

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

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

Considering it necessary to intensify economic cooperation on the basis of mutual benefit of the both Contracting Parties,

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

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

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of asset or rights 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 property rights such as mortgages, liens, pledges and similar rights;

/b/ Shares, stocks and debentures of companies or any other forms of participation in a company;

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

/d/ Intellectual and industrial property rights, including copyrights, trade marks, patents, industrial designs or utility models, technical processes, know-how, trade secrets, trade names and goodwill;

/e/ Business concessions, licenses and permits pursuant according to the law or contract, including the concessions to search for, extract, cultivate or exploit natural resources situated on the territories of the Contracting Parties.

Any alternation of the legal form in which assets are invested shall not affect their character as investment, and the term "investment" includes all investments in accordance with the Article 11 of this Agreement. 2. The term "investor" shall mean any legal or natural person of the one Contracting Party who invests in the territory of the other Contracting Party.

/a/ The term "natural person" shall mean any natural person having the nationality of the state of either Contracting Party in accordance with its laws.

/b/ The term "legal person" shall mean legal entity incorporated or established in accordance with the legislation of either Contracting Party.

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

4. The term "territory" shall mean:

/a/ In the case of the Republic of Belarus, the territory of the Republic Belarus over which the Republic of Belarus exercises sovereign rights or jurisdiction in accordance with international law;

/b/ As regards the Slovak Republic, the land territory, internal waters and the airspace above them over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law;

5. The term "freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

6. The term "public purpose" means as established under the national legislation of each of the Contracting Parties.

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

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. Under this Agreement investment of investors of each Contracting Party shall, at all times, be accorded fair and equitable treatment and shall enjoy adequate legal protection in the territory of the other Contracting Party. Neither Contracting Party shall, by unreasonable or discriminatory measures, in any way impair in its territory the management, maintenance, use, enjoyment or disposal of investments of investors of other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

## **Article 3. National and Most-favoured-nation Treatment**

1. Each Contracting Party shall accord in the territory of its state to investments and returns of investors of the other Contracting Party fair and equitable treatment which is not less favourable than that accorded to investments and returns of investors of any third State whichever is more favourable.

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

3. 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 benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

4. The non-discrimination, national treatment and most-favoured nation treatment provisions of this Agreement shall not apply to all actual or future advantages accorded by either Contracting Party, by virtue of a Contracting Party's membership of or association with a customs, economic or monetary union, a common market or a free trade area; to nationals or companies of its own, of Member States of such union, common market or free trade area, or of any third country.

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

1. When investments by investors of either Contracting Party in the territory of the other Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events, 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, whichever is more favourable.

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 state of 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 by the other Contracting Party just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Such compensation shall be paid in accordance with the provisions of the Article 4 (1) of this Agreement. 3. Resulting payments under this Article shall be freely transferable in a freely convertible currency without delay.

## **Article 5. Expropriation**

1. Investments of investors of one Contracting Party shall not be nationalized expropriated or otherwise subjected to any measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

Such compensation shall amount to the fair market value of the expropriated investments (determined on the basis of the latest available balance sheets or on the average market value for the same kind of investment) immediately before expropriation was taken or before impending expropriation became public knowledge whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be effectively realizable. This interest shall not be less than interest established at the London Interbank Market (LIBOR). Compensation shall be made in a freely convertible currency. 2. The investor effected shall have a right, to prompt review, by a judicial or other independent authority of the Contracting Party making the expropriation, 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. If 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 the provisions of paragraph 1 of this Article shall be applied by the first Contracting Party to the extent necessary to provide prompt, adequate and effective compensation to the investors.

## **Article 6. Transfers**

1. The Contracting Parties shall permit the free transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Returns as defined in paragraph 3 of Article 1 of this Agreement;
- c) Funds in repayment of loans;
- d) Proceeds of the total or partial sale or liquidation of the investment;
- e) The wages or other similar earnings of natural person engaged from abroad in connection with an investment subject to the laws and regulations of the Contracting Party, in which investments have been made.

2. The transfer shall be made in a freely convertible currency, exchange of currency shall be made at the market rate on the date of transfer in accordance with the law and regulations in force in the Contracting Party where the investments were made if otherwise is not agreed between the investor and the Contracting Party.

3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may adopt or maintain measures relating to cross-border capital transactions:

- a) In the event of serious balance of payment and external financial difficulties or threat thereof, or
- b) In case where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

4. Measures referred to in paragraph 3 of this Article:

- a) Shall not exceed those necessary to deal with the circumstances set out in paragraph 3 of this Article;
- b) Shall be temporary and eliminate as soon as conditions permit; and
- c) Shall be promptly notified to the Contracting Party.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency (hereinafter referred to as the "former Contracting Party"), makes payment in accordance with the insurance in respect of investment in the territory of the other Contracting Party (hereinafter referred to as the "later Contracting Party") the later 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 insured party to the former Contracting Party, as well as,

b) The former Contracting Party is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor to the same extent as the insured party.

3. The former Contracting Party shall in respect to

a) The rights and claims obtained in virtue of the above mentioned assignment,

b) Any payment received by using these rights,

Have the right to treatment equal to treatment which insured party was entitled to have in accordance with this Agreement in respect of investments and returns related to the investments.

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

1. If any disputes which may arise between an investors of one Contracting Party and the other Contracting Party in connection with any obligations of the latter Contracting Party in accordance with this Agreement in respect of any investments of the investors which can not be settled within a period of three months following the date on which such negotiations were requested in written notification, the investors shall be entitled to submit the case to international arbitral tribunal.

2. If a dispute is submitted to international arbitral tribunal, an investor and the Contracting Party, which are parties to the dispute, can agree to submit the case to:

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 at Washington D.C. on 18 March 1965, if the Contracting Parties participate in this Convention, or

b) The International ad hoc Arbitral Tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"). Each Contracting Party gives its contest to the submission of disputes to international arbitration set out in paragraphs a) and b).

3. The arbitral awards shall be final and binding on both parties to the dispute. The Contracting Party concerned shall enforce the arbitral awards in accordance with its domestic laws.

## **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 consultation and negotiation.

2. If the dispute cannot be thus settled within six months following the first written notice, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted for each individual case in the following way. Within two months from the date 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 shall be appointed as a Chairman of the tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, and the Contracting Parties have not agreed otherwise, any Contracting Party may make a request 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 if he is prevented from discharging the said function, the member of the International Court Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments. The arbitral tribunal established in accordance with this Article shall reach its decision by a majority of votes. The decisions of the tribunal are final and binding on each Contracting Party. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in the remaining costs shall be borne in equal parts by both Contracting Parties. Subject to other provisions made by the Contracting Parties the tribunal shall determine its 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 signatories, nothing in this Agreement shall prevent either Contracting Party or 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 this case.

2. If the treatment to be accorded by one Contracting Party to investments and 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 this Agreement, the more favourable shall be accorded.

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

This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its laws and regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement but shall not apply to any dispute or claim concerning investment which may have arisen, or which was settled before its entry into force.

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

1. This Agreement is subject to an approval in accordance with procedures required by law of both Contracting Parties for bringing this Agreement into force, and it shall enter into force on the 90th day after the date of the last Contracting Party's notification confirming that all constitutional formalities required by law for bringing this Agreement into force have been fulfilled.

2. This Agreement shall remain in force for an infinite of time. Each Contracting Party may terminate this Agreement by giving a written notice twelve months in advance.

3. In respect of investment 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 thereto have signed this Agreement.

DONE at this day of 2005 in two originals in the Belarusian, Slovak and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of For the Government of The Republic of Belarus the Slovak Republic