SYNTHESISED TEXT
OF
THE MLI AND THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

General disclaimer on the Synthesised text document

This document was prepared in consultation with the competent authority of the Republic of Slovenia.

This document presents the synthesised text for the application of the Convention between the Government of the Republic of India and the Government of the Republic of Slovenia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 13 January 2003 amended by the Protocol signed on 17 May 2016 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Slovenia and by the Republic of India on 7 June 2017 (the "MLI").

The document was prepared on the basis of the MLI position of the Republic of India submitted to the Depositary upon ratification on 25 June 2019 and of the MLI position of the Republic of Slovenia submitted to the Depositary upon ratification on 22 March 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement" and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal texts of the MLI and the Convention can be found:

in the Republic of India:

- http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf
- https://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx

in the Republic of Slovenia:

- in the Official Journal of the Republic of Slovenia, nos. 13/04-MP, 16/16-MP and 2/18-MP (https://www.uradni-list.si);

The MLI position of the Republic of India submitted to the Depositary upon ratification on 25 June 2019 and the MLI position of the Republic of Slovenia submitted to the Depositary upon ratification on 22 March 2018 can be found on the MLI Depositary (OECD) webpage.

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of India and the Republic of Slovenia in their MLI positions.

Dates of the deposit of instruments of ratification: 25 June 2019 for the Republic of India and 22 March 2018 for the Republic of Slovenia.

Entry into force of the MLI: 1 October 2019 for the Republic of India and 1 July 2018 for the Republic of Slovenia.

The provisions of the MLI have effect with respect to the Convention:

In accordance with paragraphs 1 and 2 of Article 35 of the MLI, the provisions of the MLI have effect in the Republic of India with respect to the Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 April 2020; and

b) with respect to all other taxes levied by the Republic of India, for taxes levied with respect to taxable periods beginning on or after 1 April 2020;

and,

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI have effect in the Republic of Slovenia with respect to the Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and

b) with respect to all other taxes levied by the Republic of Slovenia, for taxes levied

with respect to taxable periods beginning on or after 1 April 2020.

C O N V E N T I O N

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA

AND

THE GOVERNMENT OF THE REPUBLIC OF INDIA

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Slovenia and the Government of the Republic of India, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries,

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by this [*Convention*] [1] **without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this [*Convention*] for the indirect benefit of residents of third jurisdictions),**

have agreed as follows:

[1] The texts of the boxes in [Square brackets] and in *italics* indicate minor terminology changes made to the text of the MLI.

Article 1

PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are in particular:

a) in Slovenia:

(i) the tax on profits of legal persons;

(ii) the tax on income of individuals, including wages and salaries, income from agricultural activities, income from business, capital gains and income from immovable and movable property;

(hereinafter referred to as "Slovenian tax").

b) in India:

the income tax, including any surcharge thereon;

(hereinafter referred to as "Indian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term “Slovenia” means the Republic of Slovenia and, when used in a geographical sense, means the territory of Slovenia, including the sea area, sea-bed and subsoil adjacent to the territorial sea, if Slovenia may exercise its sovereign rights and jurisdiction over such sea area, sea-bed and subsoil in accordance with its domestic legislation and international law;

b) the term “India” means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

c) the terms "Contracting State" and "the other Contracting State" mean the Republic of Slovenia or the Republic of India as the context requires;

d) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

h) the term "competent authority" means:

   (i) in Slovenia: the Ministry of Finance of the Republic of Slovenia or its authorized representative;

   (ii) in India: the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative;

i) the term "national" means:

   (i) any individual possessing the nationality of a Contracting State;

   (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. **[REPLACED by paragraph 1 of Article 4 of the MLI]** [Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.]

The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of [***the Convention***] **a person other than an individual is a resident of both** [***Contracting States***]**, the competent authorities of the *Contracting States* shall endeavour to determine by mutual agreement the** [***Contracting State***] **of which such person shall be deemed to be a resident for the purposes of** [***the Convention***]**, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by** [***the Convention***] **except to the extent and in such manner as may be agreed upon by the competent authorities of the** [***Contracting States***]**.**

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop,

f) a sales outlet,

g) a warehouse in relation to a person providing storage facilities for others,

h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on, and

i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than twelve months.

4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [Notwithstanding the preceding provisions of this Article the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.]

***The following paragraph 2 of Article 13 of the MLI applies with respect to paragraph 4 of Article 5 of this Convention*:**

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS
Option A

Notwithstanding [*Article 5 of the Convention*], the term "permanent establishment" shall be deemed not to include:

a) the activities specifically listed in [*paragraph 4 of Article 5 of the Convention*] as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Convention as modified by paragraph 2 of Article 13 of the MLI:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

[*Paragraph 4 of Article 5 of the Convention, as modified by paragraph 2 of Article 13 of the MLI*] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [*Contracting State*] and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [*Article 5 of the Convention*]; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

a) [**MODIFIED by paragraph 1 of Article 12 of the MLI]** [has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or]

The following paragraph 1 of Article 12 of the MLI applies with respect to subparagraph a) of paragraph 5 of Article 5 of this Convention:

ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Notwithstanding [***Article 5 of the Convention***]**, but subject to [*paragraph 7 of Article 5 of the Convention as modified by paragraph 2 of Article 12 of the MLI*], where a person is acting in a** [***Contracting State***] **on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:**

a) in the name of the enterprise; or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that [***Contracting State***] **in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that** [***Contracting State***]**, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of** [***Article 5 of the Convention***]**.**

b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. **[Modified by paragraph 2 of Article 12 of the MLI]** [An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph unless the transactions are at arm's length.]

The following paragraph 2 of Article 12 of the MLI applies with respect to paragraph 7 of Article 5 of this Convention:

ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

[***Paragraph 5 of Article 5 of the Convention as modified by Paragraph 1 of Article 12 of the MLI***] **shall not apply where the person acting in a *Contracting State*] on behalf of an enterprise of the other** [***Contracting State***] **carries on business in the first-mentioned** [***Contracting State***] **as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.**

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

The following paragraph 1 of Article 15 of the MLI applies to provisions of this Convention:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of [*Article 5 of the Convention as modified paragraph 2 of Article 12 and paragraph 4 of Article 13 of the MLI*], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean the profits derived by an enterprise referred to in paragraph 1 from transportation by sea or air of passengers, livestock or goods.

4. Profits derived by an enterprise referred to in paragraph 1 shall also include profits from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic.

5. For the purposes of this Article interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

6. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of the State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** [5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;]

The following paragraph 1 of Article 8 of the MLI applies to subparagraph a) of paragraph 2 of Article 10 of this Convention:

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

[*Subparagraph a of paragraph 2 of Article 10 of the Convention*] shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the

company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by the Government of the other Contracting State, including its political subdivisions or local authorities, the Central Bank, Slovene Export Company and Export-Import Bank of India.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties and fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties and fees for technical services.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The term “fees for technical services” as used in this Article means payments of any amount, other than those mentioned in Articles 14 and 15 of this Convention, in consideration for the services of managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. **[REPLACED by paragraph 4 of Article 9 of the MLI]** [Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.]

The following paragraph 4 of Article 9 of the MLI replaces paragraph 4 of Article 13 of this Convention:

ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

For purposes of [*the Convention*], gains derived by a resident of a [*Contracting State*] from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other [*Contracting State*] if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other [*Contracting State*].

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 – months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants.

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 – month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State are substantially supported by public funds of one or both of the Contracting States or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

      (i) is a national of that State; or

      (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall not apply to income from research, if such research is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of paragraph 1 “approved institution” means an institution which has been approved in this regard by the competent authority of the concerned State.

Article 21

STUDENTS

1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on:

a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

b) remuneration which he derives from an employment which he exercise in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any period of twelve month if the employment is directly related to his studies or apprenticeship.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other State.

Article 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

Article 23

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

1. In Slovenia:

a) Where a resident of Slovenia derives income which, in accordance with the provisions of this Convention, may be taxed in India, Slovenia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in India.

Such deduction shall not, however, exceed that portion of the income tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

b) Where in accordance with any provision of the Convention, income derived by a resident of Slovenia is exempt from tax in Slovenia, Slovenia may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In India:

a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Slovenia, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Slovenia.

Such deduction shall not, however, exceed that portion of the income tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Slovenia.

b) Where in accordance with any provision of the Convention income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of tax claims. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term “tax claim” as used in this Article means an amount owed in respect of taxes as mentioned in Article 2, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a tax claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That tax claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the tax claim were a tax claim of that other State.

4. When a tax claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that tax claim in accordance with the provisions of its laws as if the tax claim were a tax claim of that other State even if, at the time when such measures are applied, the tax claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. When a Contracting State may, under its law, take interim measures of conservancy by freezing of assets before a tax claim is raised against a person, the competent authority of the other Contracting State, if requested by the competent authority of the first mentioned State, shall take measures for freezing the assets of that person in that Contracting State in accordance with the provisions of its law.

6. Notwithstanding the provisions of paragraphs 3 and 4, a tax claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a tax claim under the laws of that State by reason of its nature as such. In addition, a tax claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that tax claim under the laws of the other Contracting State.

7. Proceedings with respect to the existence, validity or the amount of a tax claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

8. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant tax claim to the first-mentioned State, the relevant tax claim ceases to be:

a) in the case of a request under paragraph 3, a tax claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a tax claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

9. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

The following paragraphs 1 through 3 of Article 10 of the MLI apply and supersede the provisions of this Convention:

ARTICLE 10 OF THE MLI – ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENTS SITUATED IN THIRD JURISDICTIONS

Paragraph 1 of Article 10 of the MLI

1. Where:

a) an enterprise of a [*Contracting State*] derives income from the other [*Contracting State*] and the first-mentioned [*Contracting State*] treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and

b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned [*Contracting State*],

the benefits of [*the Convention*] shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned [*Contracting State*] on that item of income if that permanent establishment were situated in the first-mentioned [*Contracting State*]. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other [*Contracting State*], notwithstanding any other provisions of [*the Convention*].

Paragraph 2 of Article 10 of the MLI

2. Paragraph 1 [*of Article 10 of the MLI*] shall not apply if the income derived from the other [*Contracting State*] described in paragraph 1 [*of Article 10 of the MLI*] is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

Paragraph 3 of Article 10 of the MLI

3. If benefits under [*the Convention*] are denied pursuant to paragraph 1 [*of Article 10 of the MLI*] with respect to an item of income derived by a resident of a [*Contracting State*], the competent authority of the other [*Contracting State*] may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by

such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2 [*of Article 10 of the MLI*]. The competent authority of the [*Contracting State*] to which a request has been made under the preceding sentence by a resident of the other [*Contracting State*] shall consult with the competent authority of that other [*Contracting State*] before either granting or denying the request.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(*Principal Purposes Test provision)*

Notwithstanding any provisions of [*the Convention*], a benefit under [*the Convention*] shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*the Convention*].

Article 29

ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at New Delhi as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in Slovenia, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the exchange of instruments of ratification takes place;

b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the exchange of instruments of ratification takes place.

Article 30

TERMINATION

This Convention shall remain in force indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

a) in Slovenia, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given;

b) in India, in respect on income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Convention.

DONE in duplicate at Ljubljana on this 13th day of January, 2003, in the Slovenian, Hindi and English languages, all the texts being equally authentic. In case of divergence among the texts, the English text shall be the operative one.

For the Government of the Republic of Slovenia:	For the Government of the Republic of India:
Darko Končan	Gingee N Ramachandran

P R O T O C O L

At the moment of signing the Convention between the Government of the Republic of Slovenia and the Government of the Republic of India for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, the Plenipotentiaries of the two Contracting States, duly authorized thereto, have agreed that the following provisions shall form an integral part of the Convention:

The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where the provisions to the contrary are made in this Convention.

1. With reference to Article 3 and 23:

a) The term “tax” means Slovenian or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes.

b) The term “fiscal year” means:

(i) in the case of Slovenia: the calendar year;

(ii) in the case of India: “financial year beginning on the 1st day of April”.

2. With reference to Article 6 and Article 13:

With reference to paragraphs 1 of Article 6 and 13 it is understood that in case of India income from immovable property and capital gains on alienation of immovable property respectively may be taxed in both Contracting States subject to the provisions of Article 23.

3. With reference to Article 20:

For the purposes of Article 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. With reference to Article 24:

It is understood that the provisions of Article 24 paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor being in conflict with the provisions of paragraph 3 of Article 7. However the difference in tax rate shall not exceed 15 percentage points.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Ljubljana on this 13th day of January, 2003, in the Slovenian, Hindi and English languages, all the texts being equally authentic. In case of divergence among the texts, the English text shall be the operative one.

For the Government of the Republic of Slovenia:	For the Government of the Republic of India:
Darko Končan	Gingee N Ramachandran