

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Singapore and the Government of the Republic of Bulgaria (each hereinafter referred to as a "Contracting Party"),

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" shall mean every kind of asset invested, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, and in particular, though not exclusively, includes:

(a) movable and immovable property and other rights in rem 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, know-how and goodwill; and

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

A subsequent change of the form in which investments have been made shall not affect their character as investments, provided that the change has been made in compliance with Article 2 of this Agreement, as applicable.

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 in relation to either Contracting Party:

(a) any citizen of either Contracting Party in accordance with its laws;

(b) any company, firm, organisation, association or body, with or without juridical personality, incorporated, established or registered under the laws in force in either Contracting Party.

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

5. The term "territory" shall mean the territory under the sovereignty of the Republic of Singapore, on one hand, and of the Republic of Bulgaria, on the other hand, including the territorial sea, as well as the exclusive economic zone and the continental shelf over which the respective State exercises sovereign rights or jurisdiction, in conformity with international law, with respect to the exploration and exploitation of natural resources.

Article 2. Applicability of this Agreement

1. This Agreement shall only apply:

(a) in respect of investments in the territory of the Republic of Singapore, to all investments made by investors of the Republic of Bulgaria, which are approved in writing by the competent authority designated by the Government of the Republic of Singapore and upon such conditions, if any, as it shall deem fit;

(b) in respect of investments in the territory of the Republic of Bulgaria, to all investments made by investors of the Republic of Singapore in accordance with the laws and regulations of the Republic of Bulgaria.

2. For the avoidance of any doubt, it is agreed that the provisions of paragraph 1 of Article 4 shall apply to paragraph 1 of this Article.

3. The provisions of the foregoing paragraphs shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement.

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 (including reinvestments of returns from investments) made in accordance with Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

Article 4. Treatment

1. Investments made in accordance with Article 2 and returns from such investments shall be accorded treatment no less favourable than that accorded to investments made by investors of any third State.

2. The provisions of paragraph 1 of this Article shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) existing or future customs union, free trade area, or similar economic communities or any agreement designed to lead in future to such an arrangement; or

(b) any arrangement with a third State or States in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects.

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,

4. 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, contains provisions entitling investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall not be affected by this Agreement. Each Contracting Party shall observe any commitment in accordance with its laws additional to those specified in this Agreement entered into by the Contracting Party or its investors with investors of the other Contracting Party as regards their investments.

Article 5. Expropriation

1. Neither Contracting Party shall take any measure of expropriation, nationalization or other measures having effect equivalent to nationalization 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, on a non-discriminatory basis, in accordance with its laws and against compensation which shall be effectively realisable and shall be made without unreasonable delay. Such compensation, shall, subject to the laws of each Contracting Party, be the value immediately before the action of expropriation is taken. The compensation shall be freely convertible and transferable. Any applicable interest shall be determined in accordance with the legislation or legal system, as relevant, in the territory of each Contracting Party.

2. Any measure of expropriation or valuation may, at the request of the investor affected, be reviewed by a judicial or other

independent authority of the Contracting Party taking the measure in the manner prescribed by its laws.

3. Where a Contracting Party expropriates the assets of an investor as defined in Article 1(3)(b) which is incorporated or constituted under the laws 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 guarantee compensation as specified therein 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, 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.

Article 7. Repatriation

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 or sale 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 1(1)(d);
- (e) payments in respect of technical assistance, technical service and management fees;
- (f) the remuneration received by citizens of the other Contracting Party for work or services in connection with investments made in its territory;
- (g) compensation payable in accordance with Articles 5 and 6.

2. The provisions of this paragraph shall not be construed so as to permit tax evasion.

Article 8. Exchange Rate

The transfers referred to in Articles 5 to 7 of this Agreement shall be effected at the prevailing market exchange rate in freely convertible currency on the date of transfer.

Article 9. Laws

For the avoidance of any doubt, 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 10. Subrogation

1. In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Agreement, the other Contracting Party acknowledges that the former Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investor.

2. Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to make any applicable claims against the other Contracting Party in accordance with Article 11.

Article 11. Investment Disputes

1. Any dispute between an investor 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 6 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 either to:

(a) the competent court of the Contracting Party concerned; or

(b) arbitration by the International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between the States and Nationals of other States done at Washington, March 18th 1965 (ICSID Convention) when both States are parties to the Convention. For this purpose, each Contracting Party hereby irrevocably consents in advance under Article 25 of the Convention to submit any dispute to the Centre.

3. In case of a dispute with regards to Articles 5, 6, 7 and 10 of this Agreement, either party to the dispute may alternatively submit the dispute to arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules, 1976 (UNCITRAL).

4. A dispute shall be submitted to only one forum. The judgement of the court or the arbitral award shall be final and the parties shall abide by and comply with the judgement or the award.

Article 12. 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.

2. If any dispute cannot be thus settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter I called "the tribunal") shall consist of three arbitrators, one appointed by 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.

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 citizen of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a citizen of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party 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 13. Consultations

The Contracting Parties may mutually agree to hold consultations concerning any questions relating to the interpretation or application of this Agreement.

Article 14. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party 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 fourteen years, either Contracting Party notifies in writing the other Contracting Party of its intention 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 the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 13 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 on 15 September 2003, in the English and Bulgarian languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

TAN CHIN TIONG

Permanent Secretary (Foreign Affairs)

For the Government of the Republic of Singapore

KRASSMIR KATEV

Deputy Minister of Finance

For the Government of the Republic of Bulgaria

PROTOCOL

At the signing of the Agreement between the Government of the Republic of Singapore and the Government of the Republic of Bulgaria on the Mutual Promotion and Protection of investments, the undersigned duly authorised by their respective Governments, have agreed on the following, which constitute an integral part of the said Agreement:

1. With regard to Article 4 of this Agreement:

For greater clarity, it is understood that after the accession of the Republic of Bulgaria to the European Union, the treatment accorded under Article 4 shall not apply to all actual or future advantages accorded by the Republic of Bulgaria to investors of the Member States, by virtue of this membership.

2. With regard to Article 14 of this Agreement:

This Agreement may be amended by written agreement between the Contracting Parties. Such amendments shall enter into force in accordance with the provisions of Article 14 of this Agreement.

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

Done in duplicate at Singapore on 15 September 2003, in the English and Bulgarian languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

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