

# Agreement between the Slovak Republic and the Government of Malta on the Promotion and Reciprocal Protection of Investments

The Government of the Slovak Republic and the Government of Malta (hereinafter referred to as the "Parties"),

Desiring to intensify economic cooperation to the mutual benefit of both countries,

Intending to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party and

Mindful that the promotion and reciprocal protection of investments under this Agreement stimulates business initiatives in this field,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of assets invested in connection with economic activities by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the law of the other Contracting Party and in particular, but not exclusively

a) movable and immovable property and other property rights such as mortgages, liens, pledges and similar rights,

b) shares, stocks and debentures of companies or any other form of participation in society,

c) claims to money or any performance having economic value in relation to investments,

d) the rights of intellectual property including copyright, patents and rights relating to literary and artistic works, including sound recording, inventions in all fields of human activity, industrial designs, trade secrets, know-how and goodwill, confidential business information, business signs, service marks and trade names,

e) rights conferred by law or by contract, licenses and permits issued by law, including concessions to explore, extract, cultivate or exploit natural resources.

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

2. The term "investor" means any natural or legal person who invests in the territory of the other Contracting Party.

a) The term "natural person" means any person having the nationality of one Contracting Party in accordance with its law.

b) The term "legal person" means any entity that is incorporated or organized under the laws of the Contracting Party and having its registered office in the territory of one Party and it is legally recognized.

3. The term "returns" means amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, shares, dividends, royalties and other fees.

4. The term "territory" means

a) in relation to the Slovak Republic the territory over which the Slovak Republic exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law in order to research, use and protection of the territory and natural resources,

b) in relation to Malta territory of Malta, as well as marine areas, including the seabed and parts adjacent to the outside the territorial sea, over which Malta exercises sovereign rights and jurisdiction in accordance with international law, with the aim

of exploring, exploiting and preserving natural resources of these areas.

## **Article 2. Investment Promotion and Protection**

1. Each Contracting Party shall, in the territory of its State, promote and create favorable conditions for investments by investors of the State of the other Contracting Party and shall facilitate such investments in accordance with the law of its State.

2. Each Party shall, in accordance with its laws and regulations grant the necessary permits relating to these investments and the application of license agreements and contracts regarding the technical, commercial and administrative cooperation.

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

## **Article 3. National Treatment and Most Favoured Nation**

1. Each Party shall provide in its territory to investments and returns of investors of the other Contracting Party treatment which is fair, equitable and not less favorable than that accorded to investments and returns of its own investors or to investments and returns of investors of any third state, whichever is preferred.

2. Each Party shall, as regards the management, maintenance, use, enjoyment or disposal of investments with them, provide in its territory to investors of the other Contracting Party treatment which is fair, equitable and not less favorable than that accorded to its own investors or investors any third State whichever is more favorable.

3. Paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to investors of the other Contracting Party treatment, benefits or privileges as may be provided by one Party by

a) any customs union, free trade area, monetary union, or similar international agreements leading to such unions or institutions or other forms of regional cooperation, where one party is or may become a member,

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

## **Article 4. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, the coup, the state of emergency, revolt, insurrection, riot or other similar events in the territory of the other Party, that Party shall provide treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that this party own investors or investors of any third State whichever is more favorable. Resulting payments shall, without undue delay, freely transferable in freely convertible currency.

2. Notwithstanding paragraph 1 of this Article, investors of the State of one Contracting Party who, in the events referred to in the preceding paragraph, have suffered damage in the territory of the State of the other Contracting Party as a result of:

a) requisitioning of their property by its forces or authorities of the other Contracting Party,

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

Shall be accorded restitution or fair and reasonable compensation for the damage suffered by the confiscation of property, or the destruction of property. Resulting payments shall be freely transferable without delay in a freely convertible currency.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose. The expropriation shall be carried out only on the basis of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and fair compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or value at a time when the future expropriation became public knowledge, whichever comes first, will include interest at the current exchange rate from the date of expropriation of investments shall be carried out without delay, be effectively realizable and freely transferred in freely convertible currency.

2. The investor affected shall have the right to prompt review of its case and of the valuation of its investment judicial or other independent official body of the State Party in accordance with the principles set out in this Article.

## **Article 6. Transfers**

1. States Parties shall guarantee the transfer of payments related to investments and returns after fulfillment of tax obligations. The transfers shall be made in freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular, but not exclusively

- a) capital and additional amounts to maintain or increase investment,
- b) profits, interest, dividends and other current income,
- c) funds in repayment of loans,
- d) royalties or fees.
- e) proceeds from the total or partial sale or liquidation of investments;
- f) earnings of natural persons working in the territory of the other Contracting Party in connection with an investment.

2. Transfers shall be made without undue delay, in any freely convertible currency at the market exchange rate on the date of transfer.

## **Article 7. Subrogation**

1. If one Contracting Party or its authorized representative makes a payment to its own investors as a guarantee for non-commercial risk associated with an investment in the territory of the other Contracting Party, the other Party shall recognize

- a) the assignment of any right or claim by the investor to the Contracting Party or its designated authorized representative, regardless of whether the referral is made under the Act or pursuant to a legal transaction in that country, as well as
- b) the eligibility of the former Contracting Party or its authorized representative to exercise the rights and the claims of that investor and assume the obligations related to the investment because of subrogation.

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

## **Article 8. Settlement of Investment Disputes between a Contracting Party and Investors of the other Contracting Party**

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall be settled by negotiation between the parties to the dispute.

2. If a dispute between an investor of one Contracting Party and the other Contracting Party is not resolved within six months, the investor is entitled to submit the dispute either

- a) the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington, DC, March 18, 1965, if both Contracting Parties are parties to this Convention;
- b) an arbitrator or international arbitration tribunal established an ad hoc basis under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The parties may agree in writing to modify these Rules. The arbitration award shall be final and binding on the parties to 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 shall, if possible, be settled through consultations and negotiations.

2. If the dispute so settled within six months, at the request of either Contracting Party shall be submitted to arbitration in

accordance with the provisions of this Article.

3. The arbitral tribunal for each individual case shall be constituted as follows: within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, the arbitral tribunal. The two arbitrators shall then select a national of a third State, who shall be appointed with the consent of both parties, as President of the Court of Arbitration (the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the two arbitrators.

4. If, within the period referred to in paragraph 3 of this Article makes the necessary appointment, the appointment may request the President of the International Court of Justice. If the President is a national of either Contracting Party or him in performing this function prevents other obstacles will be asked to appoint vice-chairman. If the Vice-President is a citizen of either Contracting Party or him in performing this function prevents other obstacles will be asked to appoint the oldest member of the International Court of Justice who is not a national of either Contracting Party.

5. The tribunal shall reach its decision by majority vote. Such decision shall be binding. Each Contracting Party shall bear the expenses only its arbitrator and the costs associated with its participation in the arbitration proceedings. Expenses of the Chairman and other costs shall be borne by the Parties in equal shares. The arbitral tribunal may decide that most of the expenditure borne by one party and that decision is binding on both parties. The Arbitral Tribunal shall determine its own rules of procedure.

## **Article 10. Other Regulations and Specific Commitments**

1. In the event that any questions concerning this Agreement shall be settled at the same time by this Agreement and by another international agreement to which both Contracting Parties are signatories, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Party did not use any code which is more favorable for him.

2. If the treatment accorded by one Contracting Party to investors of the other Contracting Party in accordance with the law or other contractual provisions is more favorable than that provided in this Agreement, then the more favorable treatment.

## **Article 11. Application of the Agreement**

The provisions of this Agreement in respect of investments made by investors of either Contracting Party in accordance with the law on the territory of the other Contracting Party before the entry into force of this Agreement, as well as after its entry into force, but shall not apply to any disputes arising relating to investments or claim, which was settled before the entry into force of the Agreement.

## **Article 12. Entry Into Force, Duration and Termination**

1. Each Party shall notify the other Party in writing that its legal requirements necessary for the entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for ten years and then will be extended for an additional ten years unless either Contracting Party notifies in writing the other Party of its intention to terminate the Agreement not less than one year before the date of expiry or in any of the periods.

3. In respect of investments made prior to the expiry of this Agreement which the provisions of Articles 1-11 of this Agreement in force for ten years from the expiry of the Agreement.

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

Done in Valetta September 7, 1999, in duplicate, in the Slovak and English languages, both texts being equally authentic.

For the Government of the Slovak Republic:

Eduard Kukan. r.

For the Government of Malta:

Joseph Borgin. r.

