

AGREEMENTI BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the Kingdom of Denmark and the Government of the Republic of India, hereinafter referred to as the Contracting Parties,

DESIRING to create favourable conditions for investments in both States and to intensify the cooperation between enterprises in both States with a view to stimulating the productive use of resources,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement,

(1) The term "investment" means every kind of asset established or acquired in accordance with the national laws of the Contracting Party in whose territory the investment is made and shall include in particular, but not exclusively:

(i) Movable and immovable property, as well as any other rights such as leases, mortgages, liens, pledges, privileges, guarantees and any other similar rights,

(ii) Shares, stock or other forms of participation in a company or business enterprise and bonds and debt of a company or business enterprise,

(iii) Returns reinvested, rights to money and performance pursuant to contract having an economic or financial value,

(iv) Industrial and intellectual property rights, such as copyrights, patents, trade names, technical processes, trademarks, goodwill and know-how in accordance with the relevant laws of the respective Contracting Party,

(v) Concessions or other rights conferred by law or under contract, including concessions to search for, extract or exploit oil and other minerals.

(2) A change in the form in which assets are invested, does not affect their character as investments.

(3) »Returns« means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, dividends, royalties or fees.

(4) "Investor" means any national or juridical person of a Contracting Party.

(5) "National" means:

(a) In respect of Denmark: natural persons having the citizenship or nationality of, or who are permanently residing in Denmark in accordance with its laws.

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

(6) Juridical person means in respect of each Contracting Party: any entity established in accordance with, and recognized as a legal person by the law of that Contracting Party, such as companies, firms, associations, development finance institutions,

foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

(7) "Territory" means in respect of each Contracting Party: its territory, the territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Contracting Party has sovereignty, sovereign rights or jurisdiction in accordance with its laws in force and International Law, including the 1982 United Nations Convention on the Law of the Sea. United Nations Convention on the Law of the Sea.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments, including the establishment of representative offices, in accordance with its laws and regulations.

(2) Investments of investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party and shall not be subject to unreasonable or discriminatory measures.

(3) Returns, including the returns yielded from the reinvestment, shall in accordance with the provisions of this Agreement be given the same protection as the investment.

(4) Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party, with disputes arising from such obligations being only redressed under the terms of the contracts underlying the obligations.

Article 3. Treatment of Investments

(1) Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to the investments of its own investors or to investors of any third state, whichever is the more favourable from the point of view of the investor.

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

(3) In addition each Contracting Party shall accord to investors of the other Contracting Party treatment which shall not be less favourable than that accorded to investors of any third state.

Article 4. Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of each Contracting Party or of any third State 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 resulting from:

(a) Membership of any existing or future regional economic integration organisation or customs union of which one of the Contracting Parties is or may become a party, or

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

Article 5. Expropriation and Compensation

(1) Investments of investors of each Contracting Party shall not be nationalized, 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 authorised by and carried out in accordance with its laws, on a non-discriminatory basis and against fair and equitable compensation.

(2) Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment. Compensation shall be paid without undue delay and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(3) The investor affected shall have a right to prompt review under the law 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 of this Article.

(4) 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 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.

Article 6. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, or riot 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.

(2) Without prejudice to paragraph 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the area of the other Contracting Party resulting from:

- (a) Requisitioning of its investment or part thereof by the latter's forces or authorities, or
- (b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be fair and equitable.

Article 7. Transfer of Capital and Returns

(1) Each Contracting Party shall with respect to investments in its territory by investors of the other Contracting Party allow the free transfer of:

- (a) The initial capital and any additional capital for the maintenance and development of an investment;
- (b) The invested capital or the proceeds from the sale or liquidation of all or any part of an investment;
- (c) Interests, dividends, profits and any other returns realized;
- (d) Repayments of any loan, including interests thereon, relating to the investment;
- (e) Payments of royalties and services fees relating to the investment;
- (f) Unspent earnings and other enumerations of personnel engaged from abroad in connection with an investment;
- (g) Compensation, restitution, indemnification or other settlement pursuant to Articles 5 and 6.

(2) Transfers of payments under paragraph 1 of this Article shall be effected without undue delay and in a freely convertible currency. paragraph 1 of this Article shall be effected without undue delay and in a freely convertible currency.

(3) A payment shall be deemed to have been made without undue delay if effected within such period as is normally required for the completion of transfer formalities. The period shall commence on the day in which the relevant request has been made, with full documentation and information, and may on no account exceed two months.

(4) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. If a market rate is unavailable, the rate to be used will be the most recent exchange rate applied to inward investments.

Article 8. Subrogation

(1) If one Contracting Party or its designated agency makes a payment to its own investors under a guarantee against non-commercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) The assignment, whether under the law or pursuant to a legal transaction, of any right or claim by the investor to the former Contracting Party or to its designated agency and

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor.

(2) The subrogated rights or claims shall not exceed the original rights or claims of the investment.

Article 9. Disputes between a Contracting Party and an Investor

(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 dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, the investor shall be entitled to submit the case either to the competent judicial or administrative bodies of the Contracting Party in whose territory the investment was made or to international conciliation or arbitration as follows:

(a) To international conciliation under the rules of the United Nations Commission on International Trade Law. If the conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to arbitration, either to

(b) The International Centre for Settlement of Investment Disputes established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965 (ICSID Convention), as soon as both Contracting Parties become Parties to this Convention. In the meantime the dispute may be submitted to the Additional Facility for the Administration of Conciliation, Arbitration and Fact-finding Proceedings; or to

(c) An international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law, subject to the following modifications: Arbitration Rules of the United Nations Commission on International Trade Law, subject to the following modifications:

(i) 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. The third arbitrator shall not be a national of either Contracting Party.

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

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

(4) The arbitral award shall be final and binding for the parties involved in the dispute, and shall be implemented according to national law.

Article 10. Disputes between the Contracting Parties

(1) If any dispute arises between the Contracting Parties concerning the interpretation and application of this Agreement, the Contracting Parties shall, as far as possible, try to settle any such dispute through negotiations.

(2) If such a dispute cannot be settled within six months from the beginning of the dispute, it shall, upon the 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:

(a) Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, who on approval by the Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(b) If within any of the periods specified 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 any 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, 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.

(c) The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and applicable principles of international law. It shall reach its decision by a majority of votes. The arbitral tribunal shall determine its own procedure.

(d) Each decision of the tribunal shall be final and binding upon the Contracting Parties to the dispute.

(e) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 11. Consultations

The Contracting Parties shall consult at the request of either of them on matters concerning this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 12. Applicable Laws

(1) Subject to the provisions of 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 measures in accordance with its laws normally and reasonably applied on a nondiscriminatory basis, in circumstances of extreme emergency for the prevention of diseases or pests.

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. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to or after the entry into force of the Agreement.

Article 15. Amendments

This Agreement may be amended by agreement in writing between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

Article 16. Territorial Extension

This Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 17. Entry Into Force

The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of receipt of the last notification.

Article 18. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination

shall become effective one year after the date of notification.

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

DONE in duplicate at New Delhi on 6 September 1995 in the Danish, Hindi and English languages, all texts being equally authentic.

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

For the Government of the Kingdom of Denmark

Bjarne II. Sorensen

For the Government of the Republic of India

Y. V. Reddy