ranked immediately below him and who is not a national of one of the Contracting Parties, shall be invited to make the necessary appointments.
5. The Arbitral Tribunal shall reach its decisions by a majority of votes. Its decisions shall be final and binding. Each Contracting Party shall bear the costs of its own arbitrator, as well as the costs of its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be born equally by the two Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 10
Case of Interruption of Diplomatic or Consular Relations

The provisions of this Agreement shall continue to be fully applicable irrespectively of whether or not the Contracting Parties have diplomatic or consular relations.

Article 11
Application of the Agreement

1. This Agreement shall apply to investments made by the investors of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. It shall, however, not be applicable to disputes which have arisen to its entry into force.
2. This Agreement shall not be applicable to disputes relating to events or actions taken and completed before its entry into force, even if the effects remain after that date.

Article 12
Entry into Force, Duration and Termination of the Agreement

1. The Contracting Parties shall notify each other of the completion of their legal requirements for the entry into force of this Agreement.
2. This Agreement shall enter into force thirty days after the date of the latter of the two notifications. It shall remain binding for fifteen years and shall be extended afterwards for an indefinite time unless one of the Contracting Parties gives written notice of its intention to terminate it, six months before it expires.
3. After fifteen years have elapsed, the Agreement may be denounced at any time with prior notice of six months.
4. For investments made before the date of termination of this Agreement, it shall continue to be in force for fifteen years after that date.

Article 13
Language

This Agreement drafted in duplicate, one in Spanish and the other in _____, each version being equally authentic.

In case of any divergence or interpretation, the Spanish text shall prevail.

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

DONE at, on.....2000.

FOR THE REPUBLIC OF PERU

FOR

* * *

1994 Prototype, revised 4/1998

**TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE REPUBLIC OF _____
CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF
INVESTMENT***

The Government of the United States of America and the Government of the Republic of
(hereinafter the “Parties”);

Desiring to promote greater economic cooperation between them, with respect to investment by
nationals and companies of one Party in the territory of the other Party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the
flow of private capital and the economic development of the Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic
resources and improve living standards;

Recognizing that the development of economic and business ties can promote respect for
internationally recognized worker rights;

Agreeing that these objectives can be achieved without relaxing health, safety and environmental
measures of general application; and

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of
investment;

Have agreed as follows:

ARTICLE I

For the purposes of this Treaty

(a) “company” means any entity constituted or organized under applicable law, whether or
not for profit, and whether privately or governmentally owned or controlled, and includes a
corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other
organization;

(b) “company of a Party” means a company constituted or organized under the laws of that
Party,

(c) “national” of a Party means a natural person who is a national of that Party under its
applicable law;

* *Source:* The Government of the United States of America, Department of State. [Note added by the editor.]

(d) “investment” of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:

- (i) a company;
- (ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;
- (iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;
- (iv) tangible property, including real property, and intangible property, including rights, such as leases, mortgages, liens and pledges;

(v) intellectual property, including:

copyrights and related rights;

patents,

rights in plant varieties,

industrial designs,

rights in plant varieties,

industrial designs,

rights in semiconductor layout designs,

trade secrets, including know-how and confidential business information,

trade and service marks, and

trade names; and

(vi) rights conferred pursuant to law, such as licenses and permits;

(e) “covered investment” means an investment of a national or company of a Party in the territory of the other Party;

(f) “state enterprise” means a company owned, or controlled through ownership interests, by a Party;

(g) “investment authorization” means an authorization granted by the foreign investment authority of a Party to a covered investment or a national or company of the other Party;

(h) “investment agreement” means a written agreement between the national authorities of a Party and a covered investment or a national or company of the other Party that (i) grants rights

with respect to natural resources or other assets controlled by the national authorities and (ii) the investment, national or company relies upon in establishing or acquiring a covered investment;

(i) “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

(j) “Centre” means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention; and

(k) “UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law.

ARTICLE II

1. With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investments, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter “national treatment”) or to investments in its territory of nationals or companies of a third country (hereinafter “most favored nation treatment”), whichever is most favorable (hereinafter “national and most favored nation treatment”). Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments.

2. (a) A Party may adopt or maintain exceptions to the obligations of paragraph 1 in the sectors or with respect to the matters specified in the Annex to this Treaty. In adopting such an exception, a Party may not require the divestment, in whole or in part, of covered investments existing at the time the exception becomes effective.

(b) The obligations of paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

3. (a) Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.

(b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.

4. Each Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.

5. Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect covered investments are promptly published or otherwise made publicly available.

ARTICLE III

1. Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization (“expropriation”) except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensations; and in accordance with due process of law and the general principles of treatment provided for in Article II, paragraph 3.
2. Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken (“the date of expropriation”); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than;
 - (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
 - (b) interest, at commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

ARTICLE IV

1. Each Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.
2. Each Party shall accord restitution, or pay compensation in accordance with paragraphs 2 through 4 of Article III, in the event that covered investments suffer losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:
 - a) requisitioning of all or part of such investments by the Party’s forces or authorities, or
 - b) destruction of all or part of such investments by the Party’s forces or authorities that was not required by the necessity of the situation.

ARTICLE V

1. Each party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (c) interest, royalty payments, management fees, and technical assistance and other fees;
- (d) payment made under a contract, including a loan agreement; and
- (e) compensation pursuant to Articles III and IV, and payments arising out of an investment dispute.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Each party shall permit returns in kind to be made as authorized or specified in an investment authorization, investment agreement, or other written agreement between the Party and a covered investment or a national or company of the other Party.

4. Notwithstanding paragraphs 1 to 3, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses; or
- (d) ensuring compliance with orders or judgements in adjudicatory proceedings.

ARTICLE VI

Neither Party shall mandate or enforce, as a condition for the establishment, acquisition, expansion, management, conductor operation of a covered investment, any requirement (including any commitment or undertaking in connection with the receipt of a governmental permission or authorization):

- (a) to achieve a particular level or percentage of local content, or to purchase, use or otherwise give a preference to products or services of domestic origin or from any domestic source;
- (b) to limit imports by the investment of products or services in relation to a particular volume or value of production, exports of foreign exchange earnings;

- (c) to export a particular type, level or percentage of products or services, either generally or to a specific market region;
- (d) to limit sales by the investment of products or services in the Party's territory in relation to a particular volume or value of production, exports or foreign exchanges earnings,
- (e) to transfer technology, a production process or other proprietary knowledge to a national or company in the Party's territory, except pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws; or
- (f) to carry out a particular type, level or percentage of research and development in the Party's territory.

Such requirements do not include conditions for the receipt or continued receipt of an advantage.

ARTICLE VII

1.
 - (a) Subject to its laws relating to the entry and sojourn of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.
 - (b) Neither Party shall, in granting entry under paragraph (a), require a labor certification test or other procedures of similar effect, or apply any numerical restriction.
2. Each Party shall permit covered investments to engage top managerial personnel of their choice, regardless of nationality.

ARTICLE VIII

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty or to the realization of the objectives of the Treaty.

ARTICLE IX

1. For purposes of this Treaty, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.
2. A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:

- (a) to the courts or administrative tribunals of the Party that is a party to the dispute; or
 - (b) in accordance with any applicable, previously agreed dispute settlement procedures; or
 - (c) in accordance with the terms of paragraph 3.
3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2(a) or (b), and that three months have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:
- (i) to the Centre, if the Centre is available; or
 - (ii) to the Additional Facility of the Centre, if the Centre is not available; or
 - (iii) in accordance with the UNCITRAL Arbitration Rules; or
 - (iv) if agreed by both parties to the dispute to any other arbitration institution or in accordance with any other arbitration rules.
- (b) A national or company, notwithstanding that it may have submitted a dispute to binding arbitration under paragraph 3 (a), may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Party that is a party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its rights and interests.
4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice of the national or company under paragraph 3 (a) (i), (ii), and (iii) or the mutual agreement of both parties to the dispute under paragraph 3 (a) (iv). This consent and the submission of the dispute by a national or company under paragraph 3 (a) shall satisfy the requirement of:
- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to the dispute; and
 - (b) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for an “agreement in writing”.
5. Any arbitration under paragraph 3 (a) (ii), (iii) or (iv) shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.
6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.
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7. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

8. For purposes of Article 25 (2) (b) of the ICSID Convention and this Article, a company of a Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of the other Party.

ARTICLE X

1. Any dispute between the Parties concerning the interpretation or application of the Treaty, that is not resolved through consultations or other diplomatic channels, shall be submitted upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the UNCITRAL Arbitration Rules shall govern, except to the extent these rules are (a) modified by the Parties or (b) modified by the arbitrators unless either Party objects to the proposed modification.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as chairman, who shall be a national of a third state. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the arbitral panel shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman and other arbitrators, and other costs of the proceedings, shall be paid for equally by the Parties. However, the arbitral panel may, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

ARTICLE XI

This Treaty shall not derogate from any of the following that entitle covered investments to treatment more favorable than that accorded by this Treaty:

- (a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party;
- (b) international legal obligations; or
- (c) obligations assumed by a Party, including those contained in an investment authorization or an investment agreement.

ARTICLE XII

Each Party reserves the right to deny to a company of the other Party the benefits of this Treaty if nationals of a third country own or control the company and

- (a) the denying Party does not maintain normal economic relations with the third country; or
- (b) the company has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

ARTICLE XIII

1. No provision of this Treaty shall impose obligations with respect to tax matters, except that:

- (a) Articles III, IX and X will apply with respect to expropriation; and
- (b) Article IX will apply with respect to an investment agreement or an investment authorization.

2. With respect to the application of Article III, an investor that asserts that a tax measure involves an expropriation may submit that dispute to arbitration pursuant to Article IX, paragraph 3, provided that the investor concerned has first referred to the competent tax authorities of both Parties the issue of whether that tax measure involves an expropriation.

3. However, the investor cannot submit the dispute to arbitration if, within nine months after the date of referral, the competent tax authorities of both Parties determine that the tax measure does not involve an expropriation.

ARTICLE XIV

1. This Treaty shall not preclude a Party from applying measures necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude a Party from prescribing special formalities in connection with covered investments, such as a requirement that such investments be legally constituted under the laws and regulations of that Party. Or a requirement that transfers of currency or other monetary instruments be reported, provided that such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XV

1. (a) The obligations of this Treaty shall apply to the political subdivisions of the Parties.
- (b) With respect to the treatment accorded by a State, Territory or possession of the United States of America, national treatment means treatment no less favorable than the treatment accorded thereby, in like situations, to investments of nationals

of the United States of America resident in, and companies legally constituted under the laws and regulations of, other States, Territories or possessions of the United States of America.

2. A Party may terminate this Treaty at the end of the initial ten year period or at any time thereafter by giving one year's written notice to the other Party.

ARTICLE XVI

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2. It shall apply to covered investments existing at the time of entry into force as well as to those established or acquired thereafter.

2. A Party may terminate this Treaty at the end of the initial ten year period or at any time thereafter by giving one year's written notice to the other Party.

3. For ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments.

4. The Annex shall form an integral part of the Treaty.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

Done in duplicate at [city] this [number] day of [month, year], in the English and [foreign] languages, each text being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES
OF AMERICA

FOR THE GOVERNMENT OF
.....

ANNEX

1. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees and insurance; state and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article 1108 thereof, and landing of submarine cables.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

2. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national and most favored nation treatment to covered investments in the sectors or with respect to the matters specified below;

fisheries; air and maritime transport, and related activities; banking, insurance, securities, and other financial services; and one-way satellite transmissions of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services.

3. The Government of the Republic of [country] may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

4. Notwithstanding paragraph 3, each Party agrees to accord national treatment to covered investments in the following sectors:

leasing of minerals and pipeline rights-of-way on government lands.

* * *

