

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE SLOVAK REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF CUBA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Slovak Republic and the Government of the Republic of Cuba (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 of 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 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 property 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) Claim 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) Any rights conferred by law or under contract and any licenses and permits pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment. 2. The term "investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

- a) The term "natural person" shall mean any natural person having the citizenship of either Contracting Party in accordance with its laws.
- b) The term "legal person" shall mean any entity, which has a main office in the territory of either Contracting Party and is incorporated or constituted in accordance with the laws of that Contracting Party.

3. The Term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, shares, dividends, royalties or fees.

4. The term "territory" shall mean:

- In relation to the Slovak Republic: the land over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with International Law.

- In relation to the Republic of Cuba: in addition to the areas within the land boundaries, the maritime areas are also included. These include the marine and submarine areas over which the Cuban State has sovereignty or, in accordance with International Law, exercises sovereign rights and jurisdiction.

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

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and shall admit such investments in accordance with its laws and regulations.
2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.
3. Each Contracting Party shall create favourable conditions for granting visas and necessary work permits in its territory to the citizens of the other Contracting Party for performing activities connected with such investments, once the approval for such investments is granted.

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

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of its own investors or to investment and returns of investors of any third State, whichever is more favourable.
2. Each Contracting party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.
3. As for the national treatment, it is confirmed that investors referred to in paragraphs (1) and (2) above are those governed by national legislation – in the case of the Republic of Cuba, the national legislation covering foreign investment – and the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.
4. The provisions of paragraphs (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 Contracting Party the benefits 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 of the Contracting Party is or may become a party,
  - c) 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 conflicts, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the latter Contracting Party, 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.

Resulting payments shall be freely transferable in freely convertible currency without delay. 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 forces or authorities,
- b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded fair 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 effect 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, and shall include interests from the date of expropriation, shall be made without delay, 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, or 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. The Contracting Parties shall guarantee to free transfer of payments related to investments and returns, after fulfillment of tax obligations. The transfers shall be made without restrictions and undue delay, in any freely convertible currency agreed upon by the Parties. Such transfers shall include, in particular, though not exclusively;

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

b) Profits, interests, dividends and other current incomes,

c) Funds in repayment of loans,

d) Royalties or fees,

e) Proceeds of sale or liquidation of the investment,

f) The earning 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 prevailing exchange 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 against non-commercial risks it has accorded in respect of 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. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party shall be subject to negotiations between the parties in dispute

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months, the investor shall be entitled to submit the case either to:

a) The Court of Arbitration of the International Chamber of Commerce in Paris; or

b) An arbitrator or international ad hoc Arbitral Tribunal established under the Arbitration Rules of the United Nations

Commission on International Trade Law (UNCITRAL).

The parties to the dispute may agree, in writing, to modify these Rules. The arbitral award shall be final and binding on both 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 or negotiations.
2. If the dispute cannot be thus settled within six months from the date of the request for settlement, it shall, upon the request of either Contracting Party, be submitted to an Ad hoc Arbitral Tribunal in accordance with the provisions of this Article.
3. The 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. These two members shall then select a national of a third State who, on approval of the two Contracting parties, shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). the Chairman shall be appointed within three months from the date of the 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, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be 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 appointments.
5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

## **Article 10. Application of other Rules and Special Commitments**

1. Where a matter is governed simultaneously both by this Agreement and by another International Agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.
2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

## **Article 11. Applicability of this Agreement**

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party prior as well as after its entry into force, but shall not apply to any dispute concerning investments which have arisen before its entry into force.

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

1. This Agreement is subject to approval in accordance with internal constitutional requirements of both Contracting Parties and shall enter into force on the latter day on which either Contracting Party notifies the other Contracting Party about the said approval.
2. This Agreement shall remain in force for a period of ten years and shall continue in force automatically for further periods of ten years, unless one year before the date of its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.
3. In respect of 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 duly authorized have signed this Agreement.

DONE at Havana, on 22.3.1997, in the Slovak, Spanish and English languages, all texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA

FOR THE GOVERNMENT OF THE SLOVAK REPUBLIC