

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE SYRIAN ARAB REPUBLIC ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of India and the Government of the Syrian Arab Republic hereafter referred to as the "Contracting Parties".

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

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of sovereign equality and mutual benefit;

And

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

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investments" shall mean any kind of asset invested or established or acquired, including changes in the form of such investment 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 guarantee, liens or pledges or any other similar rights;

b- Rights derived from shares, bonds or any other form of interest in companies in the territory of the other Contracting Party;

c- Patents, industrial designs, trade marks, trade names, know how, and other intellectual property rights; in accordance of the relevant laws of the respective Contracting Party.

d- Business concessions conferred by law or under contract related to investment including concessions to search for or exploit natural resources

2. The term "investors" means for either Contracting Party, the following who invest in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party and the provisions of this Agreement:- In respect of India:

a. Natural persons deriving their status as Indian Nationals in accordance with the law in force in India;

b. Corporation, firms and associations incorporated or constituted under the law in force in any part of India.

In respect of Syria:

a- Natural persons who have Syrian Nationality in accordance with Syrian laws and regulations;

b- Juridical persons or other economic entities established in accordance with the Syrian laws and regulations and domiciled in the territory of the Syrian Arab Republic.

3. The term "returns" means the amounts yielded by an investment in particular though not exclusively includes, profits, interests, dividend, capital gains, royalties and fees.

4. The term "territory" means:

- In respect of India, the territory of the Republic of India including its territorial waters and the airspace above it and the other maritime zones including the Economic Zone and continental shelf over which the Republic of India has sovereignty, rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on Law of the Sea and International law.

- In respect of Syria, the term Syria means in accordance with international law, the territories of the Syrian Arab Republic including its internal waters, territorial sea, the subsoil thereof and the airspace above them to which Syria has sovereign rights and other maritime areas to which Syria has the rights to exercise sovereign rights for the purposes of exploration, exploitation and conservation of natural resources.

Article 2. Scope of the Agreement

This agreement shall apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its national laws and regulations, whether made before or after coming into force of the present Agreement. However, this Agreement shall not apply to disputes that have arisen before its entry into force.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such investment in accordance with its laws and regulations.
2. Investments and returns of investors of each 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 4. National Treatment and Most Favoured Nation Treatment

1. Admitted Investments of investors of one Contracting Party effected within the territory of the other Contracting Party in accordance with the laws and regulations of the latter, shall receive in the other Contracting Party treatment not less favorable than that accorded to its own investors or to investors of any third state.
2. In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investment, treatment which shall not be less favorable than that accorded to investors of any third state
3. If a Contracting Party accords special advantages to investors of any third state by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organization or by virtue of an agreement on the avoidance of double taxation or any matter pertaining wholly or mainly to taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereafter referred to as "expropriation") in the territory of the other Contracting Party except for 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 becomes public knowledge, whichever is the earlier. It shall include interest at a fair and equitable rate from the actual date of expropriation until the date of payment, and shall be effective. For the purpose of this Agreement, the term "expropriation" in this article shall be interpreted in accordance with Annex on interpretation of this article made without unreasonable 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, of his or its case of the valuation of his or its investment in accordance with the principles set out in this paragraph. 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 the share of the investors of the other Contracting Party in such a company.

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 disturbance 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 favorable 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. Transfer

1. Each Contracting Party shall grant investors of the other Contracting Party the transfer without restriction or delay in a freely convertible currency of the amounts relating to their investments, in particular, though not exclusively, of:
 - a. Profits, interests, dividends and other current income;
 - 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;
 - e. Royalties or fees;
 - f. Earnings of natural persons after paying all the due taxes;
 - g. The proceeds of sale or liquidation of the investment;
 - h. Compensation for losses;
 - i. Compensation for expropriation.
2. Such transfer shall be made at the prevailing rate of exchange on the date of transfer with respect to current transaction.
3. Notwithstanding paragraph (1), a Contracting Party may prevent a transfer through equitable, non-discriminatory and good faith in application of its laws relating to:
 - a. Bankruptcy, insolvency or the protection of the rights of creditors;
 - b. Issuing, trading or dealing in securities, futures, options, or derivatives;
 - c. Criminal or penal offences, and the recovery of proceeds of crime; or
 - d. Social Security, public retirement or statutory savings schemes, including provident funds, retirement gratuity programmes and employees insurance programmes.
4. Notwithstanding paragraph (1) of this Article, a Contracting Party may prevent a transfer through measures or action taken to stabilize its currency so long as the measures or actions are not used in a discriminatory manner against investors from the other Contracting Party.

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 dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement 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 both parties agree, be submitted to:

a. The competent courts, arbitral or administrative bodies of the Contracting Party in whose territory the investments has been made; or

b. International conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law, if accepted by the disputing parties;

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 Arbitration, as follows:

a. The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of the other States opened for signature at Washington, on March 18 1965, in case both Contracting Parties have become members of this Convention; or

b. The International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility of Rules), if one of the Contracting Parties is not a contracting state of the ICSID Convention; or

c. An ad hoc arbitral tribunal which, unless otherwise agreed upon by the Parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The Arbitration procedure shall be as follows: - The parties shall appoint their respective arbitrators within two months.

- The third arbitrator, who is not a national of either Contracting Party, shall be appointed by the disputing parties.

- If the parties fail to appoint the third arbitrator within two months, the appointing authority under Article 7 of the UNCITRAL 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.

4. The choice made as per sub paragraphs (a) or (b) or (c) of paragraph (3) herein above is final.

5. The arbitral tribunal shall decide the dispute in accordance with the national laws of the Contracting Party in whose territory the investment has been made, the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.

Article 10. Settlement of Disputes between the Contracting Parties

1. Dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiation.

2. If a dispute between the Contracting Parties can not thus be settled within six months from the time the dispute arose, it shall upon 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 arbitral 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 arbitral tribunal. The Chairman shall be appointed within two months from the 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 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 is too 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. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award. The tribunal shall determine its own procedures. 6. Each Contracting Party shall bear the cost of its appointed arbitrator and of

its representations in arbitral proceedings. The relevant costs of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties, unless otherwise decided by the tribunal.

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 natural persons 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. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to investments of that investor if persons of a non-Party own or control such investor and the denying Contracting Party:

a. Does not maintain diplomatic relations with such non-Party; or

b. Adopts or maintains measures with respect to such non-Party that prohibit transactions with the investor or that would be violated or circumvented if the benefits of this Agreement were accorded to the investor or to its investments.

2. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Contracting Party and persons of a non-Party, or of the denying Contracting Party, own or control the enterprise.

Article 13. Applicable Laws

1. Except as otherwise provided in this Agreement, all investments shall be governed by 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 14. 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 15. Entry Into Force, Duration, Amendment and Termination

1. The Agreement shall enter into force three months after the date of the latest notification by any Contracting Party of the accomplishment of its internal procedures of ratification.

2. 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 on receipt of such written notice.

3. This Agreement may be amended at any time after its entry into force by mutual consent.

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

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

Done at New Delhi on 18th June 2008 in two originals each in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

"For the Government of India"

(Pranab Mukherjee)

Minister of External Affairs

"For the Government of Syrian Arab Republic"

(Dr. Amer Husni Lutfi)

Minister of Economy and Trade

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. Except in rare circumstances 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.