

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of India and the Government of the Republic of Finland, hereinafter referred to as "the Contracting Parties",

Desiring to create favourable conditions for fostering greater investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that the encouragement and protection of such investments under international agreement will be conducive to the stimulation of individual business initiatives and will increase the prosperity of the people of the Republic of India and the Republic of Finland.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "Investment" means every kind of asset established or acquired in accordance with national laws and regulations of the Contracting Party in whose territory the investment is made and, includes in particular, though not exclusively: (a) Movable and immovable property as well as property rights such as mortgages, liens, pledges and leases;

(b) Reinvested returns;

(c) Shares in and stock and debentures of a company and any other form of participation in an enterprise;

(d) Claims or rights to money or to any performances under contract having economic value;

(e) Intellectual and industrial property rights, such as patents, copyrights, industrial designs, trade marks, know-how and goodwill, in accordance with the relevant laws of the respective Contracting Party;

(f) Business concessions conferred by law or under a contract, such as concessions to search for, extract or exploit natural resources, including concessions for mining and oil and gas exploration.

(2) A change in the form in which the assets are invested or reinvested does not affect their character as an investment.

(3) The term "Investor" means (a) Any natural person deriving his/her status as a national of a Contracting Party from the laws of that Contracting Party, and

(b) Any legal person such as a corporation, firm and association, constituted or established under the laws of the Contracting Party and having its registered office in the territory of the same Contracting Party.

(4) The term "Returns" means the amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

(5) The term "Territory" means the land territory, internal waters and territorial sea and the airspace above them, as well as the maritime zones beyond the territorial sea over which the Contracting Party exercises sovereign rights or jurisdiction in accordance with its national laws and international law, as reflected in the 1982 United Nations Convention on the Law of the Sea.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by invest of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any claim which was settled 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 and shall admit investments as defined in Article 1 of this Agreement

(2) Each Contracting Party is fully responsible under this Agreement for me observance of the provisions of the Agreement, and snail take measures available to it to ensure such observance by all authorities within its territory

(3) Investments and returns of investments of investors of one Contracting Party shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting Party The latter Contracting Party shall in no way by unreasonable or discriminatory measures impair the management, maintenance, use, enjoyment or disposal of such investments.

(4) Neither Contracting Party shall impose on investments by investors of the other Contracting Party, measures the effect of which would be arbitrary or unreasonable.

(5) Laws, regulations, procedures and judicial decisions of general application as well as international agreements which Contracting Parties have entered into and which may affect the operation of this Agreement shall continue to be made public.

(6) Nothing in this Agreement requires a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosures of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular enterprises.

Article 4. Treatment of Investments

(1) Each Contracting Party shall in its territory accord to investments by investors of the other Contracting Party treatment no less favourable than that which it accords to investments of its own investors or to investments made by investors of any third State, whichever, according to the investor, is more favourable.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, a fair and equitable treatment which in no case shall be less favourable than that accorded to investments of its own investors or investors of any third State, whichever, according to the investor, is more favourable.

(3) The provisions of paragraphs (1) and (2) of this Article do not apply to any present or future benefits, treatments, preferences or privileges which a Contracting Party accords to investors of a third State by virtue of its participation in or of its association with a free trade area, a customs union, a common market, an economic and monetary union or other similar regional economic integration agreement or any matter pertaining wholly or mainly to taxation.

Article 5. Expropriation

(1) Investments by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") unless the measures are taken for a public purpose, authorised by the laws of that Contracting Party, on a non-discriminatory basis and against effective and adequate compensation without undue delay.

(2) Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the date of expropriation or before the impending measures of expropriation became public knowledge, whichever is earlier. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of actual payment.

(3) An investor whose investment is expropriated may, under the laws of the Contracting Party making the expropriation, seek review of expropriation measures by a judicial or other independent authority of that Contracting Party. The Contracting Party taking the measures of expropriation, shall make every endeavour to ensure that such review is carried out promptly.

Article 6. Compensation for Losses

(1) An investor of the 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, civil disturbances or other similar events, shall be accorded by the latter Contracting Party: as regards restitution, indemnification, compensation or other forms of settlement, a treatment no less favourable than that accorded to its own investors or investors of any third State, whichever, according to the investor, is more favourable to him,

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) The requisitioning of its investment by the latter's armed forces or authorities, or

(b) The destruction of its investment by the latter's armed forces or authorities, which was not required by the necessity of situation, shall be accorded by the latter Contracting Party a restitution or compensation which in either case shall be adequate and with respect to resulting compensation, shall be fully realisable and shall be paid expeditiously.

(3) Investors whose investments suffer losses in accordance with paragraph (2) of this Article, shall have the right to prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in paragraph (2) of this Article.

Article 7. Transfer of Payments

(1) Each Contracting Party shall ensure to the investors of the other Contracting Party the free transfer of payments on a nondiscriminatory basis. Transfers shall include in particular, though not exclusively:

(a) Initial capital and additional capital to maintain and increase an investment,

(b) Proceeds from a partial or total sale or liquidation of an investment, including proceeds from sale of shares,

(c) Profits, interest, dividends or other current income,

(d) Funds pursuant to repayment of loans, including interest thereon,

(e) Royalties and service fees,

(f) Earnings and other remuneration of personnel engaged from abroad in connection with an investment,

(g) Payment or compensation under Articles 5,6 and 9 of this Agreement.

(2) Transfers under paragraph (1) of this Article shall be effected free of any restrictions and in a freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred and shall be transferred expeditiously. If a market rate is unavailable, the rate to be used will be the most recent exchange rate applied for the conversion of currencies into Special Drawing Rights.

Article 8. Subrogation

Where the Contracting Party or its designated agency has guaranteed any indemnity against noncommercial risk in respect of an investment in the territory of the other Contracting Party and has made a payment to such investors in respect to their claims V under this Agreement, the latter Contracting Party shall recognise that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of its own investors, The subrogation rights or claims shall not exceed the original rights or claims of such investors.

Article 9. Investment Disputes

(1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment under this Agreement shall, as far as possible, be settled amicably.

(2) If such a dispute cannot be settled amicably within a period of three months from the date at which either party to the dispute requested amicable settlement, the investor that is party to the dispute may submit the dispute for resolution as follows:

(a) To the competent courts, judicial or administrative bodies of the Contracting Party that is party to the dispute, or with the

consent of the Contracting Party to its arbitral bodies; or

(b) To international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"); or

(3) Should the options in paragraph (2) of this Article not be exercised, or where the conciliation proceedings under paragraph (2)(b) of this Article are terminated other than by signing of a settlement agreement, the dispute may be referred to international arbitration according to the following provisions:

(a) To the International Centre for Settlement of Investment Disputes (hereinafter referred to as 'the Centre'), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965 when both Contracting Parties become parties to the said Convention, subject to the investors written consent; or

(b) To the Centre under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre subject to the consent of both parties to the dispute; or

(c) To an ad hoc arbitral tribunal which unless otherwise agreed to by the parties to the dispute, is to be established under the Arbitration Rules of UNCITRAL, subject to the following modifications: (i) The appointing authority under Article 7 of the said 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 or is not otherwise prevented from discharging this task. The third arbitrator must not be a national of either Contracting Party.

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

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

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

(4) At no stage of a dispute, shall a Contracting Party which is a party to the dispute object to the investor from raising a dispute under this Article on the ground that it, being the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

(5) The arbitral award shall be final and binding and the parties to the dispute shall abide and comply with the terms of the award. The award shall be enforced in accordance with national law of the Contracting Party where the investment has been made.

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 amicably.

(2) If such a dispute has not thus been settled within six months from the date on which negotiations were requested, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State to be appointed by the Contracting Parties as their Chairman. The members shall be appointed within two months and the Chairman within four months from the date of the written notice containing the request under paragraph (2) of this Article.

(4) If the time limits referred to in paragraph (3) of this Article have not been complied with, either Contracting Party may invite the International Court of Justice to make the necessary appointments. The appointing authority 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 or is not otherwise prevented from discharging this task.

(5) The arbitral tribunal shall determine its own procedures and take its decisions by a majority of votes. Each Contracting Party shall bear the costs of its own member and its own representation in the arbitration proceedings. The costs 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. The decisions and awards of the arbitral tribunal shall be final and binding on both Contracting Parties.

Article 11. Entry of Personnel

Each Contracting Party shall, subject to its laws and regulations, treat favourably the applications relating to investments and grant expeditiously the necessary permits required in its territory in connection with investments by investors of the other Contracting Party.

Article 12. Applicable Laws

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

(2) Nothing in this Agreement precludes the host Contracting Party from taking necessary action in abnormal circumstances for the protection of its essential security, interests or in circumstances of extreme emergency in accordance with its laws 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. Consultations

The Contracting Parties shall consult each other from time to time for reviewing the implementation of the present Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held at a place and at a time agreed upon through diplomatic channels.

Article 15. Final Clauses

(1) This Agreement shall enter into force on the thirtieth day after the day on which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force until the expiration of twelve months from the date on which either Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement.

(3) With respect to investments made prior to, the date on which the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 14 remain in force for a further period of fifteen years from that date.

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

Done at New Delhi on 7 November, 2002 in two originals in the Hindi, Finnish and English languages, all three texts being equally authentic. In case of divergence the English text shall prevail.

For Government of the Republic of India

For the Government of the Republic of Finland