

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

The Government of the Republic of India and the Government of the Republic of Uzbekistan (hereinafter referred to as the "Contracting Parties");

Desiring to promote more extensive economic cooperation for mutual benefit of both parties on a long-term basis,

Recognising the mutual benefits of encouragement and reciprocal protection of investments with the purpose of creating and preserving favourable conditions for investments of investors of the state of one contracting party in the territory of the state of the other Contracting Party,

Agreeing that the stable ground of investment will promote most effective utilisation of economic resources and development of productive forces;

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement

1. The term "investor" means any natural or judicial person. making investments in the territory of the state of the other Contracting Party. a. The term "natural person" means:

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

In respect of the Republic of Uzbekistan: natural persons having the citizenship or nationality of, or persons who are permanently residing in the Republic of Uzbekistan in accordance with its laws.

b. The term "juridical person" means with regard to both Contracting Parties any legal entity - company, corporation, firm, association, enterprise, registered or established in any part of that Contracting Party in accordance with its legislation in force.

2. The term "investments" means any kind of asset established or acquired Including related rights on them, in accordance with the national laws of the Contracting Party in whose territory the investments are made, including, but not exclusively: a. Movable and immovable property as well as other rights such as mortgages, liens or pledges;

b. Shares in and stock and debentures of a company and any other similar forms of participation in a company as well as government securities;

c. Rights to money or to any performance under contract having a financial value;

d. Intellectual property rights, goodwill, technical processes and know how in accordance with the relevant laws of the respective Contracting Party;

e. Concessions granted by law or under contract, including concessions to search for and extract oil and other natural resources.

Change in the form in which assets are invested does not affect their character as investments.

3. The term. "returns" means the amounts, yielded by an investment, such as profits, interests, dividends, royalties, capital gains, licence and commission 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 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, and international law, including the 1982 United Nations Convention on the Law of the Sea.

In respect of the Republic of Uzbekistan: the territory of the Republic of Uzbekistan, including the territorial waters and any area where, under the laws of the Republic of Uzbekistan and in accordance with international law, the Republic of Uzbekistan exercises its sovereign rights for the purpose of exploitation, exploration and conservation of natural resources.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party and also admit investments in its territory in accordance with its laws and policy relating to investments.
2. Each Contracting Party shall accord to investments as well as to investors in respect of such investments at all time fair and equitable treatment and full protection and security in its territory.
3. Investments in the territory of state of a Contracting Party shall be made by means permitted under the law in force in the territory of the state of the Contracting Party, receiving investments.
4. Each Contracting Party shall in accordance with its laws render assistance to the investors of the other Contracting Party, whose investments were admitted in its territory, for obtaining the required clearances and permissions.

Article 3. National Treatment and Most-favoured-nation Treatment

1. Each Contracting Party shall accord to investment of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own investors or to 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 paragraph 1 and 2 above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from: (a) Any existing or future customs union or similar international agreement to which it is or may become a party, or
(b) Any matter pertaining wholly or mainly to taxation.

Article 4. Application of other Rules and Special Obligations

If provisions in legislation of the state of one of the Contracting Parties or obligations under international law, existing at present or established hereafter in addition to the present Agreement, contain rules, whether general or specific, entitling investments by investors of the state of the other Contracting party to a treatment more favourable than is provided by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 5. Transfer of Investment and Returns

1. Contracting Party in whose territory investments of investors of the state of the other Contracting Party were made, shall permit free transfer of funds related to investments or returns thereon without unreasonable delay and on non-discriminatory basis provided the investor has complied with all his fiscal obligations. Such funds may include, in particular, but not exclusively: (a) Capital and additional capital amounts used to maintain and increase investments;
(b) Net operating profits including dividends and interest in proportion to their share-holding;
(c) Repayments of any loan, including interest thereon, relating to the investment;
(d) Payment of royalties and services fees relating to the investment;
(e) Proceeds from sales of their shares;
(i) Proceeds received by investors in case of sale or partial sale or liquidation;
(g) The earnings of citizens/nationals of one Contracting Party who work in connection with investment on the territory of the other Contracting Party;

(h) Compensations under Articles 6 and 7 of the present Agreement and other payments, related to any investment disputes in the framework of the present Agreement.

2. Unless otherwise agreed to between the parties, currency transfer under paragraph I of this Article shall be made in the currency in which the original investments were made or in a freely convertible currency, at the prevailing market rate of exchange on the date of transfer, in accordance with the procedure provided under the Foreign exchange regulation and other legislation of the state of the contracting Party in whose territory the investments were made.

Article 6. Expropriation

1. Contracting Parties shall not undertake directly or indirectly actions on expropriation, nationalisation or other actions, having equal character and effect, relating to investments of investors of the state of the other Contracting Party, except measures taken for a public purpose, under its legislation on a non-discriminatory basis and against compensation.

2. The contracting Party, which expropriates investments, due to circumstances, indicated in paragraph 1 of the present Article, shall provide to investors of the state of the other Contracting Party 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 became public knowledge whichever is earlier, and shall include interests on the amount of compensation at market rate from the date of expropriation till the date of payment, shall be made without unreasonable delay, be effectively realisable and be freely convertible and transferable. Transfer without unreasonable delay is considered to be the period normally necessary for fulfillment of formalities related to transfer.

3. The investor affected that have a right, under the law of the Contracting Party making the expropriation, to review, by judicial or other independent authority of that Contracting Party. of his or its case and of the valuation of his or its investment. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

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 state of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 and 2 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 7. Compensation for Losses

Investors of the state of a Contracting Party whose investments in the territory of the state of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, riots or other similar events in the territory of the state of the other Contracting Party, shall be provided treatment, as regards compensation, restitution, indemnification or other settlement, no less favourable than that which the state of the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 8. Subrogation

Where one Contracting Party or its authorised 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 authorised 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. Consultations

A Contracting Party may propose to the other Contracting Party to conduct consultations on any matter, connected with interpretation and application of the present Agreement. The Contracting Parties shall agree through diplomatic channels on the form as well as the time and venue of such consultation.

Article 10. Settlement of Disputes between Contracting Parties

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

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, 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. 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 two 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.
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 any necessary appointment. 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.
5. The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.
6. Decisions of the Tribunal shall be final and binding on the Contracting Parties. The establishment of an arbitral tribunal under this Article shall not prevent the Contracting Parties from arriving at an amicable settlement of the dispute.

Article 11. 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 made by the investor under this Agreement shall, as far as possible, be settled amicable through negotiations.
2. Any such dispute which has not amicably settled within a period of six months may, if both Parties agree, be submitted:
 - (a) For resolution, in accordance with the law of the state of the Contracting Party which has admitted the investment to its competent judicial or administrative bodies; or:
 - (b) To international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.
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. The Arbitration procedure shall be as follows:
 - (a) 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 National of other States, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes such a dispute shall be referred to the Centre; or
 - (b) If both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or
 - (c) 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:
 - (i) The appointing authority under Article 7 of these 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 and shall be binding on the parties to the dispute.
 - (iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either Party.

Article 12. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its applicable laws and regulations 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 13. Applicable Laws

1. If the contrary is not provided by the present Agreement, all investments under the present Agreement shall be regulated by the legislation in force in the territory of the state of the Contracting Party, where such investments are made.

2. Notwithstanding the provisions of paragraph 1 of the present Article nothing shall restrict the receiving Contracting Party from applying measure to protect its vital interests and security or in the case of emergency, in accordance with its laws on a non-discriminatory basis.

Article 14. Scope of the Agreement

The Present Agreement shall apply to all investments made by investors of the state of either Contracting Party, in the territory of the state of the other Contracting Party in accordance with its laws in force whether made before or after the date of entry into force of the present Agreement.

Article 15. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the later date on which the Contracting Parties have notified each other that the internal procedures for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.

2. This Agreement may be amended by mutual consent of both Contracting Parties in writing at any time after it is in force.

3. This agreement shall remain in force for a period of ten years. Thereafter it shall be tacitly extended for the further period of five years at a time 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 twelve months from the date of receipt of such written notice.

4. In the case of termination of the present Agreement its provisions shall remain in force for a further period of ten years in respect of investments made before the termination of this Agreement.

Done at Tashkent on this the 18th day of May, 1999 in two original copies, each in the Hindi, English and Uzbek languages, all texts being equally authentic.

The text in English language shall prevail in case of difference of interpretation.

Sd/-

For the Government of the Republic of India

Sd/-

For the Government of the Republic of Uzbekistan