

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

The Slovak Republic and the Republic of Singapore (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 purpose 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, which relate to the output which results from intellectual activity in the industrial, scientific, literary and artistic fields, and comprises, inter alia, industrial property including inventions, trademarks, industrial designs, trade secrets, geographical indications and copyright;

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

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment provided that the change has been made in compliance with Article 3 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 any natural or legal person of one Contracting Party who or which invests in the territory of the other Contracting Party:

(a) the term natural person means a natural person having the nationality of the relevant Contracting Party in accordance with its laws; and

(b) the term legal person means any entity, which is incorporated or constituted in accordance with the laws and regulations of the relevant Contracting Party.

4. The term "territory" means:

(a) as regards the Slovak Republic, the land territory and internal waters, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law;

(b) as regards the Republic of Singapore, the territory under the sovereignty of the Republic of Singapore, including the territorial sea, as well as the exclusive economic zone and the continental shelf over which the Republic of Singapore exercises sovereign rights or jurisdiction, in conformity with international law, with respect to the exploration and exploitation of natural resources.

5. The term "freely usable currency" means freely usable currency as determined by the International Monetary Fund under its Articles of Agreement and any amendments thereto.

Article 2. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made pursuant to paragraph 1 of Article 3 of this Agreement by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute concerning an investment which has arisen, or any claim which was settled, before its entry into force.

Article 3. Promotion and Protection of Investments

1. This Agreement shall only apply:

(a) in respect of investments in the territory of the Slovak Republic, to all investments made by investors of the Republic of Singapore which are admitted in accordance with the laws and regulations of the Slovak Republic, with the assistance of the Slovak Investment and Trade Development Agency (SARIO) or any other competent authority designated by the Government of the Slovak Republic and notified to the other Contracting Party;

(b) in respect of investments in the territory of the Republic of Singapore, to all investments made by investors of the Slovak Republic, which are specifically approved in writing by the Singapore Economic Development Board or any other competent authority designated by the Government of the Republic of Singapore and notified to the other Contracting Party.

2. Each Contracting Party shall encourage and create favourable conditions in its territory for investors of the other Contracting Party to make in its territory investments pursuant to paragraph 1 of this Article that are in line with its general economic policy.

3. Investments made by investors of each Contracting Party pursuant to paragraph 1 of this Article shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 4. National Treatment and Most-favoured Nation Treatment

1. Each Contracting Party shall in its territory accord to investors and investments made pursuant to paragraph 1 of Article 3 of this Agreement and returns from the said investments treatment not less favourable than that, which it in like circumstances accords, subject to its laws and regulations, to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable.

2. The provision of paragraph 1 of this Article relating to the granting of treatment not less favourable than that accorded to its own investors or to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from its membership in 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 the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement; or any Investment Guarantee Agreement entered into prior to 1991.

3. The provision 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 in its territory 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 authorized by law, on a non-discriminatory basis, in accordance with its laws and against compensation which shall be effectively realizable and shall be made without unreasonable delay.

Such compensation shall, subject to the laws of each Contracting Party, be the value immediately before the expropriation. The compensation shall be freely convertible and transferable.

Unless the law and practice of a Contracting Party provides otherwise, such compensation shall amount to the fair market value of the expropriated investments determined on the basis of the average market value for the same kind of investment immediately before expropriation action was taken and shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be effectively realizable.

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. Where a Contracting Party expropriates the assets of an entity which is incorporated or constituted under the laws in force, 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 provide compensation as specified therein to such investors of the other Contracting Party who are owners of those 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 or other similar events 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 or to its own investors, whichever is more favourable. Any resulting compensation shall be freely convertible and transferable.

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

(a) requisitioning of their property by the forces or authorities of the other Contracting Party; or

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

shall be accorded compensation for the losses sustained during the period of the requisitioning or as result of the destruction of the property. The compensation shall be in accordance with the laws of the Contracting Party, or, if no provision is made in its laws, shall be such sum as may be just and adequate. Resulting payments shall be freely convertible and transferable.

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 usable currency without any restriction or undue delay, at the prevailing market rate on the date of transfer. 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 paragraph 1 (d) of Article 1;

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

(f) payments in connection with contracting projects;

(g) additional funds necessary for the maintenance or development of the existing investments;

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

(i) compensation pursuant to Articles 5 and 6.

2. Notwithstanding paragraph 1 of this Article, either Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) adoption of safeguard measures, for a reasonable period of time, which may be taken in exceptional circumstances such as serious macroeconomic difficulties or serious difficulties for the balance of payments for the host Contracting Party;

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

(c) issuing, trading, or dealing in securities, futures, options or derivatives;

(d) criminal or penal offenses;

(e) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(f) ensuring the satisfaction of judgments, orders or awards in adjudicatory proceedings; or

(g) social security, public retirement or compulsory savings schemes.

3. The measures referred to in paragraph 2 (a) of this Article shall have limited duration and shall not go beyond what is necessary to remedy the balance of payments situations. A Contracting Party that imposes measures under paragraph 2 (a) of this Article shall inform the other Contracting Party forthwith and present as soon as possible a time schedule for their removal.

Article 8. 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:

(a) the assignment, whether under the law or pursuant to a legal transaction in that State, of any rights or claims from investors to the former Contracting Party (or any agency, institution, statutory body or corporation designated by it);

(b) that the former Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of the 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 their claims against the other Contracting Party in accordance with Article 9.

Article 9. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

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 negotiation 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:

(a) the competent court of the Contracting Party in the territory of which the investment was made; or

(b) arbitration by the International Centre for the Settlement of Investments Disputes (hereinafter referred to as "the Centre" in this Agreement) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March, 1965 (called "the Convention" in this Agreement); or

(c) an ad-hoc arbitral tribunal, which shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

In the event that the investor and the Contracting Party each choose a different body for the settlement, the choice of the investor shall prevail.

3. Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration and any arbitral award shall be final and binding upon the parties to the dispute.

Article 10. Settlement of 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 within six months, it shall upon the request of either Contracting Party be submitted to an Arbitral Tribunal in accordance with the provisions of this Article,

3. The 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 Arbitral Tribunal. These two members shall then select a national of a third State who, on approval of the two Contracting Parties, shall be appointed Chairman of the Arbitral Tribunal (hereinafter referred as the Chairman). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If the Arbitral Tribunal shall not have been constituted within five 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 make the necessary appointment or appointments. If the President is a national 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 national 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 national of either Contracting Party may be invited to make the necessary appointments, and so on.

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

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

7. Each Contracting Party shall bear the cost of its own member of the Arbitral Tribunal and of its representation in the arbitration proceedings and the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral 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.

8. Apart from the above, the Arbitral Tribunal shall establish its own rules of procedure.

Article 11. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are signatories, nothing in this Agreement shall prevent either Contracting Party or of any of its investors, who own investments in the territory of the other Contracting Party, from taking advantage of whichever rules are more favourable to his case.

2. 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 with investor of the other Contracting Party as regards their investments.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall be subject to approval in accordance with procedures required by both Contracting Parties for bringing this Agreement into force and it shall enter into force on the 90th day after the date of notification by the later Contracting Party confirming that all formalities required for bringing this Agreement into force have been fulfilled.

2. This Agreement shall remain in force for an initial period of fifteen years and shall continue in force thereafter unless, after 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 11 shall remain in force for a further period of ten years.

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

Done in duplicate at Singapore on 13 October 2006, in the Slovak and English language, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

Mr. Lim Hng Kiang

Minister for Trade and Industry

For the Republic of Singapore

Mr. Lubomir Jahnátek

Minister for Economy

For the Slovak Republic