

Agreement between the Republic of India and the Kingdom of the Netherlands for the promotion and protection of investments

The Government of the Kingdom of the Netherlands

And

The Government of the Republic of India (each hereinafter referred to as a Contracting Party),

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 investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that reciprocal protection of such investments under an agreement will subserve the aforesaid objective and will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) "investments" means every kind of asset invested in accordance with the national laws and regulations of the Contracting Party in the territory of which the investment is made and in particular, though not exclusively, includes:

(i) Movable and immovable property as well as other property rights such as mortgages, leases, liens, or pledges;

(ii) Rights derived from shares, bonds and other kinds of interest in companies;

(iii) Rights to money or to any performance having value;

(iv) Intellectual property rights, technical processes, goodwill and know how in accordance with the relevant laws of the respective Contracting Parties;

(v) Rights granted under law or under contract such as business concessions to search for and extract oil, natural gas and other minerals;

b) "nationals" means:

(i) In respect of India: persons deriving their status as Indian nationals from the law in force in India;

(ii) In respect of the Netherlands: natural persons having the nationality of the Netherlands;

c) "companies" means:

(i) In respect of India: corporations, firms and associations incorporated or constituted under the law in force in any part of India;

(ii) In respect of the Netherlands: legal persons constituted under the law of the Netherlands;

d) "investors" means: nationals or companies of a Contracting Party;

e) "territory" means:

(i) In respect 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 jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the

Law of the Sea and public international law. 1982 United Nations Convention on the Law of the Sea and public international law.

(ii) In respect of the Netherlands: the term territory includes the maritime areas adjacent to the coast of the State, to the extent to which the State exercises sovereign rights or jurisdiction in those areas according to international law.

Article 2. Scope of the Agreement

This Agreement shall apply to any investment made by investors of either Contracting Party in the territory of the other Contracting Party including an indirect investment made through another company, wherever located, which is fully owned by such investors, whether made before or after the coming into force of this Agreement.

Article 3. Promotion of Investment

Each Contracting Party shall encourage and promote favourable conditions for investors of the other Contracting Party to make investments in its territory in accordance with its laws and policy. The admission of such investment shall be subject to the laws and policies of the Contracting Party in whose territory the investment is made.

Article 4. National Treatment and Most Favoured Nation Treatment

1. Investments of 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.

2. Each Contracting Party shall accord to such investments, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

3. The provisions of paragraphs 1 and 2 in respect of the grant of most favoured nation treatment shall not apply to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

4. The provisions of paragraphs 1 and 2 in respect of the grant of national treatment and most favoured nation treatment shall also not apply in respect of any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation or arrangements consequent to such legislation relating wholly or mainly to taxation. paragraphs 1 and 2 in respect of the grant of national treatment and most favoured nation treatment shall also not apply in respect of any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation or arrangements consequent to such legislation relating wholly or mainly to taxation.

5. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party, provided that dispute resolution under Article 9 of this Agreement shall only be applicable in the absence of a normal, local, judicial remedy being available. Article 9 of this Agreement shall only be applicable in the absence of a normal, local, judicial remedy being available.

Article 5. 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 in the public interest in accordance with law, on a non-discriminatory basis and against compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal market rate until the date of payment, shall be effectively realizable without undue delay, and shall be freely convertible and transferable.

2. The investor affected shall have a right to review, under the laws of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

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 shall be accorded by the latter Contracting Party treatment as regards compensation, restitution, indemnification or other forms of settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State. Any payments made under this Article shall be freely convertible and transferable.

Article 7. Repatriation of Investment and Returns

1. Each Contracting Party shall assure to investors of the other Contracting Party, without delay and on a non-discriminatory basis, the unrestricted transfer inter alia of: inter alia of:

- a) Capital and additional capital amounts used to maintain or increase investments;
- b) Net operating profits including dividends and interest;
- c) Repayments of any loan, including interest thereon, relating to the investment;
- d) Payment of royalties and service fees as far as it is related to the investment;
- e) Proceeds of sale or liquidation of the investment;
- f) The earnings of nationals of one Contracting Party or of any third State who work in connection with investments in the territory of the other Contracting Party.

2. Currency transfer under paragraph 1 shall be in a freely convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

Article 8. Subrogation

If the investments of an investor of one Contracting Party are insured against or otherwise guaranteed in respect of non-commercial risks under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or guarantee shall be recognised by the other Contracting Party. The subrogated right or claim shall not exceed the original rights or claims of such investor.

Article 9. Investment Disputes

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. The party intending to resolve such dispute through negotiations shall give notice to the other of its intentions.

2. If the dispute cannot be thus resolved as provided in paragraph (1) of this Article within three months from the date of notice given thereunder, then the dispute may be referred to conciliation in accordance with the United Nations Commission on International Trade Law Rules of Conciliation 1980, if both parties to the dispute so agree.

3. If either party to the dispute does not agree to conciliation within one month of the reference or where it is so referred but conciliation proceedings are terminated other than by the signing of a settlement agreement, or if no reference is made to international conciliation, the dispute may be referred to arbitration as follows:

- a) If the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 and both parties to the dispute consent in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes, such a dispute shall be referred to the Centre; or Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 and both parties to the dispute consent in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes, such a dispute shall be referred to the Centre; or
- b) If both parties to the dispute so agree, under the Additional Facility Rules for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or
- c) If the course of action at a) and b) above is not followed then the dispute shall be referred to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International

Trade Law, 1976 if the investor so agrees.a) and b) above is not followed then the dispute shall be referred to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 if the investor so agrees.

4. In respect of arbitration proceedings under paragraph 3 c) of this Article the following shall apply:

(i) The Arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration. The two arbitrators shall within two months from then appoint by mutual agreement a third arbitrator, the Chairman, who shall be a national of a third State.

(ii) If the necessary appointments are not made within the period specified in paragraph (4)(i), either party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments.

(iii) The arbitral award shall be made in accordance with the provisions of this Agreement.

(iv) The tribunal shall reach its decision by a majority of votes.

(v) The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award.

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

(vii) Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations.

2. If a dispute between the Contracting Parties cannot be settled, after six months it shall, upon the request of either Contracting Party, be submitted to arbitration.

3. The arbitral tribunal shall consist of three arbitrators. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator and within two months from then the two arbitrators shall appoint a third arbitrator who shall be the Chairman of the tribunal.

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 such 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 decision shall be final and 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 and half the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties. The tribunal shall determine its own procedure and the rules of law to be applied.

Article 11. Applicable Laws

All investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 12. Prohibitions and Restrictions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or

restrictions or take action in accordance with its laws applied in good faith, on a non discriminatory basis, and to the extent necessary for the protection of its essential security interests, or for the prevention of diseases and pests in animals or plants.

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. Area of Application

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and to Aruba, unless otherwise provided for under paragraph 2 of Article 16 of this Agreement.

Article 15. Entry Into Force

This 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 have been complied with.

Article 16. Duration and Termination

1. This Agreement shall remain in force for a period of ten years. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be deemed to have been extended for periods of ten years at a time, 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. In respect of investments made before the date of the termination of the present Agreement the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

2. Subject to the period mentioned in paragraph 1 above either of the Contracting Parties shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom of the Netherlands.

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

DONE in duplicate at The Hague on 6 November 1995 in the Netherlands, English and Hindi languages, the three texts being equally authentic. In case of difference of interpretation the English text shall prevail.

For the Government of the Republic of India

For the Government of the Kingdom of the Netherlands, (sd.) A. VAN DOK-VAN WEELE