AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF UKRAINE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Singapore and the Government of Ukraine (hereinafter referred to as the "Contracting Parties"),

DESIRING to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one State in the territory of the other State based on the principles of equality and mutual'benefit;

RECOGNISING that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiative and increasing prosperity in both States;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset permitted by each Contracting Party in accordance with its laws and regulations, including, though not exclusively, any:

(a) movable and immovable property and other property rights such as mortgages, liens or pledges;

(b) shares, stocks, debentures and similar interests in companies;

(c) claims to money or to any performance under contract having an economic value;

(d) intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment; and

(e) business concessions conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources.

2. The term "returns" means monetary' returns yielded by an investment including any profits, interest, capital gains, dividends, royalties or fees.

3. The term "investor" means any individual or legal entity investing in the territory of the other Contracting Party':

(a) The term "individual" means any natural person having the citizenship of either Contracting Party in accordance with its laws;

(b) The term "legal entity" means, with respect to either Contracting Party, any company, firm, association or body, with or without legal personality, incorporated, established or registered under the laws in force in the Contracting Party.

4. The term "freely convertible currency" means any currency that is widely used to make payments for international transactions v and widely traded in the principal international exchange markets.

5. The term "territory" means the territory of each Contracting Party including the territorial sea, as well as any maritime area beyond that where a Contracting Party, in conformity with intemationaf law, exercises sovereign rights for the purposes of exploring and exploiting, conserving and managing the natural resources.

Article 2. Applicability of this Agreement

1. This Agreement shall only apply in respect of investments, made by the investors of one State in the territory of the other, which are specifically approved in writing by the competent authority of the latter State and upon such conditions, if any, as it shall deem fit.

2. The provisions of the foregoing paragraph shall apply to all investments made by investors of one State in the territory of the other, whether made before or after the coming into force of this Agreement, but shall not apply to any disputes which arose, or any claims which were 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.

2. Investments within the meaning of Article 2 of this Agreement shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

Article 4. Most Favoured-nation Provision

1. Each Contracting Party shall in its territory accord to investments within the meaning of Article 2 of this Agreement and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of investors of any third State.

2. The provisions of paragraph 1 of this Article 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 which may be extended by the former Contracting Party by virtue of any existing or future customs union, free trade area, free trade arrangement, common market, monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party, or an agreement designed to lead to the formation or extension of such a union, area or arrangement.

3. The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by any Avoidance of Double Taxation Treaty between the two Contracting Parties and the domestic laws of each Contracting Party.

Article 5. Expropriation

1. Neither Contracting Party shall take any measure of expropriation, nationalisation or other measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") against the investment of investors of the other Contracting Party unless the measures are taken for any purpose authorised by law. The expropriation shall be carried out under due process of law, on a non-discriminatory basis, and shall be accompanied by provisions for the payment of a prompt and effective compensation. Such compensation, shall, subject to the Taws of each Contracting Party, be the market value immediately before the expropriation. The compensation shall be freely convertible and transferable.

2. Any measure of expropriation or valuation may, at the request^ of the investors affected, be reviewed by a judicial or other independent authority of the Contracting Party taking the measures in the manner prescribed by its laws.

3. The provisions of paragraph 1 of this Article shall also apply, to the extent necessary, 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.

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, 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, if any, no less favourable than that which the latter Contracting Party accords to investors of any third State. Any resulting compensation shall be freely convertible and transferable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referrea to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property' by its forces or authorities,

(b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded such compensation as may be prescribed by law.

Article 7. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer, on a non-discriminatory basis, of their capital and the returns from any investments. The transfers shall be made in a freely convertible currency, without any restriction or undue delay. Such transfers shall include in particular, though not exclusively:

(a) profits, capital gains, dividends, royalties, interest and other current income accruing from an investment;

(b) the proceeds of the total or partial liquidation of an investment;

(c) repayments made pursuant to a loan agreement in connection with an investment;

(d) license fees in relation to the matters in Article l(l)(d) of this Agreement;

(e) payments in respect of technical assistance, technical service and management fees;

(f) payments in connection with contracting projects;

(g) earnings of investors of the other Contracting Party who work in connection with an investment in the territory of the former Contracting Party.

2. Nothing in paragraph 1 of this Article shall affect the free transfer of compensation paid under Articles 5 and 6 of this Agreement.

3. The transfers under this Article and those referred to in Articles 5 and 6 of this

Agreement shall be affected at the prevailing market rate in freely convertible currency on the date of transfer. "

Article 8. Laws

For the avoidance of any disputes, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 9. Subrogation

1. If a Contacting Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or contract of insurance, arising from or pertaining to an investment of that investor within the territory of the other Contracting Party, the latter shall:

(a) recognise the assignment, to the former Contracting Party or its designated agency, of any right or claim of such investor that formed the basis of such payment; and "

(b) recognise the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim ofthe investor.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 10. Investment Disputes

1. Any dispute between investors of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. The party intending to resolve such dispute through negotiations shall give written notice to the other of its intention.

2. If the dispute cannot be thus resolved as provided in paragraph 1 of this Article, within six months from the date of the notice given thereunder, then, unless the parties

Have otherwise agreed, it shall, upon the request of either party to the dispute, be submitted to conciliation or arbitration by

the International Centre for Settlement of Investment Disputes (called "the Centre 1 ' in this Agreement) established by the Convention on the Settlement of Investment Disputes between the States and Nationals of Other States opened for signature at Washington on 3 8 March, 1965 (called "the Convention" in this Agreement). For this purpose, each Contracting Party hereby irrevocably consents in advance under Article 25 of the Convention to submit any dispute to the Centre.

Article 11. 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 negotiation. The Contracting Party intending to resolve such dispute through negotiations shall give written notice to the other of its intention.

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2. If any dispute cannot be thus settled within six months from the date of the notice given under paragraph 1, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter _ called "the tribunal") shall consist of three arbitrators, one appointed bv each Contracting Party and the third, who shall be Chairman of the tribunal, appointed by agreement of the Contracting Parties.

3. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator, who shall be Chairman of the tribunal.

4. If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party or if hens 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 7 may be invited to make the necessary appointments, and so on.

5. The tribunal shall reach its decision by a majority of votes.

6. The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

7. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

8. Apart from the above the tribunal shall establish its own rules of procedure.

Article 12. Other Obligations

1. If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement, result in a position entitling investments py investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. Each Contracting Party shall observe commitments, made in accordance with its laws, additional to those specified in this Agreement, it has entered into with respect to the investment of the investors of the other Contracting Party.

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Any provision relating to expropriation in investment guarantee agreements entered / the Republic of Singapore prior to 1991 shall not apply to this Agreement.

Article 13. Amendments or Modifications

1. The provisions of this Agreement may be amended or modified by the mutual agreement of Contracting Parties.

2. Such amendments or modifications shall be included in additional Protocols which will constitute an integral part of this Agreement.

Article 14. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party in writing of the fulfillment of its internal legal procedures required for the bringing into force of this Agreement This Agreement shall enter into force on the thirtieth day from the date of notification of the later Contracting Party'.

2. This Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter unless, after the expiry of the initial period of fomteen years,

. either Contracting Party notifies the other Contracting Party, in writing, of its intention O to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

3. In respect of investments made prior to date "when the notice of termination of this Agreement becomes effective, the provisions of Article 1 to 13 of this Agreement shall remain in force for a further period of fifteen years from that date.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Singapore, this 18th day of September 2006, in the Ukranian and English languages, both texts being equally authentic.

For the Government of Ukraine

Volodymyr Makukha Minister for Economy

For the Government of the Republic of Singapore

Lim Hng Kiang Minister for Trade and Industry