

AGREEMENT BETWEEN THE GOVERNMENT OF THE SLOVAK REPUBLIC AND THE GOVERNMENT OF MALAYSIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Slovak Republic and the Government of Malaysia hereinafter referred to as the Contracting Parties,
Desiring to expand and strengthen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;
Recognising the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to promoting the economic prosperity of both Contracting Parties,
Have agreed as follows:

Article 1. Definitions

1. For the purpose of this Agreement:

(a) "investments" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, regulations and national policies of the latter Contracting Party and, in particular, though not exclusively, includes:

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

(ii) shares, stocks and debentures of companies or interests in the property of such companies;

(iii) a claim to money or a claim to any performance having financial value;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents and utility models, industrial designs, trademarks and service marks, geographical indications, layout designs of integrated circuits, trade names, trade secrets, technical processes, know-how and goodwill. The protection of the intellectual property rights shall be enforced in conformity with the respective national laws and regulations of the Contracting Parties and with international agreements signed by both Contracting Parties;

(v) business concessions conferred by law, or under contract, including concessions to search for, cultivate, extract, or exploit natural resources;

(b) "investor" means any natural or legal person of one Contracting Parties who invests in the territory of the other Contracting Party;

(i) the term natural person means any natural person possessing the citizenship of or has the right of permanent residence in the territory of the Contracting Parties in accordance with its laws, regulations and national policies; or

(ii) the term legal person means any entity, which is incorporated or constituted in accordance with the laws and regulations of one of the Contracting Parties and which has its registered office, central administration or principal place of business in the territory of one of the Contracting Parties;

(c) "territory" means:

i) with respect to 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;

(ii) with respect to Malaysia, the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and sub-soil of the territorial waters, and the air space above, and when used in geographical sense includes any area

extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and sub-soil of any such area which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living.

Provided that nothing contained in the above definition shall be construed as conferring recognition or acceptance by any Contracting Party of the outstanding maritime and territorial claims made by that Contracting Party, nor shall be taken as prejudging the determination of such claims;

(d) returns mean amount yielded by investment, in particular though not exclusively, including profits, interest, capital gains, dividends, royalties, or all kinds of fees;

(e) "freely convertible currency" means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets; and

(f) national policies mean any policy or administrative guidelines issued by the Government of the respective Contracting Parties.

2. Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investors of the other Contracting Party to invest in its territory and, in accordance with its laws, regulations and national policies, shall admit such investments.

2. Investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy full and adequate protection and security in the territory of the other Contracting Party.

3. Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the operations, management, maintenance, use, enjoyment or disposal of investments in the territory by investors of the other Contracting Party.

Article 3. Most-favoured-nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State.

2. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded 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:

(a) its membership in any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms or 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 or area within a reasonable length of time; or

(b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. 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, revolution, a state of national emergency, revolt, insurrection or riot, or other similar situations in the territory of the latter Contracting Party, shall be accorded treatment as regards restitution, indemnification, compensation or other forms of settlement by the latter Contracting Party which is not less favourable than that which the latter Contracting Party accords to the investors of any third State.

Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalised, expropriated or otherwise subjected to any

other measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for lawful or 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 market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, and shall be freely transferable in freely convertible currency. Any unreasonable delay of payment of compensation shall carry an interest at the prevailing commercial rate unless such rate is prescribed by law, from the date of expropriation until the compensation is made.

2. In both expropriations and compensation, treatment no less favourable than that which the Contracting Party accords to investors of any third State shall be accorded.

3. Investors of one Contracting Party affected by expropriation shall have a right to a prompt review of the valuation of their investments by a judicial authority of the other Contracting Party in accordance with the laws, regulations and national policies of the Contracting Parties.

Article 6. Transfer

1. Each Contracting Party shall, in accordance with the Contracting Parties rights and obligations under the Articles of Agreement of the International Monetary Fund, allow without any unreasonable delay the transfer in any freely convertible currency:

(a) the net profits, dividends, royalties, technical fees, interest and other current income, accruing from any investment of the investors of the other Contracting Party;

(b) the proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;

(c) funds in repayment of borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognised as investment; and

(d) the net earnings and other compensations of nationals of one Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. The exchange rates applicable to such transfer in paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfer referred to in Paragraph 1 of this Article a treatment as favourable as that accorded to the transfer originating from investments made by investors of any third State.

4. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may adopt or maintain measures relating to cross-border capital and payment transactions:

a) in the event of serious balance of payments and external financial difficulties or threat thereof; or

b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

5. Measures referred to in paragraph 4 of this Article:

a) shall not exceed those necessary to deal with the circumstances set out in paragraph 4 of this Article;

b) shall be temporary and eliminated as soon as conditions permit or phased out progressively as the situation specified in paragraph 4 of this Article improves;

c) shall be promptly notified to the other Contracting Party; and.

d) shall be applied such that the other Contracting Party is treated no less favourably than any non-Contracting Party.

6. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may delay or prevent a transfer referred to in paragraph 1 of this Article through the equitable, non-discriminatory and good-faith application of its laws 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) Financial reporting or record keeping of transfers to assist law enforcement or financial regulatory authorities;
- e) Ensuring compliances with orders or judgements in adjudicatory proceedings; or
- f) Obligations of investors arising from social security and public retirement plans.....

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 other Contracting Party, the latter Contracting Party shall recognise:

- a) The assignment, whether under the law or pursuant to a legal transaction in the latter Contracting Party, 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 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 that has incurred loss or damage by reason of or arising out of an alleged breach of any rights conferred by this Agreement, 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 of the Contracting Party:

- a) to the International Center 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) competent court of the Contracting Party which is a party to the dispute; or
- d) to the Kuala Lumpur Regional Centre for Arbitration (KLCA).

Each Contracting Party gives its consent to the submission of disputes to international arbitration set out in sub-paragraph a), b) or d).

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. Neither Contracting Party shall, in respect of a dispute which one of its investors shall have submitted to arbitration in accordance with paragraph 2 of this Article, give diplomatic protection, or bring an international claim before another forum, unless the other party shall have failed to abide by, and comply with, the award in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If the dispute between the Contracting Parties cannot thus be settled, within six (6) 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. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within three 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 who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the Secretary-General of the Permanent Court of Arbitration to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the official of the Permanent Court of Arbitration next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the arbitral tribunal and of its representation in the arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by the 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. The arbitral tribunal shall determine its own procedure.

Article 10. Confidentiality

Each Contracting Party shall undertake to preserve the confidentiality and secrecy of documents, information and other data received from the other Contracting Party during the implementation of this Agreement or any other agreement made pursuant to this Agreement. The Contracting Parties agree that the provision of this Article shall continue to be binding for a period to-be agreed upon between the Contracting Parties, notwithstanding termination of this Agreement.

Article 11. Application to Investment

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws, regulations or national policies by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement

Article 12. Amendment

This Agreement may be amended by mutual consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this Agreement shall be done without prejudice to the rights and obligations arising from this Agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

Article 13. Consultations

Each Contracting Party may request that a consultation be held on any matter that both Contracting Parties agree to discuss.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force ninety (90) days after the later date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notifications letter is sent.

2. This Agreement shall remain in force for a period of ten (10) years, and shall continue in force, unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may by giving one (1) year written notice to the other Contracting Party, terminate this Agreement at the end of the initial fifteen (15) year period or anytime thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

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

Done in duplicate at Kuala Lumpur this 12th of July, 2007, in Slovak, Bahasa Malaysia 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 SLOVAK REPUBLIC

FOR THE GOVERNMENT OF MALAYSIA