

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify the economic cooperation between the two states,

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investor" shall mean:

(a) natural persons having the nationality of either Contracting Party, in accordance with its laws, and

(b) legal persons, including corporation, commercial or other companies, associations, or any other entities which are incorporated or constituted in accordance with the law of that Contracting Party;

Having made an investment in the other Contracting Party's territory.

2. The term "investment" shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

(a) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and usufructs;

(b) shares, stocks, debentures and any other forms of equity participation in a company and rights derived therefrom;

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

(d) intellectual property rights including in particular protection of copyright and related rights, including computer programmes, patents, industrial designs, trademarks and service marks, geographical indications, including appellations of origin, topographies of integrated circuits and know-how;

(e) any right to conduct an economic activity, whether conferred by law or an administrative act by a competent state authority, or by contract, including concessions for prospect, to search for, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

3. The term returns shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, capital gains or other forms of income related to the investments, including license fees and other similar fees.

4. The term "territory" shall mean:

(a) with respect to the Republic of India: the territory of the Republic of India including its territorial waters and 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.

(b) with respect to the Republic of Slovenia: the territory under its sovereignty, including air space and maritime areas, over which the Republic of Slovenia exercises its sovereignty or jurisdiction, in accordance with internal and international law.

Article 2. Application of the Agreement

This Agreement shall apply to all investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, whether made before or after the entry into force of this Agreement.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage, as far as possible, within its territory investments by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.

2. Each Contracting Party shall accord at all times fair and equitable treatment to investments by investors of the other Contracting Party.

3. Each Contracting Party shall subject to its laws, accord within its territory, protection and security to investments and shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

Article 4. National and Most Favoured Nation Treatment

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment no less favourable than that accorded to investments of its own investors or investments of investors of any third State.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards management, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State as regards their investments, whichever is more favourable.

3. The provisions of paragraphs (1) and (2) shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from:

(a) any present or future customs union, monetary union, common market, free trade area or membership in an economic community or a similar international agreement.

(b) any matter, including international agreements, pertaining wholly or mainly to taxation.

Article 5. Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures as well as international agreements which may affect the operation of the Agreement.

2. Each Contracting Party shall give sympathetic consideration to specific questions and provide, upon request, information to the other Contracting party on matters referred to in paragraph 1.

3. No Contracting party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede enforcement or would be contrary to its laws and regulations protecting confidentiality.

Article 6. Expropriation and Compensation (1)

1. Investments of investors of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for a public purpose, on a non-discriminatory basis in accordance with the law and against compensation.

2. Such compensation shall be equivalent to the fair market value of the investment, immediately prior to or at the time when the decision for expropriation was announced or became publicly known, whichever is the earlier, and be determined in accordance with generally recognised principles of valuation. The compensation shall be paid without undue delay and shall include interest at the commercial rate established on a market basis from the date of actual expropriation until the date of payment. The amount of compensation shall be effectively realizable, freely convertible and allowed to be freely transferred.

3. Where a Contracting Party expropriates the assets of a company which is considered as a company of that Contracting party pursuant to paragraph (2) of Article 1 of the present Agreement and in which an investor of the other Contracting party owns shares, it shall apply the provisions of paragraphs (1) and (2) so as to ensure due compensation to the investor.

4. The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having induced the expropriation.

5. The investor affected shall have, without prejudice to the provisions of Article 11 of this Agreement, the right, under the law of the Contracting Party making the expropriation, to review, by judicial or other independent authority of that Party, of valuation of his or its investment and the provisions of payments of compensation 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.

(1) For greater certainty, Article 6 shall be interpreted in accordance with the Protocol annexed to this Agreement.

Article 7. Compensation for Losses

1. Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards measures it adopts in relation to such losses, including compensation, indemnification and restitution, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State.

2. Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- (a) requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party, or
- (b) destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation. Resulting payments shall be effectively realisable, freely convertible and freely transferable.

Article 8. Transfers

1. Each Contracting Party shall permit investors of the other Contracting Party the free transfer of funds related to their investments and in particular, though not exclusively:

- (a) initial capital and additional contributions for the maintenance or development of the investments;
- (b) returns;
- (c) payments made under contracts including loan agreements;
- (d) proceeds from the sale or liquidation of all or part of an investment;
- (e) any compensation or other payment referred to in Articles 6 and 7 of this Agreement;
- (f) payments arising out of the settlement of a dispute;
- (g) earnings and other remuneration of personnel engaged from abroad in connection with the investment.

2. The transfers referred to in this Article shall be made without restriction or undue delay. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

3. Currency transfer under paragraph (1) of this Article shall be permitted in the currency of the original investment or any other convertible currency, unless otherwise agreed to between the investor and the host country.

4. A transfer 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 on which the relevant request has been made, without full documentation and information, and may in no account exceed three months.

5. Nothing contained in paragraph (1) of this Article shall prevent either Contracting Party from applying or enforcing in good faith and in an equitable and non-discriminatory manner, their laws, rules and regulations relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

(d) ensuring compliance with orders or judgments in adjudicatory proceedings;

(e) implementation of any obligation which is binding on that Contracting Party by virtue of its membership of any customs union, monetary union, common market, free trade area or regional economic organization.

Article 9. Subrogation

If a Contracting Party or its designated agency makes a payment to its investor an indemnity, guarantee or contract of insurance against noncommercial risks given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of all rights and claims of the investor and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

Article 10. Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to its investments, if investors of a NonContracting Party own or control the first mentioned investor and that investor has no substantial business activity in the territory of the other Contracting Party under whose law it is constituted or organised.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment shall be settled amicably through negotiations.

2. If such a dispute cannot be settled within a period of four (4) months from the date of request for settlement, either of the parties to the dispute, may submit the dispute to:

(a) the competent court, arbitral or administrative tribunal of the Contracting Party; only if the investor agrees, or

(b) conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) arbitration established under:

(i) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(ii) the rules of the International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington, D.C., on March 18, 1965, provided that both the Contracting Parties are parties to the said Convention; or

(iii) the ICSID Rules governing the Additional Facility for the Administration of Proceedings, provided that in case conciliation proceedings under (b) above are terminated other than by signing of a settlement agreement, recourse to arbitration may be taken.

(d) any other form of arbitration agreed upon by the parties to the dispute.

3. A legal person which is constituted or organised under the law of the Contracting Party, party to the dispute, and which,

before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting party, shall for the purpose of Article 25(2)(b) of the ICSID Convention be treated as a national of another Contracting State and shall for the purpose of Article 1(6) of the Additional Facility Rules be treated as a national of another State.

4. A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

5. Neither Contracting Party shall give diplomatic protection or bring an international claim in respect of any dispute referred to arbitration under this Article, unless the other Contracting Party shall have failed to abide by or comply with the award rendered in such a dispute.

6. The award shall be final and binding on both parties to the dispute and shall be recognised and enforced in accordance with internal and international law.

Article 12. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled amicably by negotiation through diplomatic channels.

2. If the Contracting Parties fail to reach a settlement within six (6) months from the time the dispute arose, the dispute shall upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this Article.

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, with both Contracting Parties maintain diplomatic relations, who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three (3) 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 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 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 rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties.

6. Each Contracting Party shall be responsible for the costs of its own member and of its representation in the arbitral proceedings. Both Contracting Parties shall assume and equal share of the cost of the Chairman, as well as any other costs. The tribunal may make a different decision regarding costs.

7. In all other respects, the tribunal shall define its own rules of procedure, unless the parties decide otherwise.

Article 13. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable for entry and sojourn of non-citizens, permit 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 14. 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 this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 15. Applicable Laws

1. Except as otherwise provided in this Agreement, all investments shall be governed by laws in force in the territory of the Contracting Party in which such investments are made.
2. Nothing in this Agreement shall be construed so as to prevent a Contracting Party from taking any action in pursuance of its international obligations for the maintenance of international peace and security or which it considers necessary for the protection of its essential security interests.
3. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party, or a disguised investment restriction, nothing in this Agreement shall be construed to prevent a Contracting Party from taking any measure necessary in situation of extreme emergency in accordance with its laws.

Article 16. Consultations

Each Contracting Party may propose to hold, whenever necessary, consultations on any matter affecting the implementation of this Agreement. These consultations shall be held at a place and a time to be agreed upon through diplomatic channels.

Article 17. Entry Into Force and Duration

1. This Agreement shall enter into force on the first day after the day of the receipt of the last diplomatic note confirming that the Contracting Parties have complied with the conditions provided for by the constitution or the national legislation for the entry into force of the present Agreement.
2. This agreement shall remain in force for a period of ten years. 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 Agreement shall stand terminated after twelve months from the date of receipt of such written notice.
3. In respect of investments made prior to the date of termination of this Agreement the provisions of Articles 1 to 15 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done at New Delhi on 14th June 2011 in two originals each in Hindi, Slovene and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India

Sd/-

(Pranab Mukherjee)

Minister of Finance

For the Government of the Republic of Slovenia

Sd/-

(Darja Radic)

Minister of Economy

Protocol

Interpretation of Expropriation in Article 6 (Expropriation)

1. A measure of expropriation includes, apart from direct expropriation or nationalisation through formal transfer of title or outright seizure, a measure or series of measures taken intentionally by a Party to create a situation whereby the investment of an investor may be rendered substantially unproductive and incapable of yielding a return without a formal

transfer of title or outright seizure.

2. The determination of whether a measure or a series of measures of a Party in a specific situation, constitutes measures as outlined in paragraph 1 above requires a case by case, fact based inquiry that considers, among other factors:

(i) the economic impact of the measure or a series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that expropriation or nationalization, has occurred;

(ii) the extent to which the measures are discriminatory either in scope or in application with respect to a Party or an investor or an enterprise;

(iii) the extent to which the measures or series of measures interfere with distinct, reasonable, investment-backed expectations;

(iv) the character and intent of the measures or series of measures, whether they are for bona fide public interest purposes or not and whether there is a reasonable nexus between them and the intention to expropriate.

3. Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives including health, safety and the environment concerns do not constitute expropriation or nationalization.

4. Actions and awards by judicial bodies of a Party that are designed, applied or issued in public interest including those designed to address health, safety and environmental concerns do not constitute expropriation or nationalization.