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

The Government of the Slovak Republic and the Government of Romania hereinafter referred to as the "Contracting Parties",

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

Intending to create and maintain favourable conditions for investments by investors of one State in the territory of the other State, and

Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

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

b) Shares, stocks and debentures of companies or any other form of participation in a company,

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

d) Intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, know-how, and goodwill, as well as other similar rights recognized by the laws of the Contracting Parties;

e) Concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment. 2. The term "investor" refers with regard to either Contracting Party to:

a) Natural person who, according to the law of that Contracting Party, are considered to be its citizens;

b) Legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities on the territory of that same Contracting Party.

3. The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, shares, dividends, royalties, management and technical assistance or other fees, irrespective of the form in which the return is paid.

4. The term "territory" means the territory of the Contracting Parties, including the territorial sea, as well as the continental shelf over which the State concerned exercises, in accordance with international law, sovereign rights and jurisdiction.

Article 2. Promotion and Admission

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

2. When a Contracting Party shall have admitted an investment on its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment, including authorizations for engaging top managerial and technical personnel of their choice, regardless of nationality.

Article 3. Protection and National and Most-favoured-nation Treatment

1. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to the investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by an investor of any third state, if this latter treatment is more favourable.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a) Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either Contracting Party is or may become a Party,

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

Article 4. Compensation for Losses

1. When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a) Requisitioning of their property by its authorities, including military forces

b) Destruction of their property by its aforementioned authorities which was not caused in combat action or was not required by the necessity of the situation

Shall be accorded just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable in freely convertible currency without delay.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation-hereinafter referred to as "expropriation"- in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest from the date of expropriation, shall be made without delay, shall be effectively realizable and be freely transferable in freely convertible currency.

2. The investor affected shall have a right to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors

of the other Contracting Party own shares.

Article 6. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, particularly of:

a) Capital and additional amounts to maintain or increase the investment,

b) Profits, interest, dividends and other current income,

c) Funds in repayment of loans,

d) Royalties or fees,

e) Proceeds of sale or liquidation of the investment,

f) The earnings of natural persons subject to the laws and regulations of the Contracting Party, in which investments have been made.

2. For the purpose of this Agreement, exchange rates shall be the official rates effective for the current transactions at the date of transfer, unless otherwise agreed.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect to an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

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

Article 8. Pre-agreement Investments

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

Article 9. Other Obligations

1. If the legislation of either Contracting Party entitles investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall to the extent that is more favourable prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 10. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case, as far as possible, amicably.

2. If these consultations do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

a) The competent court of the Contracting Party in the territory of which the investment has been made; or

b) 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 at Washington D.C. on March 18, 1965, in the event both Contracting Parties shall have become a party to this Convention, or

c) An ad hoc arbitral 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).

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

4. The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through consultation or negotiation.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members.

Each Contracting Party shall appoint on arbitrator, and these two arbitrators shall nominate a chairman who shall be a citizen of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a citizen of either Contracting Party, the appointment shall be made by the Vice-President, and if the later is prevented or if he is a citizen of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a citizen of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

7. Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

8. The decisions of the tribunal are final and binding for each Contracting Party.

Article 12. Entry Into Force, Duration and Termination

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect to investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

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

Done at Bratislava, on March 3, 1994 in two originals, in Romanian, Slovak and English, each text being equally authentic. In case of any difference in interpretation, the English text shall prevail.

For the Government of the Slovak republic

For the Government of Romania