

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

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

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

Recognising that the encouragement and reciprocal protection of investments of investors of one Contracting Party in the territory of the other Contracting Party on a non discriminatory basis under international agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in the territory of both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(a) "investment" means every kind of asset established or acquired including changes in the form of such investment, in accordance with the national laws and regulations of the Contracting Party in whose territory the investment is made 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 and regulations of the respective Contracting Parties;

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

(b) "investor" means any natural or juridical person who has made investment in the territory of the other Contracting Party:

(i) "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 Latvia: a citizen or non-citizen in accordance with the laws and regulations of the Republic of Latvia;

(ii) "juridical person" means:

In respect of the Republic of India: any entity that is incorporated, constituted, set up or otherwise duly organized under the law in force in any part of India; whether or not for profit, whether privately or otherwise owned, with limited or unlimited liability, including any corporation, company, association, partnership, trust, joint venture, co-operatives or sole proprietorship;

In respect of the Republic of Latvia: commercial company (partnership or capital company), association and foundation incorporated or constituted in accordance with the laws and regulations of the Republic of Latvia, whether or not for profit;

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

royalties and fees;

(d) "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 Latvia: the land territory, internal waters and territorial sea of the Republic of Latvia and the airspace above it, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Republic of Latvia exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas;

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

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute concerning an investment which arose, or any claim which was settled before its entry into force.

## **Article 3. Promotion and Protection of Investment**

(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) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

(3) A Contracting Party shall, subject to its laws, accord within its territory protection and security to investments and shall not impair the management, maintenance, use, enjoyment or disposal of investments.

## **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, whichever is more favourable.

(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 Contracting Party and to their investments and returns on investments the present or future benefit of any treatment, preference or privilege resulting from:

(a) Any membership in a free trade area, customs union, monetary union, common market and any international agreement resulting in similar arrangements, or

(b) Any international agreement or arrangement or, domestic legislation relating wholly or mainly to taxation.

## **Article 5. 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 fair and equitable compensation. Such compensation shall amount to the fair market 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 the normal market rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

(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 Contracting Party, of his or its case and of the valuation of his or its

investment in accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

(3) 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 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.

## **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, whichever is more favourable. Resulting payments shall be freely transferable.

## **Article 7. Transfers**

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

- (a) Initial capital and additional capital amounts used to maintain and increase investments;
- (b) Net operating profits including dividends and interest in proportion to their share-holdings;
- (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;
- (f) Proceeds received by investors in case of sale or partial sale or liquidation;
- (g) The earnings of natural persons of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

(2) Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Article 6 of this Agreement.

(3) Unless otherwise agreed to between the parties, currency transfer under paragraph (1) of this Article shall be permitted in the currency of the original investment or any other freely convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

## **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.

(2) If the dispute has not been settled within six months from the date on which it was raised in writing, the dispute may, at the choice of investor, be submitted:

- (a) To the competent courts of the Contracting Party in whose territory the investment is made; or
- (b) To arbitration under the International Centre for Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March, 1965 (hereinafter referred to as the "Centre") provided

that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; or

(c) To arbitration under the Additional Facility of the Centre, provided that either the disputing Contracting Party or the Contracting Party of the investor is a party to the ICSID Convention; or

(d) To any ad-hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) with 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.

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

(4) The arbitration award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

(5) If either Party submits a dispute for resolution under paragraph 2(a), it shall be precluded from invoking the procedure under paragraph 2(b), 2(c) or 2(d) and vice-versa.

(6) Neither of the Contracting Parties, which is a Party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other Party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

## **Article 10. Settlement of 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 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 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.

(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 procedures.

## **Article 11. Entry and Sojourn of Personnel**

A Contracting Party shall, subject to its laws and regulations relating to the entry and sojourn of foreign nationals, 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. Applicable Laws**

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

(2) Notwithstanding paragraph (1) of this Article 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 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. Entry Into Force**

Each Contracting Party shall notify the other in writing of the completion of the procedures required by its law for bringing this Agreement into force. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

### **Article 15. Duration and Termination**

(1) This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The termination of this Agreement shall become effective twelve months after the date of receipt of such written notice by the other Contracting Party.

(2) Notwithstanding termination of this Agreement pursuant to paragraph (1) 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.

(3) The Protocol shall form an integral part of the Agreement.

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

Done at New Delhi on 18th February 2010 in two originals each in the Hindi Latvian 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

Sd/- (Anand Sharma) Minister of Commerce and Industry

FOR THE GOVERNMENT OF THE REPUBLIC OF LATVIA

Sd/- (Artis Kampars) Minister of Economics

### **Protocol**

To the Agreement Between the Government of the Republic of India and the Government of the Republic of Latvia for the Promotion and Protection of Investments

On the signing of the Agreement between the Government of the Republic of India and the Government of the Republic of Latvia for the Promotion and Protection of Investments, the undersigned representatives have agreed on the following provisions which constitute an integral part of the Agreement:

### **Ad Article 1**

The Republic of India takes note of the statement of the Republic of Latvia that the term "non-citizens" referred to in Article 1, paragraph (b)(i), means a person who, in accordance with the Law on Status of Those Former U.S.S.R. Citizens Who Do Not Have Citizenship Of Latvia Or That of any Other State, has a right to a non-citizen passport issued by the Republic of Latvia.

## **Ad Article 5**

1. Article 5 (Expropriation) is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

2. An action or a series of actions by a Contracting Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

3. Article 5 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by Article 5 is indirect expropriation, where an action or series of actions by a Contracting Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of action, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact based inquiry that considers, among other factors: the economic impact of the governmental action, although the fact that an action or series of actions by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred; the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and the character of the government action.(i) The economic impact of the governmental action, although the fact that an action or series of actions by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) The extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) The character of the government action.

(b) Actions by a Government or Government controlled bodies, taken as a part of normal business activities, will not constitute indirect expropriation unless it is prima facie apparent that it was taken with an intent to create an adverse impact on the economic value of an investment.

(c) Except in rare circumstances, non-discriminatory regulatory actions by a Contracting Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriation.

For the Government of the Republic of India For the Government of the Republic of Latvia

Sd/- (Anand Sharma) Minister of Commerce and Industry Sd/-

(Artis Kampars)

Minister of Economics