

AGREEMENT BETWEEN THE REPUBLIC OF SLOVENIA AND UKRAINE ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Slovenia and Ukraine, hereinafter referred to as the "Contracting Parties",

Desiring to intensify the economic co-operation between the two States,

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and similar rights; in rem, such as mortgages, liens, pledges and similar rights;

b) Shares, stocks, debentures and any other form of interest in a company;

c) Claims to money or to any performance having an economic value and associated with an investment;

d) Intellectual property rights including in particular protection of copyright and neighbouring rights, including computer programmes, patents, industrial designs, trademarks and service marks, geographical indications, including appellations of origin, topographies of integrated circuits as well as undisclosed information on know-how;

e) Concessions conferred by law, either under a contract or an administrative act, by a competent state authority including concessions for prospecting, research and exploitation of natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties or other forms of income related to the investments including technical assistance fees.

3. The term "investor" shall mean:

a) Natural persons having the nationality of either Contracting Party, in accordance with its laws, and

b) Legal persons, including corporations, commercial companies or other companies or associations, which have their seat in the territory of one Contracting Party and are incorporated or constituted in accordance with the law of that Contracting Party.

4. The term "national territory" shall mean with respect to each Contracting Party the territory under its sovereignty, including air space and maritime areas, over which the Party concerned exercises its sovereignty or jurisdiction, in

accordance with internal and international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.

2. . Each Contracting Party shall accord at all times fair and equitable treatment to investments of investors of the other Contracting Party.

3 Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. National and Most Favoured Nation Treatment

1. Within its territory each Contracting Party shall ensure fair and equitable treatment to investments and returns of investors of the other Contracting Party. This treatment shall be in no case less favourable than that which, in like circumstances, it accords to investments and returns of its own investors or investments and returns of investors of any third State.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than the latter Contracting Party accords its own investors or to investors of any third State.

3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

a) Any existing or future free trade area, customs union, common market or other similar international agreements including other forms of regional economic co-operation and international agreements to facilitate frontier trade to which either of the Contracting Party is or may become a Party, and

b) Any international agreement relating wholly or mainly to taxation.

Article 4. Expropriation

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, effective and adequate compensation.

2. The compensation referred to in paragraph 1 of this Article shall be calculated on the basis of the market value of the investment when the expropriation became public knowledge, shall be payable from the date of expropriation in convertible currency or in the currency in which the investment was made, with interest at the applicable rate provided by law, regulations or otherwise by the Contracting Party until the date of payment, shall be paid without delay and shall be effectively realisable and freely transferable.

3. The investor whose investments are expropriated, shall have the right under the law of expropriating Contracting Party the prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards measures it adopts in relation to such losses, including compensation, indemnification and restitution, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State. Any payment made under this Article shall be freely transferable.

Article 6. Transfers

1. Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of funds related to their investments and in particular, though not exclusively:

- a) Initial capital and additional contributions for the maintenance or development of the investments;
- b) Returns defined in Paragraph 2, Article 1 of this Agreement;
- d) Proceeds from the sale or liquidation of all or part of an investment;
- e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;
- f) Earnings and other remuneration of nationals engaged from abroad in connection with the investment.

2. The transfers referred to in this Article shall be made without restriction or delay at the exchange rate applicable on the date of transfer and shall be made in convertible currency.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its investor under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the first Contracting Party of all rights and claims of the investor. The subrogated rights or claims shall not be greater than the original rights or claims of the investor.

Article 8. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled amicably.

2. If the Contracting Parties cannot reach an agreement within six months from the date of written request for settlement, the dispute shall, upon the written request of either Contracting Party, be submitted to an arbitral tribunal of three members.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

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

5. The Chairman of the Arbitral Tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

6. The Arbitral Tribunal shall rule according to majority vote. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall be responsible for the costs of its own member and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled amicably through negotiations.

2. If such a dispute cannot be settled within a period of six (6) months from the date of written request for settlement, the investor concerned may submit the dispute to:

a) The competent court of the Contracting Party;

b) An ad-hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

c) The International Center for the Settlement of Investments Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965, if both Parties ratified this Convention.

3. Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

4. The award shall be final and binding on both parties to the dispute.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11. Application of the Agreement

This Agreement shall apply to all investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations existing at or made after its entry into force.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held, on the proposal of either Contracting Party, at a place and a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force and Duration

1. This Agreement shall enter into force the day after the latter written notification with which the Contracting Parties notify each other that their respective internal legal procedures have been fulfilled.

2. This Agreement shall remain in force initially for a period of ten (10) years and shall be considered as renewed on the same terms for a period of five years and so forth, unless twelve (12) months before its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 12 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

Done in duplicate at Ljubljana on March 30, 1999 in the Slovene, Ukrainian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Slovenia

Marjan Senjur, (s)

For Ukraine

Andrij Gančaruk, (s)