

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF REPUBLIC OF TRINIDAD AND TOBAGO FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of India and the Government of the Republic of Trinidad and Tobago (hereinafter referred to as the "Contracting Parties");

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

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

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

Respecting the sovereignty and laws of the Contracting Party within whose jurisdiction the investment falls;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

- (a) "company" means any corporation, firm or association incorporated, constituted or established under the law in force in any part of the territory of the respective Contracting Party.
- (b) "investment" means every kind of asset established or acquired including changes in the form of such investment, in accordance with the laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:
  - (i) Movable and immovable property as well as other rights such as mortgages, liens or pledges;
  - (ii) Shares in and stock and debentures of a company and any other similar forms of participation in a company;
  - (iii) Rights to money or to any performance under contract having a financial value;
  - (iv) Intellectual property rights including, inter alia, goodwill, technical processes and know how, in accordance with the relevant laws of the respective Contracting Party;
  - (v) Business concessions conferred by law or under contract, including concessions to search for and extract oil and other minerals;
- (c) "investor" means any national or company of a Contracting Party who has invested in the territory of the other Contracting Party;
- (d) "investment dispute" means any dispute between a Contracting Party and an investor of the other Contracting Party concerning an obligation of the former under this Agreement;
- (e) "national" means a person deriving his or her status as a national from the law in force in the territory of the respective Contracting Party;
- (f) "return" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

(g) "territory" means:

(i) In respect of the Republic of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the exclusive economic zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and international law.

(ii) In respect of the Republic of Trinidad and Tobago: the archipelagic State of Trinidad and Tobago, comprising the several islands of the Republic of Trinidad and Tobago, its archipelagic waters, territorial sea and airspace thereof, together with the adjacent submarine areas of the exclusive economic zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereign rights or jurisdiction in accordance with its laws and international law.

## **Article 2. Scope of the Agreement**

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute, claim or difference which arose prior to its entry into force.

## **Article 3. Promotion and Protection of Investment**

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

(2) Investments and returns on investments by investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.

(3) Returns on investments and in the event of their re-investment, the returns there from shall enjoy the Same protection as the investments.

## **Article 4. National Treatment and Most-favoured-nation Treatment**

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

(2) In addition, each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which shall not be less favourable than that which it accords to its investors or to investors of any third State.

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

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

(b) Any matter pertaining wholly or mainly to taxation including double taxation avoidance agreements.

## **Article 5 (1. Expropriation**

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the normal commercial rate until the date of payment, shall be made without undue delay, be effectively realizable and be freely transferable.

(2) The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to review by a judicial or other independent authority of that Party, his or its case and the valuation of his or its investment in accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to

ensure that such review is carried out promptly.

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

## **Article 6. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

## **Article 7. Repatriation of Investments and Returns**

(1) Each Contracting Party shall permit investments or returns of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without undue delay and on a non-discriminatory basis. Such funds may include:

- (a) Capital and additional capital amounts used to maintain and increase investments;
- (b) Net operating profits including dividends and interest in proportion to their share-holdings;
- (c) Repayments of any loan including interest thereon, relating to the investment;
- (d) Royalties and service fees relating to the investment;
- (e) Proceeds from sale of their shares;
- (f) Proceeds received by investors in case of sale or partial sale or liquidation;
- (g) The earnings of nationals of one Contracting Party who work in connection with investments in the territory of the other Contracting Party.

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

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

## **Article 8. Subrogation**

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

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

(1) Any investment dispute shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) Any such dispute which has not been amicably settled within a period of six months may, if the parties to the dispute agree, be submitted: (a) To any competent judicial, arbitral or administrative body of the Contracting Party that is a party to the dispute; or

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

(3) Should the Parties fail to agree on a dispute settlement procedure provided under paragraph (2) of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement

agreement, the dispute may be referred to international arbitration. Where the dispute is referred to international arbitration, either party may submit the dispute to:

(a) The International Centre for the Settlement of Investment Disputes if both the Contracting Party of the Investor and the other Contracting Party are parties to the Convention on the Settlement of Investment Disputes between States and nationals of other States, 1965 and the investor consents in writing to submit the dispute to the Centre; or

(b) The Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings, if both parties to the dispute so agree; or

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

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

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

(iii) The arbitral award shall be made in accordance with the provisions of this Agreement and shall be final and binding for the parties in dispute. Each Contracting Party shall carry out without delay, the terms of any such award.

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

(4) In any proceeding involving an investment dispute, a Contracting Party shall not assert as a defence 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.

## **Article 10. Disputes between the Contracting Parties**

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

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

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way; within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedures.

## **Article 11. Entry and Sojourn of Personnel**

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

## **Article 12. Applicable Laws**

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

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

### **Article 13. Application of other Rules**

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

### **Article 14. Amendment**

Any provision of this Agreement may be amended by mutual agreement of the Contracting Parties. Any such amendment shall be confirmed by an exchange of letters through diplomatic channels.

### **Article 15. Entry Into Force**

Each Contracting Party shall notify the other in writing of the completion of the legal formalities required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

### **Article 16. Duration and Termination**

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

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

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

Done at NEW DELHI on this 12th day of March 2007 in two originals each in the Hindi and English languages, both the texts being equally authoritative. In case of any divergence, the English text shall prevail.

For the Government of the Republic of India

(Kamal Nath)

Minister of Commerce and Industry

For the Government of the Republic of Trinidad and Tobago

(Kenneth Valley)

Minister of Trade and Industry

1. A measure of expropriation includes, apart from direct expropriation or nationalization through formal transfer of title or outright seizure, a measure or series of measures taken intentionally by a Party to create a situation whereby the investment of an investor may be rendered substantially unproductive and incapable of yielding a return without a formal transfer of title or outright seizure.

2. The determination of whether a measure or a series of measures of a Party in a specific situation, constitutes measures as outlined in paragraph 1 above requires a case by case, fact based inquiry that considers, among other factors:

(i) The economic impact of the measure or a series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that expropriation or nationalization, has occurred;

(ii) The extent to which the measures are discriminatory either in scope or in application with respect to a Party or an investor or an enterprise;

(iii) The extent to which the measures or series of measures interfere with distinct, reasonable, investment- backed expectations;

(iv) The character and intent of the measures or series of measures, whether they are for bona fide public interest purposes or not and whether there is a reasonable nexus between them and the intention to expropriate.

3. Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives including health, safety and environmental concerns, do not constitute expropriation or nationalization.

4. Actions and awards by judicial bodies of a Party that are designed, applied or issued in public interest including those designed to address health, safety and environmental concerns, do not constitute expropriation or nationalization.