

# **BETWEEN THE GOVERNMENT OF THE SLOVAK REPUBLIC AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

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

Desiring to establish favourable conditions for improved economic co-operation between the two Countries, and especially in relation to investments by investors of one Contracting Party in the territory of the other Contracting Party,

And

Acknowledging that offering encouragement and mutual protection to such investments, based on international Agreements, will contribute to stimulating business activities, which foster the prosperity of both States,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" shall mean any kind of assets invested, before or after the entry into force of this Agreement, by an investor of a Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with laws and regulations of the latter Contracting Party and shall include in particular, but not exclusively:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges and similar rights;
- b) Shares, stocks, debentures or any other form of participation in a company and any other instruments of credit;
- c) Claims to money or any performance having an economic value connected with an investment;
- d) Intellectual property rights, which include copyrights and industrial property rights;
- e) Any economic right accruing by law or by contract and any licence and concession granted in accordance with the provisions in force on economic activities, including the right to prospect for, extract and exploit natural resources;
- f) Any increase in value of the original investment.

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 nationality of either Contracting Party in accordance with its laws.

b) The term "legal person" shall mean any entity which is incorporated or constituted in accordance with the law of one of the Contracting Parties, having its head in the territory of one of the Contracting Parties and recognised by its laws.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, shall include profits, interests, capital gains, dividends, royalties or fees as well as any return in kind.

4. The term "territory" shall mean:

- a) In relation to the Italian Republic, the land and maritime areas. The latter comprise the marine and submarine areas,

adjacent to the outer limits of the territorial sea over which it exercises its sovereignty, and sovereign rights and jurisdiction in accordance with international law;

b) In relation to the Slovak Republic, the land over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

5. The provisions of this Agreement shall apply to all the activities connected with an investment.

These activities shall include in particular, but not exclusively, the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making and performance of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of currency for imports.

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

1. Each Contracting Party shall encourage, create and maintain favourable economic and legal conditions in its territory for investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant, in accordance with its laws and regulations, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

3. 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.

4. Legal persons constituted under the applicable laws or regulations of one Contracting Party, which are owned or controlled by investors of the other Contracting Party, shall be permitted to engage top managerial personnel of their choice, regardless of nationality, in accordance with the legislation of the host Contracting Party.

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

1. Each Contracting Party shall in its territory accord 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 investments and returns of investors of any third State whichever is more favourable.

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

3. The provisions of this Agreement do not refer to the advantages and privileges which one Contracting Party may grant to investors of Third States by virtue of its membership of a Customs or Economic Union, of a Free Trade Area, of a regional or subregional Agreement or multilateral Agreements, or under Agreements stipulated in order to avoid double taxation or intended to facilitate cross-border trade and co-operation.

4. If international obligations in force or that may come into force in the future for one of the Contracting Parties, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than the one provided for by the present Agreement, such rules will, to the extent that they are more favourable, prevail over the present Agreement.

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

1. When investors of either Contracting Party suffer damages or 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 a treatment, as regards restitution, indemnification, compensation or other settlement, no 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 damages or losses in the territory of the other Contracting Party resulting from: paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damages or losses in

the territory of the other Contracting Party resulting from:

a) Requisitioning of their property by its forces or authorities,

b) Destruction or damage 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 just and adequate compensation for the damages or losses sustained during the period of the requisitioning or as a result of the destruction or damage of the property.

3. Compensation payments deriving from the events referred to in paragraph 1 and 2 of this Article shall be transferable in a convertible currency without any undue delay. paragraph 1 and 2 of this Article shall be transferable in a convertible currency without any undue delay.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose and national interest.

The expropriation shall be carried out under due process of law, on a non-discriminatory basis and in exchange of the payment of prompt, adequate and effective compensation.

Such compensation shall be equivalent to the market value of the investment expropriated immediately prior to the moment in which the decision of expropriation has been announced.

The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the decision of expropriation has been announced.

The compensation shall include interest calculated on the LIBOR basis from the date of expropriation to the date of payment, shall be made without undue delay and in any case within three months, shall be effectively realizable and shall be freely transferable in convertible currency.

2. The provisions of this Article shall also apply when a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in its territory and of which investors of the other Contracting Party own shares. In case that the object of expropriation is a legal person jointly created by Italian and Slovak investors, the evaluation of the share of the investor will be, in the currency of the investment, not lower than the starting value, increased by capital increases and revaluation of capital, undistributed profits and reserve funds, and diminished by the value of capital reductions and losses.

3. An investor of either Contracting Party who asserts that all or part of its investment has been affected by expropriation shall have the right to a prompt review by the competent judicial or administrative authorities of the other Contracting Party in order to determine whether such measure has occurred and, if it has, whether such measure and any compensation thereof conform to the provisions of this Agreement and to the principles of international law.

4. Compensation will be considered as actual if it has been paid in the same convertible currency or in any other currency accepted by the investor. Compensation will be freely transferable.

5. If, after the dispossession, as a consequence of expropriation, the assets concerned have not been utilised, wholly or partially, for that purpose, the owner or his assignees are entitled to the repurchasing of the assets at market price.

## **Article 6. Subrogation**

1. If a Contracting Party or its designated Agency makes payments to its own investors under a guarantee it has accorded in respect of non-commercial risks for 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. In relation to the transfer of payments to the Contracting Party or its designated Agency by virtue of this assignment, the provisions of Article 7 of this Agreement shall apply. Article 7 of this Agreement shall apply.

## **Article 7. Transfers**

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay, after all fiscal obligations have been fulfilled. Such transfers shall include in particular, though not exclusively:

- a) Capital and additional capital, including reinvested returns, used to maintain and increase an investment;
- b) Profits, dividends, royalties, fees, interests, and other income;
- c) Funds in repayment of loans;
- d) Returns deriving from the total or partial sale or the total or partial liquidation of an investment;
- e) Remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party;
- f) Compensation payments provided for in Article 4 and 5..

2. All the transfers referred to in paragraph 1 of this Article shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer.

3. Transfers referred to in Articles 4, 5, and in paragraph 1 of this Article, shall be considered to have been made "without undue delay" when they have been made within the period normally necessary for the completion of the transfer procedures. Such period shall under no circumstances exceed three months.

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

1. Any dispute which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled through consultations and negotiation.

2. In the event that such dispute cannot be settled amicably within six months from the date of receiving the written application for settlement, the investor may submit at his choice the dispute for settlement to:

- a) The Contracting Party's Court having territorial jurisdiction; or
- b) An "ad hoc" Arbitration Tribunal, in compliance with the arbitration regulation of the United Nations Commission on the International Trade Law (UNCITRAL). The host Contracting Party undertakes hereby to accept the reference to said arbitration; or
- c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitration or conciliation procedures under the Washington, D.C. Convention of 18 March, 1965, on the Settlement of Investment Disputes between States and Nationals of other States.

3. With reference to paragraph 2 b) of this Article arbitration shall be conducted in accordance with the arbitration standards of the United Nations Commission on International Trade Law (UNCITRAL) as well as pursuant to the following provisions:

- a) The Arbitration Tribunal shall be composed of three arbitrators; if they are not nationals of either Contracting Party, they shall be nationals of States having diplomatic relations with both Contracting Parties.

The appointment of arbitrators, when necessary pursuant to the UNCITRAL Rules, will be made by the President of the Arbitration Institute of the Stockholm Chamber, in his capacity as Appointing Authority. The arbitration will take place in Stockholm, unless the two parties in the arbitration have agreed otherwise.

- b) When delivering its decision, the Arbitration Tribunal shall in any case apply also the provisions contained in this Agreement.

The recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislation, in compliance with the relevant International Conventions they are parties to.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Any dispute which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall be settled through consultations and negotiations.
  2. In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an "ad hoc" Arbitration Tribunal as provided in this Article.
  3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the Contracting Parties shall appoint a member of the Tribunal. The two members shall then choose the national of a third state to serve as a president. The President shall be appointed within three months from the date on which the other two members are appointed.
  4. If, within the period specified in paragraph 3 of this Article, the appointments have not been made, each of the Contracting Parties can, in default of other arrangement, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.
  5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding on both Contracting Parties. Each Contracting Party shall pay the costs of its own member of Tribunal and of its representatives at the hearings. The President's costs and any other cost shall be divided equally between the Contracting Parties.
- The Arbitration Tribunal may, however, decide that a higher proportion of the costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.
- The Arbitration Tribunal shall determine its own procedures.

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

1. If a matter is governed both by this Agreement and by another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and to their investors.
2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and regulations or other provisions or specific contracts or investment authorisations or agreements, is more favourable than that provided under this Agreement, the most favourable treatment shall apply.
3. Whenever, after the date when the investment has been made, any modifications in the legislation of the Contracting Parties regulating directly or indirectly the investment should take place, they shall not be applied retroactively and the investments made under this Agreement shall therefore be protected.

## **Article 11. Applicability 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 concerning an investment which arose or any claim which was settled before its entry into force.

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

1. This Agreement shall enter into force at the receiving date of the last of the two notifications by which the two Contracting Parties shall notify each other that their respective constitutional procedures have been completed.
2. This Agreement shall remain effective for a period of 10 years from the date of its entry into force and shall remain in force for a further period of 5 years thereafter, unless one of the Contracting Parties notifies in writing of its intention to terminate the Agreement by not later than one year before its expiry date.
3. In case of investments effected prior to the termination dates, as provided under paragraph 1 of this Article, the provisions of the Articles 1 to 11 shall remain effective for a further five years period after the aforementioned dates.

Done at Bratislava, on 30 July 1998, in two originals, each in the Italian, Slovak and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE SLOVAK REPUBLIC