

**No. 50483**

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**United States of America  
and  
India**

**Investment Incentive Agreement between the Government of the United States of America and the Government of India. New Delhi, 19 November 1997**

**Entry into force:** *16 April 1998 by notification, in accordance with article 7*

**Authentic texts:** *English and Hindi*

**Registration with the Secretariat of the United Nations:** *United States of America, 26 February 2013*

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**États-Unis d'Amérique  
et  
Inde**

**Accord relatif à la promotion des investissements entre le Gouvernement des États-Unis d'Amérique et le Gouvernement de l'Inde. New Delhi, 19 novembre 1997**

**Entrée en vigueur :** *16 avril 1998 par notification, conformément à l'article 7*

**Textes authentiques :** *anglais et hindi*

**Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies :** *États-Unis d'Amérique, 26 février 2013*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

**INVESTMENT INCENTIVE AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE UNITED STATES OF AMERICA**  
**AND**  
**THE GOVERNMENT OF INDIA**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA and THE GOVERNMENT OF INDIA;**

**AFFIRMING** their common desire to encourage economic activities in India that promote the development of the economic resources and productive capacities of India; and

**RECOGNIZING** that this objective can be promoted through investment support provided by the Overseas Private Investment Corporation ("OPIC"), a development institution and an agency of the United States of America, in the form of investment insurance and reinsurance, debt and equity investments and investment guaranties;

**HAVE AGREED** as follows:

**ARTICLE 1**

As used in this Agreement, the following terms have the meanings herein provided.

(a) "Investment Support" refers to any debt or equity investment, any investment guaranty and any investment insurance or reinsurance which is provided by the Issuer in connection with a project in the territory of India.

(b) "Issuer" refers to OPIC and any successor agency of the United States of America, and any agent of either.

(c) "Investment Insurance" means insurance against any or all of the following risks:

(i) inability to convert into United States dollars other currencies, or credits in such currencies, received as earnings or profits from projects, as repayment or return of the investment therein, in whole or in part, or as compensation for the sale or disposition of all or any part thereof;

(ii) loss of investment, in whole or in part, in a project due to expropriation or confiscation by action of the Government of India;

(iii) loss due to war, revolution, insurrection or civil strife; and

(iv) loss due to business interruption caused by any of the risks set forth in subparagraphs (i), (ii) and (iii) above.

## **ARTICLE 2**

If under the laws of India the making of a loan, equity investment, or other form of investment requires an approval of the Reserve Bank of India, the Foreign Investment Promotion Board, the Ministry of Finance, or the Ministry of Industry, or such other agency of the Government of India as may be specified by the Government of India by notice to the Issuer, the provisions set forth in this Agreement with respect to Investment Support for or constituting such loan, equity investment or other form of investment shall apply only if such approval has been issued.

## **ARTICLE 3**

(a) The activities of the Issuer shall not be subject to regulation under the laws of India with respect to Investment Insurance or reinsurance extended outside of India to U.S. investors, including entities domiciled in third countries having not less than 95 percent U.S. ownership, or with respect to reinsurance extended to non-U.S. entities not domiciled in India.

(b) If the Issuer makes a payment to any person or entity, as Issuer of Investment Insurance or an investment guaranty in connection with any Investment Support, the Government of India shall recognize in connection with any dispute contemplated under the provisions of Article 6(c) hereof the transfer to the Issuer in connection with such payment of the right to exercise the rights and assert the claims of such person or entity.

(c) With respect to any interests transferred to the Issuer or any interests to which the Issuer succeeds under this Article, the Issuer shall assert no greater rights than those of the person or entity from whom such interests were received, without prejudice to any other rights that the two parties may have in their sovereign capacities.

#### **ARTICLE 4**

(a) Amounts in the currency of India, including cash, accounts, credits, instruments or otherwise, acquired by the Issuer upon making a payment, or upon the exercise of its rights as a creditor, in connection with any Investment Support provided by the Issuer for a project in India ("Local Currency"), shall be freely convertible into dollars and transferable to the United States at the prevailing market rate of exchange on the date of conversion.

(b) Local Currency may be transferred or loaned by the Issuer to, or invested by the Issuer in, any person or entity in accordance with relevant laws and regulations in force in the territory of India.

(c) Local Currency shall be freely available to the Government of the United States of America for administrative expenditures.

#### **ARTICLE 5**

Provisions equivalent to those of this Agreement shall apply with respect to investment support by the Export Credit Guaranty Corporation Ltd. or any other agency designated by the Government of India for investments in the United States under a program similar in substance to the investment incentive program to which this Agreement relates, upon completion of any constitutional or other legal processes of either Government

that may be required and an exchange of notes to be made at the initiative of either Government.

#### ARTICLE 6

(a) Any dispute between the Government of the United States of America and the Government of India regarding the interpretation of this Agreement shall be resolved, insofar as possible, through negotiations between the two Governments. If, six months following a request for negotiations hereunder, the two Governments have not resolved the dispute, the dispute, including the question of whether such dispute presents a question of international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with paragraph (b) of this Article.

(b) The arbitral tribunal referred to in paragraph (a) of this Article shall be established and shall function as follows:

(i) Each Government shall appoint one arbitrator. These two arbitrators shall by agreement designate a president of the tribunal who shall be a citizen of a third state and whose appointment shall be subject to acceptance by the two Governments. The arbitrators shall be appointed within three months, and the president within six months, of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary-General of the Permanent Court of Arbitration in the Hague to make the necessary appointment or appointments. Both Governments hereby agree to accept such appointment or appointments.

(ii) Decisions of the arbitral tribunal shall be made by majority vote and shall be based on the applicable principles and rules of international law. Its decision shall be final and binding on the parties. The arbitral tribunal shall state the basis for its decision and give reasons therefor upon the request of either Government.

(iii) During the proceedings, each Government shall bear the expense of its arbitrator and of its representation in the proceedings before the tribunal, whereas the expenses of the president and other costs of the arbitration shall be paid in equal parts by the two Governments. In its