Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the People's Republic of Bangladesh

The Government of the Kingdom of the Netherlands and the Government of the People's Republic of Bangladesh, (hereinafter referred to as the Contracting Parties),

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them particularly with respect to investments by the nationals of one Contracting Party in the territory of the other Contracting Party,

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

Article 1

For the purposes of the present Agreement:

(a) the term "investments" shall comprise every kind of as set and more particularly, though not exclusively:

i. movable and immovable property as well as any other rights in rem in respect of every kind of asset;
ii. rights derived from shares, bands and other kinds of interests in companies and joint ventures;
iii. title to money and other assets; and to any performance having an economic value;
iv. rights in the field of intellectual property, technical processes, goodwill and know-how;

(b) the term "nationals" shall comprise with regard to either Contracting Party:

i. natural persons having the nationality of that Contracting Party in accordance with its law;
ii. without prejudice to the provisions of iii hereafter, legal persons constituted under
the law of that Contracting Party;
iii. legal persons, wherever located, controlled, directly or indirectly, by nationals of
that Contracting Party.

(c) the term "territory" includes the maritime areas adjacent to the coast of the State
concerned, to the extent to which that State may exercise sovereign rights or
jurisdiction in those areas according to international law.

Article 2

Either Contracting Party shall, within the framework of its laws and regulations, promote
economic cooperation through the protection in its territory of investments of nationals of
the other Contracting Party. Subject to its right to exercise powers conferred by its laws
or regulations each Contracting Party shall admit such investments.

Article 3

1) Each Contracting Party shall ensure fair and equitable treatment to the investments of
nationals 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 nationals.

2) More particularly, each Contracting Party shall accord to such investments full
security and protection which in any case shall not be, less than that accorded either
to investments of its own nationals or to investments of nationals of any third State,
whichever is more favourable to the national concerned.

3) If a Contracting Party has accorded special advantages to nationals of any third State
by virtue of agreements establishing customs unions, economic unions or similar
institutions, or on the basis of interim agreements leading to such unions or
institutions, that Contracting Party shall not be obliged to accord such advantages to
nationals of the other Contracting Party.

4) Each Contracting Party shall observe any obligation it may have entered into with
regard to investments of nationals of the other Contracting Party.

5) 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 nationals of the other Contracting Party to a treatment more
favourable than is provided for by the present Agreement, such regulation shall to the
extent that it is more favourable prevail over the present Agreement,

Article 4

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each
Contracting Party shall accord to nationals of the other Contracting Party who are
engaged in any economic activity in its territory, treatment not less favourable than that
accorded to its own nationals or to those of any third State, whichever is more favourable
to the nationals concerned. For this purpose, however, there shall not be taken into
account any special advantages accorded by that Party under an agreement for the
avoidance of double taxation, by virtue of its participation in a customs union, economic
union or similar institution, or on the basis of reciprocity with a third State.

Article 5

The Contracting Parties shall guarantee that payments related to an investment may be
transferred. The transfers shall be made in a freely convertible currency, without undue
restriction or delay. Such transfers include:

(a) profits, interest, dividends and other current income;

(b) royalties or fees;

(c) funds necessary for the maintenance or development of an investment;

(d) funds in repayment of loans;

(e) the proceeds of sale or liquidation of the investment.

Article 6

Neither Contracting Party shall take any measures depriving, directly or indirectly,
nationals of the other Contracting Party of their investments unless the following
conditions are complied with:

(a) the measures are taken in the public interest and under due process of law;
(b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;

(c) the measures are accompanied by provisions for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

Article 7

Nationals of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

Article 8

If the investments of a national 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 into the rights of the said national pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 9

Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the International Centre for 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 on 18 March 1965. A legal person which is incorporated or constituted under the law in force in the territory of one Contracting
Party and in which before such a dispute arises the majority of shares are owned by nationals of the other Contracting Party, shall in accordance with Article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

Article 10

The present Agreement shall apply to all investments, whether existing at the time of its entry into force or made or acquired thereafter. It shall however not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

Article 11

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and Aruba, unless the notification provided for in Article 14, paragraph 1 provides otherwise.

Article 12

Either Contracting Party may propose the other Party to consult on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 13

1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.

2) If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment,
the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

4) If, in the cases provided for in the paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointment.

5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute ex aequo et bono if the Parties so agree.

6) Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

Article 14

1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of fifteen years.

2) Unless notice of termination has been given either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.
3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of fifteen years from that date.

4) Subject to the period mentioned in paragraph 2 of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

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

DONE in duplicate at, (place), on (date), in the Dutch, Bangla and English languages, the three texts being equally authentic. In case of difference of interpretation the English text will prevail.

For the Government of the Kingdom of the Netherlands: For the Government of the People's Republic of Bangladesh: