

# **Agreement between the India Taipei Association in Taipei and the Taipei Economic and Cultural Center in New Delhi on the Promotion and Protection of Investments**

The India-Taipei Association in Taipei and the Taipei Economic and Cultural Center in New Delhi (hereinafter referred to as the "Contracting Parties"),

Desiring to create favourable conditions for greater economic cooperation and investments on the basis of the principles of equality and mutual benefit; and

Recognizing that the promotion and protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement

1. "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the laws of the territory in which the investment is made and in particular, though not exclusively, includes:
  - (a) Movable and immovable property as well as other rights in them such as mortgages, liens and pledges;
  - (b) Shares in and stock and debentures of a company and any other similar forms of participation in a company;
  - (c) Rights to money or to any performance under contract having a financial value;
  - (d) Intellectual property rights, in accordance with the relevant laws of the territory in which the investment is made;
  - (e) Business concessions conferred by law or under contract, including concessions to search for and extract oil and mineral resources;
2. "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;
3. "investor" means any natural person, who is born in and/or is a permanent resident of a territory and carrying a passport or any other identification card/ certificate of such nature issued by the competent authorities of that territory, or juridical persons, such as corporations, firms, associations, etc., incorporated, constituted or established under the laws in force in that territory.
4. "territory" in respect of the Contracting Parties means the territory, including the territorial seas and any maritime areas situated beyond the territorial seas, over which the authorities of the respective territories of the Contracting Parties exercise jurisdiction in accordance with international law and its relevant laws.

## **Article 2. Promotion of Investments**

1. Investments by investors of one territory in the other territory shall be encouraged in accordance with the relevant laws and policies of the territory receiving investments.
2. The grant of necessary approvals in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance will be facilitated in accordance with the local laws and regulations.

### **Article 3. Treatment of Investments**

1. Investment of investors of one territory in the other territory and the returns thereon shall at all times be accorded fair and equitable treatment and full protection. The management, maintenance, use, enjoyment or disposal of investments shall in no way be impaired by unreasonable or discriminatory measures in the territory receiving investments.

2. In addition, investors of one territory shall be accorded treatment in the other territory no less favourable than that accorded to investors of any other third territory/country.

3. The provisions of paragraph 2 and 3 above shall not be construed so as to oblige the authorities of either territory to extend to the investors of the other territory the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs unions or any similar international agreement/arrangement to which it is or may become a party; or

(b) Any matter pertaining wholly or mainly to taxation.

### **Article 4. Expropriation**

1. Investments of investors of one territory in the other territory shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") 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 genuine 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 a fair and equitable 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 a right, under the laws of the territory where the expropriation has been made, to review, by a judicial or other independent authority of that territory of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

### **Article 5. Compensation for Losses**

Investments of investors of one territory which suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in other territory, will be given treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the authorities of the latter territory accord to their own investors or to investors of any third territory/ country. Resulting payments shall be freely transferable.

### **Article 6. Transfer of Investments and Returns**

Investors of one territory shall, in the other territory have the right to freely transfer payments relating to their investments and returns including compensation paid pursuant to Articles 4 and 5. above, without unreasonable delay and on a non-discriminatory basis. The currency of transfer shall be the currency of original investment or any other convertible currency. Such transfers shall be made at the prevailing market rate of exchange on the date of transfer.

### **Article 7. Subrogation**

Payments made by authorities of a territory or its designated agency to its investor under a guarantee given in respect of an investment in the other territory, shall be recognised by the authorities of the other territory for assignment, whether by the law or by legal transaction, to the authority of the former territory or its designated agency of all the rights and claims of the indemnified investor, and shall also recognise that the former authority 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 8. Settlement of Disputes between an Investor and Authorities of a Territory**

1. Any dispute between an investor of a territory and the authorities of the other territory 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 three months from the date when such dispute arose may, if both the parties agree, be submitted to the competent judicial, arbitral or administrative bodies of the territory which has admitted the investment, for resolution in accordance with the laws of that territory.

3. Should the parties fail to agree on a dispute settlement procedure provided under paragraph 2 above, either party may refer the dispute for arbitration to:

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

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

(b) If the parties to the dispute failed to establish an arbitral tribunal as referred to in paragraph (a) above within six months from the day when a request in writing for such arbitration is made by either party to the dispute, such dispute shall then be referred to the Court of Arbitration of the International Chamber of Commerce for arbitration.

The award shall be binding on the parties to the dispute.

The authorities of both territories shall undertake to abide by the awards and shall execute the arbitral awards.

## **Article 9. Applicable Laws**

1. Except as otherwise provided in this Agreement, all investments will be governed by the laws in force in the territory in which such investments are made.

2. The authorities of the territory which has admitted investments are, however, not precluded from taking any action for the protection of its essential security interest or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis.

## **Article 10. Application of other Rules**

If the provisions of the law of either territory or obligations under international law existing at present or established hereafter between the two territories in addition to the guarantees under this Agreement, whether general or specific, entitling investments and returns of investors of the other territory to treatment more favourable than is envisaged by the present Agreement, such rules shall to the extent that they are more favourable prevail over the guarantees mentioned in this Agreement.

## **Article 11. Scope of the Agreement**

This Agreement shall apply to all investments, whether made before or after the date of entry into force of the Agreement, but shall not apply to any dispute which arise before entry into force of this Agreement.

## **Article 12. Entry and Sojourn of Personnel**

Natural persons, or personnel employed by companies of one territory will be permitted to enter and remain in the other territory for purpose of engaging in activities connected with investments, subject to the laws applicable from time to time relating to the entry and sojourn of non-citizens in that territory.

## **Article 13. Disputes between the Contracting Parties**

1. Any dispute or difference between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled by mutual consultations.

2. If such dispute or disagreement cannot be settled, it shall, by mutual consent of the concerned Contracting Parties, be referred to arbitration on such terms and conditions as may be agreed upon by the Contracting Parties.

## **Article 14. Entry Into Force**

1. This Agreement shall enter into force by exchange of letters between the Contracting Parties informing each other of the

confirmation of approval of this Agreement by their respective authorities.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given a written notice of termination to the other.

3. In respect of investment made prior to the date when the notice of termination becomes effective, the provisions of this Agreement shall remain in force with respect to such investment for a further period of ten years from that day.

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

Done in duplicate at Taipei this 17th day of October 2002 in the Hindi, Chinese and English languages, all texts being equally authoritative. In case of doubt, however, the English text shall prevail.

Director General

India Taipei Association In Taipei

Director General

Taipei Economic and Cultural Center In New Delhi.

## **UNILATERAL DECLARATION BY THE GOVERNMENT OF INDIA FOR PROTECTION OF INVESTMENTS MADE BY INVESTORS FROM TAIWAN IN INDIA**

### **1.**

This declaration is made with a view to attract and encourage investments by investors from Taiwan into India and to promote economic development of India and Taiwan.

### **2.**

For the purpose of this declaration, the definitions shall be as under:

(a) "investment" means every kind of asset established or acquired by investors from Taiwan, including changes in the form of such investment, in accordance with national laws of India, 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, in accordance with the relevant laws of India;

(v) Business concession conferred by law or under contract, including concessions to search for and extract oil and other minerals;

(b) "investor" means any natural person or juridical person from Taiwan recognised as such under its applicable law/rules;

(c) "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

### **3.**

Investments may be made in India in accordance with the laws and policy of India. This declaration shall apply to all investments made by investors from Taiwan in India accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this declaration but shall not apply to any dispute which arose before the date of this Declaration.

#### **4.**

Investments will be accorded treatment which shall not be less favourable than that accorded either to investments made by Indians or investments of any foreign investor. Investors shall also be accorded, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to any foreign investor. The declaration shall not be construed so as to oblige India to extend to the investors the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs unions, free trade area, economic communities or similar international agreement to which India is or may become a party, or,

(b) Any matter pertaining wholly or mainly to taxation.

#### **5.**

(1) Investments made by investors 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 India 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 genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation become public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

(2) The investor affected shall have the right for review under Indian law by a judicial or other independent authority of India, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

#### **6.**

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

#### **7.**

Investors shall have the right to freely transfer payment relating to their investments and returns including compensation paid to them pursuant to Articles 5 and 6 without unreasonable delay and on a non-discriminatory basis. The currency of transfer shall be the currency of original investment or any other convertible currency. Such transfers shall be made at the prevailing market rate of exchange on the date of transfer.

#### **8.**

Where any designated agency from Taiwan has guaranteed any indemnity against non-commercial risks in respect of an investment by investors in the territory of India and has made payment to such investors in respect of their claims, the Government of India agrees that such agency from Taiwan as 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 claim of such investors.

#### **9.**

1. Any dispute between an investor and Govt of India 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 three months from the date when such dispute arose may, if both the parties agree, be submitted to the competent judicial, arbitral or administrative bodies of India for resolution in accordance with Indian laws.

3. Should the parties fail to agree on a dispute settlement procedure provided under paragraph 2 above, either party may refer the dispute for arbitration to:.

a) An adhoc 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 parties shall appoint their respective arbitrators within two months.

ii) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party to the dispute.

b) If the parties to the dispute failed to establish an arbitral tribunal as referred to in paragraph (a) above within six months from the day when a request in writing for such arbitration is made by either party to the dispute, such dispute shall then be referred. to the Court of Arbitration of the International Chamber of Commerce for arbitration:

The award shall be binding on the parties to the dispute.

The authorities in India shall abide by the awards and shall execute the arbitral awards.

## **10.**

India shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit investors and personnel employed by them to enter and remain in its territory for the purpose of engaging in activities connected with investments.

## **11.**

(1) Except as otherwise provided in this declaration, all investments shall be governed by. the laws in force in the territory of India.

(2) Notwithstanding paragraph (1) of this Article nothing in this declaration precludes India 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.

## **12.**

(1) This declaration shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless it is expressly withdrawn in writing. This declaration shall stand terminated one year from the date of announcement of the withdrawal.

(2) In respect of investments made prior to the date of termination, the provisions of this declaration shall continue to be effective for a further period often years from that date.

(3) This declaration can be modified, altered and amended at any time. Such modification, alteration or amendment shall be effective from the date when it is notified or made public through a declaration.

## **13.**

This declaration shall come into effect from the date of its issuance.

New Delhi

Dated :

(G.S. Duff)

Joint Secretary to the Government of India

For the Government of the Republic of India