

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of India and Government of the Kingdom of Saudi Arabia (hereinafter referred to as the "Contracting Parties");

Desiring to intensify economic cooperation between both States and intending to create favourable conditions for investments by investors of either State in the territory of the other State;

Recognizing that the reciprocal promotion and protection of such investments are apt to encourage business initiative and to increase the prosperity of both States;

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement;

1 The term "investment" means every kind of asset, owned by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation and in particular, but not exclusively includes:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufructs and similar rights;
- b) Shares, stocks and debentures of companies and other right or interest in companies as well as securities issued by a Contracting Party or any of its investors, in accordance with the relevant laws and regulations of the host Contracting Party for such securities;
- c) Claims to money such as loans or to any performance having an economic value, associated with an investment;
- d) Intellectual property rights, including but not limited to copyrights, patents, industrial designs, know-how, trademarks, trade names and goodwill in accordance with the relevant laws of the respective Contracting Party;
- e) Business concession conferred by law or under contract or any license or permit issued according to law;

Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alteration is not in conflict with the legislation of the Contracting Party in the territory of which the investment is made.

2. The term "returns" means the monetary amounts yielded by an investment in particular profits, dividends, royalties, capital gains or any similar fee or payment.

3. The term "investor" means:

a) In respect of the Republic of India:

I. Nationals deriving their status as Indian nationals from the law in force in India;

II. Companies, corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.

b) In respect of the Kingdom of Saudi Arabia:

I. Natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

II. Any entity having legal personality and constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;

III. The Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in Saudi Arabia.

4. The term "territory" means:

a) In respect of the Republic of India : the territory of the Republic of India including its territorial waters and the air space 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, International Law and the 1982 United Nations Convention on the Law of the Sea.

b) In respect of the Kingdom of Saudi Arabia: in addition to the zones contained within the land boundaries, the marine and submarine zones and the air space over which the Kingdom of Saudi Arabia exercises sovereignty and sovereign or jurisdictional rights under International Law;

## **Article 2.**

1. Each Contracting Party shall as far as possible promote investments by investors of the other Contracting Party in its territory and admit such investments in accordance with its laws and regulations. Each Contracting Party shall in any case accord such investments fair and equitable treatment.

2. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall not in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

## **Article 3.**

1. Each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third State.

2. In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its investors.

3. Each Contracting Party shall accord the investors of the other Contracting Party with regard to the management, maintenance, use, enjoyment or disposal of investments or with any other activity associated with investments in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of a third State,.

4. The provisions in paragraph 1 and 3 of this Article shall not, however, relate to any treatment, preference or privilege granted by either Contracting Party to the investors of a third State by virtue of its membership of, or association with, a customs union, an economic union, a common market or a free trade area.

5. The treatment granted under this Article shall not relate to matters regarding taxation.

## **Article 4.**

1. Investments by investors of either Contracting Party shall not be expropriated, nationalized, or subjected to any other measures, the effects of which would be tantamount to expropriation or nationalization by the other Contracting Party except for the public benefit of the Contracting Party and against speedy, fair and equitable compensation, provided that these measures are not discriminatory and in accordance with domestic laws of general application. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalization or comparable measure has become publicly known, whichever is earlier. The compensation shall be paid without undue delay and shall carry a rate of return determined on the basis of the market

prevailing rate of return until the time of payment; it shall be effectively realizable and freely transferable. Provision shall be made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

2. To determine whether an action or series of actions is tantamount to expropriation (indirect expropriation), a case-by-case fact based inquiry shall be made in accordance with the provisions of this agreement and the principles of customary international law, and shall consider, inter alia, the economic impact, the purpose and context of such action and the extent to which it interferes with distinct, reasonable investment backed expectations. The mere fact that an action or series of actions by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, would not establish that an indirect expropriation has occurred. Also any action of a Contracting Party taken as a part of normal business activities would not, by itself, constitute an indirect expropriation unless the prima facie intention to create adverse impact on the economic value of the investment is apparent.

3. This Article shall not be construed to prevent a Contracting Party from taking a regulatory action, for the public benefit of that Contracting Party on a non-discriminatory basis, to protect legitimate public welfare objectives, such as health, safety, and the environment.

## **Article 5.**

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of general emergency, a revolt or to any measures taken for essential security interests, shall be accorded treatment not less favourable than that accorded by the latter Contracting Party to the investors of a third State or to its own investors. Such payments shall be freely transferable.

## **Article 6.**

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with investments and investment returns they hold in the territory of the other Contracting Party, in particular;

- a) The principal and additional amounts to maintain or increase the investment;
- b) The returns;
- c) Repayment of loans;
- d) The proceeds from the liquidation or the sale of the whole or any part of the investment;
- e) The compensation provided for in Articles 4 and 5;
- f) Proceeds from sales of their shares;
- g) The earnings of nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

## **Article 7.**

1. Transfers under Articles 4, 5 and 6 shall be made without delay at the prevailing market rate of exchange on the date of transfer.
2. In the absence of the prevailing market rate of exchange, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.
3. A transfer shall be deemed to have been made without undue delay if effected within such period as is normally required for the completion of transfer formalities. The period shall commence on the day on which the relevant request has been made, with full documentation and information, and may on no account exceed two months.

## **Article 8.**

If either Contracting Party makes a payment to any of its investors under a guarantee for a noncommercial risk it has assumed in respect of an investment or a part thereof in the territory of the other Contracting Party or become subrogator

to such investors in claiming any of the rights pertaining to these investments, the latter Contracting Party shall recognize:

- a) The right of the other Contracting Party based on the process of subrogation in such claim whether under law or pursuant to a legal transaction;
- b) That the other Contracting Party is entitled – according to the process of subrogation to any such right or claim – to assert such rights to the same extent as its predecessor is entitled.

## **Article 9.**

If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this 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 this Agreement, such regulation shall, to the extent that is more favourable, prevail over what is provided for in this context in the Agreement..

## **Article 10.**

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

## **Article 11.**

1. Disputes between the Contracting Parties concerning the interpretation or application of the Agreement should as far as possible be settled amicably by the governments of the two Contracting Parties.
2. If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.
3. Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their Chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within four months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.
4. If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, 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 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 Court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counselling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different arrangement concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

## **Article 12.**

1. Dispute concerning investments between a Contracting Party and an investor of the other Contracting Party, in connection with these investments in the territory of the former Contracting Party, should be amicably settled as far as possible.
2. If the dispute cannot be settled in the way prescribed in paragraph (1) of this Article within six months from the date when the request for the settlement has been submitted, it shall be at the request of the investor filed to the competent court of law, tribunals or judicial authorities constituted under law of the Contracting Party in whose territory the investment was made, or filed for arbitration under the Convention of 18 March, 1965 on the Settlement of Investment Disputes between States and Nationals of other States or in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law of 1976. If the investor chooses to file for arbitration, the Contracting Party shall agree to the settlement by arbitration and not to request the exhaustion of local settlement procedures.

3. If the dispute is submitted in accordance with paragraph (2) to the competent Court of Law, tribunals or judicial authorities constituted under law of the Contracting Party, the investor cannot at the same time seek international arbitration, and the ruling made by the court, tribunals or judicial authorities constituted under law, as the case may be, shall be binding and shall not be subject to any appeal or remedy other than those provided for in the law of the Contracting Party.

4. In the event that an investor chooses to submit the dispute for resolution to international arbitration the arbitration procedure shall be as follows:

a) The investor of a Contracting Party is entitled to submit its dispute with the host Contracting Party to the International Center for the Settlement of Investment Disputes, if the latter Contracting Party is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965; or

b) To be submitted to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the UNCITRAL of 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.

5. The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention or under the UNCITRAL Rules. The award shall be enforced in accordance with domestic law.

### **Article 13.**

The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment.

### **Article 14.**

This Agreement shall not preclude the application by either Contracting Party of measures necessary for maintenance of public order, or the protection of its own essential security interests in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis.

### **Article 15.**

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

### **Article 16.**

1. This Agreement shall enter into force thirty days after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall remain in force thereafter for an unlimited period unless denounced in writing by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years, this Agreement may be denounced at any time by either Contracting Party giving twelve months' notice.

2. In respect of investment made prior to the date of termination of this Agreement, the provisions of Articles 1 to 15 shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

Done at New Delhi on 25th January 2006 in duplicate in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

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For the Government of the Republic of India For the Government Kingdom of. Saudi Arabia.