



VEEVYSLANECTVO SLOVENSKEJ REPUBLIKY
KUALA LUMPUR

Došlo: 19 MAY 2009

Číslo: 1537 / 09

Počet listov: 4 Prilohy: 1

NOTE NO: GW 03/09

The Ministry of Foreign Affairs, Malaysia presents its compliments to the Embassy of the Slovak Republic and with reference to the query by the Office of the President of the Slovak Republic on the usage of the term 'Government' in the Investment Guarantee Agreement (IGA) between Malaysia and the Slovak Republic, has the honour to enclose herewith the explanation from the Ministry of International Trade and Industry, Malaysia and request the assistance of the latter to forward it to the relevant authorities in the Slovak Republic.

The Ministry of Foreign Affairs Malaysia avails itself of this opportunity to renew to the Embassy of the Slovak Republic the assurances of its highest consideration.

**The Embassy of the Slovak Republic
Kuala Lumpur**

12 May 2009





KEMENTERIAN PERDAGANGAN ANTARABANGSA DAN INDUSTRI
MALAYSIA

MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY, MALAYSIA

BLOK 10, KOMPLEKS KERAJAAN JALAN DUTA
50622 KUALA LUMPUR

Telefon : (603) - 6203 3022

Faks : (603) - 6201 2337, 6203 1303

Web Site : <http://www.miti.gov.my>

Fail Tuan :

Fail Kanan MITI:ID/DP/A(S)101/104 Jld.3

Tarikh 22 April 2009

Mr. Andrej Solár
Director of the Department
Department of the Management and Accounting
of Specific Operations of the State
Ministry of Finance of the Slovak Republic
Štefanovičova 5
817 82 Bratislava 15
SLOVAK REPUBLIC

Dear Sir,

**RATIFICATION OF THE INVESTMENT GUARANTEE
AGREEMENT BETWEEN THE SLOVAK REPUBLIC AND
MALAYSIA**

I wish to refer to your letter dated 10 March 2009 (Ref No: MF/012446/2009-333) regarding queries by the Office of the President of Slovak Republic on the above mentioned matter.

2. We take note that Slovak Republic has not been able to ratify the Investment Guarantee Agreement (IGA) due to differing legal opinion by the Office of the President of Slovak Republic which asserted that IGA shall be concluded only between states.

3. Due to these differences in legal opinion, we also take note of your request for a legal explanation from Malaysia with regards to the usage of the term "Government" in the IGA between the Slovak Republic and Malaysia.

4. In this respect, Malaysia is of the view that the usage of the term "Government" in the IGA is very important and should be

maintained on the following grounds:

- (a) Malaysia, as provided under Article 1 of the Malaysian Federal Constitution (MFC), is a federation consisting of 13 States. Article 80 of the MFC provides for the distribution of executive powers between the executive authority of the Federation and the States. It is provided that for the Federation, the power extends to all matters with respect to which Parliament may make laws. Whereas for the States to the extent which the Legislature of that State may make law;
- (b) Matters with respect to which Parliament may make laws are listed under the Federal List of the Ninth Schedule of the MFC. One of the matters is with regard to the External Affairs which include entering into agreement with a foreign country which bring the Federation into relations with that particular country;
- (c) Under Article 39 of the MFC, the executive authority of the Federation i.e. Malaysia, is vested with the *Yang di-Pertuan Agong* (the King) and exercisable by him or by the Cabinet or any Minister authorized by the Cabinet;
- (d) Under Article 40 of the MFC, the King shall only act in accordance with the advice of the Cabinet as the Cabinet is the executor of the executive authority of the Federation, and as such, is the Government for the Federation; and
- (e) Since entering into and implementing international treaties and agreements are matters under the authority of the Federation, it must be expressly stated in the treaties or agreement that it is entered into by the Government of the Federation, which is the Government of Malaysia.

5. We hope that with this explanation, the Office of the President of Slovak Republic will be able to submit the deeds of ratifications to the President of Slovak as soon as possible.

Thank you.

Yours Sincerely,

G. Alagasan
(G. ALAGASAN)
Senior Director
Investment Policy and Trade Facilitation Division
For Secretary-General
Ministry of International Trade and Industry
Malaysia

C.C.

H.E. Milan Lajčiak
Ambassador
Embassy of the Slovak Republic
11 Jalan U- Thant, Ampang
55000 Kuala Lumpur
MALAYSIA

Secretary General
Ministry of Foreign Affairs
Wisma Putra
No.1, Jalan Wisma Putra, Presint 2
62602 PUTRAJAYA
(attn. : Pn. Nor Hafidza Jaafar
Bahagian Eropah)

KSU, TKSU(I), TKSU(P), PUU