

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE SLOVAK REPUBLIC FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of India and the Slovak Republic, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States, Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, and

Conscious that the promotion and reciprocal protection of investments, in accordance with the present Agreement, will be conducive to the stimulation of business initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means every kind of assets or rights established or acquired by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the host Contracting Party and shall include, in particular, though not exclusively:

- a) Movable and immovable property as well as and any other property rights such as mortgages, liens, leases or pledges;
- b) Shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom;
- c) Claims to money or to any performance under contract having an economic value;
- d) Intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, including but not limited to, industrial property rights, copyrights and related rights, trademarks, patents. Industrial design and technical processes, rights in plant varieties, geographical indications, knowhow, trade secrets, trade names and goodwill.

Any alternation or change of the form in which assets or rights are invested or reinvested shall not affect their character as an investment.

2. "return" means the amount yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

3. "investor" means any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party:

a) The term "natural person" means a natural person having the nationality of that Contracting Party in accordance with its laws; and

b) The term "legal person" means:

(i) In respect of the Republic of India:

Any entity that is incorporated, constituted, set up or otherwise duly organized under the laws and regulations of the Republic of India, whether or not for profit, whether privately or otherwise owned, with limited or unlimited liability, including any corporation, company, association, partnership, trust, joint venture, co-operatives or sole proprietorship. A

legal person shall not include an entity, which is established and located in the territory of the Republic of India with negligible or nil business operations or with no real and continuous business activities carried out in its territory.

(ii) In respect of the Slovak Republic:

Any entity which is incorporated or constituted in accordance with the laws and regulations of the Slovak Republic and which has its registered office, central administration or principal place of business in the Slovak Republic. However, should such a legal person have only its registered office in the territory of the Slovak Republic, its operations must possess a real and continuous link with the economy of that Contracting Party.

4. "territory" means:

a) As regards the Republic of India, the territory of the Republic of India including its territorial waters and the 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) As regards the Slovak Republic, the land territory, internal waters and the air space above them, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

5. "Freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

Article 2. Promotion and Protection of the Investments

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, encourage and create favourable conditions for investor of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and policy.

2. Investment of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. National and Most-favoured-nation Treatment

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment, which is fair and equitable and not less favourable than that, which it in like circumstances accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that, which it in like circumstances accords to investors of any third State.

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

a) Any existing or future customs, economic and monetary union or a common market or a free trade area or a regional economic organization or similar international agreement to which it is or may become a party; or

b) Any obligation which is binding on that Contracting Party by virtue of its membership to the above mentioned customs union, economic and monetary union or common market, or

c) Any matter pertaining wholly or mainly to taxation.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable.

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

- Requisitioning of their property by forces or authorities of the other Contracting Party, or
- Destruction of their property by 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 restitution or adequate compensation in no less favourable than that, which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any other State.

Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures. Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be effectively realizable. Compensation shall be made in a freely convertible currency.
2. In both expropriations and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.
3. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority (which cannot be an executive or legislative authority/power) of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.
4. Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, the provisions of this Article shall be applied.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfillment of their financial obligations, the free transfer of payments, including principals, and returns related to their investments. Such transfers shall include, in particular, though not exclusively:
 - a) Net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;
 - b) Proceeds accruing from the sale or the total or partial liquidation of investments;
 - c) Funds in repayment of loans related to investments;
 - d) Earnings of nationals or residents of the other Contracting Party who are allowed to work in connection with investments in its state territory;
 - e) Additional funds necessary for the maintenance or development of the existing investments; and
 - f) Compensation pursuant to Articles 4 and 5.
2. All transfers under this Agreement shall be made in a freely convertible currency and without undue delay.
3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may prevent or restrict transfer through 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 or for any customs, economic and monetary union, common market, free trade area or regional economic organization, to which it is or may become a party;
 - b) Implementation of any obligation which is binding on that Contracting Party by virtue of its membership to any customs union, economic and monetary union, common market, free trade area or regional economic organization;
 - c) Bankruptcy, insolvency or the protection of the rights of the creditors;
 - d) Issuing, trading or dealing in securities, futures, options or derivatives;

e) Criminal or penal offences and the recovery of proceeds of crime;

f) Ensuring the satisfaction of judgments, orders or awards in adjudicatory proceedings such as judicial and quasi-judicial proceedings, or

g) Social security, public retirements or statutory saving schemes, including provident funds, retirement gratuity programs and employees insurance programs.

4. Measures referred to in paragraph 3 (a) shall be equitable, neither arbitrary nor unjustifiably discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. A Contracting Party that imposes measures under this Article shall inform the other Contracting Party forthwith and present as soon as possible a time schedule for their removal.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee or indemnity given in respect of investments in the territory of the State of the other Contracting Party, the latter Contracting Party shall recognize:

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 its designated agency; and

b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights of and enforce the claims of those investors.

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

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled by the parties to the dispute in an amicable way.

2. If the dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, it shall be submitted upon request and choice of the investor:

a) To the International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States in case both Contracting Parties are parties to this Convention, or

b) To an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or

c) The local competent court of the Contracting Party which is a party to the dispute.

3. The award shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

4. Any dispute arising out of action taken under Article 13 and all pre-establishment disputes shall be excluded from purview of international arbitration.

Article 9. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with this Agreement, or to discuss any matter relating to the interpretation or application of this Agreement. The Contracting Parties also agree to consult promptly whenever one Contracting Party believes that steps are necessary to assure compatibility between this Agreement and the treaties establishing any customs, economic and monetary union or a common market or a free trade area or a regional economic organization to which that Contracting Party is or becomes a member with a view to assuring compatibility.

2. If the 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 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 Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three 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, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be 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 appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

Article 10. Entry and Sojourn of Personnel

Each Contracting Party shall, subject to its laws relating to the entry, sojourn and employment of non-citizens, permit natural persons of the other Contracting Party and personnel employed by legal persons of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investment.

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. If the treatment to be accorded by one Contracting Party to investments and to investors of the other Contracting Party, in accordance with its laws and regulations or other specific provisions of contracts, is more favourable than that accorded by this Agreement, the more favourable shall be accorded.

Article 12. Applicability of this Agreement

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party to the territory of the other Contracting Party prior as well as after its entry into force and shall apply also to investments existing at the time of entry into force, but shall not apply to any dispute concerning investments, which has arisen before its entry into force.

Article 13. Applicable Laws

1. Except as otherwise provided in this Agreement all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2. Notwithstanding paragraph (1) of this Agreement, nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis.

Article 14. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other regarding completion of the respective constitutional requirements for entry into force of this Agreement. This Agreement shall enter into force ninety (90) days from the date of the receipt of the second notification.

2. This Agreement shall continue to remain in force, unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may terminate this Agreement by giving twelve-month's written notice to the other Contracting Party.

4. In respect of investments made prior to the date of termination of this Agreement the provisions of this Agreement shall

continue to be effective for a period of ten years from the date of its termination unless the Contracting Parties decide otherwise.

IN WITNESS WHEREOF, the undersigned duly authorized thereto, have signed this Agreement.

DONE at Bratislava on the 25th day of September 2006 in two originals each in the Hindi, English and Slovak languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

For the Government of Republic of India

For the Government of Slovak Republic

With regard to the Article 5 (Expropriation) Contracting Parties confirm their shared understanding that:

(1) The concept of "measures having an effect equivalent to nationalization or expropriation" can also be termed "indirect expropriation." Indirect expropriation results from a measure or series of measures of a Contracting Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure;

(2) The determination of whether a measure or series of measures of a Contracting Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) The economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party have an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

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

(c) The character of the measure or series of measures, including their purpose and rationale.

(3) Except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Contracting Party that are designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriation.