

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

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

- Desiring to intensify economic cooperation between them on mutually advantageous conditions,
- Determining to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,
- Recognising that the promotion and protection of such investments will stimulate business initiative and increase the prosperity of both countries,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every kind of asset invested, established or acquired, including changes in the form of such investment, by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

- i) Movable and immovable property, such as mortgages, liens, pledges and similar rights;
- ii) Shares, bonds, debentures and other forms of participation in an entity;
- iii) Claims to money or to any performance under a contract having an economic value;
- iv) Intellectual property rights, goodwill, technical processes and know-how, in accordance with the relevant laws of the respective Contracting Party;
- v) Right to engage in economic and commercial activities conferred by law and by virtue of a contract, including concessions to search for and extract or exploit natural resources;

2. The term "investor" means any natural person or entity of one of the Contracting Parties that has made an investment in the territory of the other Contracting Party in accordance with its national legislation:

- i) A "natural person" shall mean:

In respect of India: Persons deriving their status as Indian nationals from the laws in force in India.

In respect of Lithuania: Persons who are nationals of the Republic of Lithuania according to the laws and regulations of the Republic of Lithuania;

- ii) An "entity" means in particular, though not exclusively, a company, an enterprise, a corporation or association incorporated or constituted in accordance with the laws of that Contracting Party and engaged in substantial business activities in the territory of that Contracting Party.

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

4. The term "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 exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

ii) In respect of Lithuania: the territory under the sovereignty of the Republic of Lithuania and other areas over which the Republic of Lithuania exercises its sovereign rights or jurisdiction in accordance with its laws and international law.

5. The term "laws and regulations" means in respect of either Contracting Party, the laws and regulations in force in the territory of that Contracting Party.

## **Article 2. Scope of the Agreement**

This Agreement shall apply to all the investments made by the investors of either Contracting Party in the territory of the other Contracting Party, accepted as such, in accordance with its laws and regulations prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose or could have arisen, or 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 favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall accord fair and equitable treatment, full protection and security to all investments made by the investors of the other Contracting Party on a non discriminatory basis.

## **Article 4. National Treatment and Most-favoured-nation Treatment**

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own or investments of 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 investments, treatment which shall not be less favourable than that accorded to investors of any third State.

3. The provisions of the paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege accorded to the investors of any third State by virtue of:

a) Any existing or future customs union, common market, free trade area, other forms of regional economic cooperation or similar international arrangements to which either Contracting Party is or may become a party; or

b) Any existing or future agreements relating to avoidance of double taxation or any other matters relating to taxation.

## **Article 5 (1. 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 for a public purpose in accordance with law on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier, and shall be made without unreasonable delay, be effectively realizable and be freely transferable. The compensation shall include interest on the LIBOR basis from the date of expropriation until the date of full payment.

2. The investor affected shall have 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 and 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 possible endeavour to ensure that such review is carried out promptly.

3. Where a Contracting Party expropriates the assets of an entity 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 or have other form of

participation, 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 their investment to such investors of the other Contracting Party who are owners of those shares or who are participating in the other forms in the entity.

## **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 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 favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. The compensation or restitution in either case shall be prompt, adequate and effective and the resulting payments shall be freely transferable.

## **Article 7. Transfers**

1. Each Contracting Party shall permit free transfer of all funds of an investor of the other Contracting Party related to an investment in its territory without unreasonable delay and on a non-discriminatory basis. Such funds may include:

- a) Capital and additional amounts used for the maintenance or extension of the investment;
- b) Returns;
- c) Proceeds from total or partial liquidation of the investment;
- d) Funds in repayment of loans directly related to the investment;
- e) Compensation provided under Articles 5 and 6;
- f) The earnings of natural persons of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

2. Without prejudice to measures adopted by any customs union, common market, free trade area, other forms of regional economic cooperation or similar international arrangements to which either Contracting Party is a party or member state, transfers shall be made in the currency in which the original investment was made or in any freely convertible currency if agreed upon by the investor, at the applicable market rate of exchange prevailing on the date of transfer, and effected without undue delay.

## **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 claim 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. In the event of a dispute the Contracting Party in whose territory the investment was made shall be notified in writing by the investor.
2. In case of any such dispute which has not been amicably settled within a period of six months from the date of the written notification under paragraph 1, the investor may choose to submit the dispute for settlement:
  - A) To the relevant courts or competent tribunals or administrative bodies of the Contracting Party in whose territory the investment was made; or
  - B) To International conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
  - C) To arbitration in accordance with the following:

- i) 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 (ICSID) and the investor consents in writing to submit the dispute to the ICSID, such a dispute shall be referred to the ICSID; or
  - ii) In the event that one of the Contracting Parties has not adhered to the above-mentioned Convention, the dispute may be resolved in accordance with ICSID rules governing the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings; or
  - iii) 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, subject to the following modifications:
    - a) 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.
    - b) The third arbitrator shall not be a national of either Contracting Party.
    - c) The parties shall appoint their respective arbitrators within two months.
3. The choice made by the investor to submit a dispute either under paragraph 2 (A) or (B) or (C) of this Article shall be final.
4. The awards of arbitration shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay any such award, recognised in accordance with the laws and regulations of the respective Contracting Party, and shall provide for the effective enforcement of such awards in its territory.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channels.
2. If the Contracting Parties cannot reach an agreement within six months after the beginning of the dispute, the latter shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each case in the following way. Within two months from the date on which either Contracting Party receives from the other Contracting Party a request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall together, within a further period of two months, select a third arbitrator who is a national of a third State. The third arbitrator, once approved by the two Contracting Parties, shall be appointed as Chairman of the arbitral tribunal.
4. If the arbitral tribunal has not been constituted within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of State of either Contracting Party, or 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 also 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 determine its own procedure. The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and binding on both the Contracting Parties.
6. Each Contracting Party shall bear the costs of its own member of the arbitral tribunal and of its representation in the arbitration proceedings; the costs of the Chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may, however, decide that a higher proportion of costs shall be borne by one of the two Contracting Parties and such award shall be binding on both the Contracting Parties.

## **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 entity of such other Party and to investments of that investor if the entity 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 entity.

### **Article 13. Security Exceptions**

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 made 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. Consultations**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to hold consultations on the interpretation or application of this Agreement.

### **Article 16. Amendments**

This Agreement may be amended, at any time, in such a manner as may be agreed in writing between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other in writing that all their respective internal legal procedures for their entry into force have been completed.

### **Article 17. Annex and Footnotes**

The Annex and footnote, referred to in Article 5, shall form an integral part of this Agreement.

### **Article 18. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the date when the Contracting Parties have notified each other in writing that all their respective internal legal procedures for its entry into force have been completed.

2. This Agreement shall remain in force for a period of fifteen (15) years. Thereafter, it shall continue to be in force 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 of receipt of such written notice.

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

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

Done at Vilnius on this 31st day of March 2011 in two originals each in Hindi, Lithuanian and English languages, all texts being equally authentic.

In case of any divergence, the English text shall prevail.

For the Government of the Republic of India For the Government of the Republic of Lithuania

sd/- (Preneet Kaur) Minister of State for External Affairs Sd/

(Audronius Azubali)

Foreign Minister

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.

1 The term "expropriation" in this Article shall be interpreted in accordance with Annex on interpretation of this Article