# Agreement between the Slovak Republic and the Government of Ukraine on the promotion and reciprocal protection of investments

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

Desiring to develop and deepen economic cooperation between the two countries in order to promote and create conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments in accordance with this Agreement, stimulates the business initiatives in this field,

Have agreed as follows:

## Article 1. Definitions

1. The term "investment" means: all types of financial, material and other property and intellectual property invested by investors of one Contracting Party in various activities in the territory of the other Contracting Party for the purpose of profit or social gain, in particular, though not exclusively,

a) movable and immovable property and other rights in rem: mortgages, liens, pledges and similar rights,

b) shares, deposits in companies, bonds and contracts as legal persons or shareholding of these entities,

c) claims to money and claims for any activity having an economic value associated with investments,

d) freely convertible currency and the currency valid in the country where the investments take place.

e) the rights of intellectual property, including copyright, of trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment

f) concessions authorized by the laws of the states of each Contracting Party or bilateral agreements between Ukraine and the Slovak Republic, including the exploration, development, extraction and exploitation of natural resources.

Any change in the form of investment does not affect their classification as an "investment", provided that such a change does not contradict the approved original form.

2. The term "investment" means:

a) Investments in the territory of Ukraine, which are carried out in accordance with the current legislation of Ukraine;

b) Investments in the territory of the Slovak Republic approved by the Government or authorized by it in accordance with the legislation of the Slovak Republic.

3. The term "Investors" means:

Any natural or legal person of one Contracting Party that carries out investment activities in the territory of the other Contracting Party:

An individual who is a national of the state of one of the Contracting Parties, in accordance with its legislation;

Legal person means for each of the Contracting Parties:

Any legal entity created in accordance with the laws of the state of each of the Contracting Parties;

Any other partnership of persons established in the territory of the other Contracting Party and, under its laws, is considered a partnership.

4. The term "proceeds" means money and other property values derived from an investment, and includes, but are not limited to profits, interest, dividends, royalties or fees;

5. The term "territory" means:

The state territory of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf, over which the Contracting Parties exercise their sovereign rights and jurisdiction in accordance with international law

## Article 2. Investment Promotion and Protection

1. Each Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory, and these investments will allow, 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 full protection and security in the territory of the other Contracting Party.

## Article 3. National and Most-favored-nation Treatment

1. Each Party shall in its territory to investments and returns of investors of the other Contracting Party treatment no less favorable than that it accords to investments or returns of its own investors or to investments or returns of investors of any third state. This principle of national treatment will not be to the detriment of the special conditions in accordance with its law of the Party uses to foreign investors.

2. Each Party shall in its territory to legal entities and natural persons of the other Contracting Party in respect of their activities relating to their investments, treatment no less favorable than that accorded to its own investors or investors of any third state even in the when it comes to the State subject to the maximum advantage.

3. Paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to investors of the other Contracting Party treatment, benefits or privileges as may be provided by one Party by

a) customs union or a free trade area or a monetary union or other forms of regional co-operation, each Contracting Party is or may become a member,

b) an agreement to prevent double taxation or other international agreement relating wholly or partially tax, in accordance with the law of taxation in force in each State Party.

4. The Contracting Parties reserve the right to determine the objects and sphere of activity with the specific requirement for investment or completely exclude the participation of foreign investors, each Party shall so notify the other Party.

## Article 4. Compensation for Losses

1. When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of emergency, revolt, insurrection, riot or other similar events in the territory of the other Party, that Party will provide them with treatment, as regards restitution, indemnification or other settlement, not less favorable than that accorded by this party to investors of any third state.

2. Notwithstanding paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in the preceding paragraph, suffer losses in the territory of the other Contracting Party, consisting of

a) confiscation of their property by forces or authorities of the other Contracting Party,

b) destruction of their property by forces or authorities of the other Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

It will be given fair and reasonable compensation for the damage suffered during the grabbing of property or the destruction of property. Resulting payments shall be freely transferable without delay in a freely convertible currency.

## Article 5. Compensation In Connection with Coercive Measures

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose. The expropriation shall be carried out only by law and will be

accompanied by provision for the payment of prompt, adequate and effective compensation.

2. The expropriation shall be carried out on a non-discriminatory basis.

3. The compensation shall correspond to the market value of the expropriated investment immediately before the expropriation or before the future expropriation became public knowledge in accordance with the conditions set out in paragraph 1, and be implemented in accordance with the principles of objective evaluation practice in international relations. The compensation shall be paid in freely convertible currency at the official exchange rate applicable on the date of expropriation. The amount shall be transferred without undue delay and shall be implemented immediately, except for the period required to perform the formalities connected with the transfer. Refund will include interest from the date of expropriation of investments until maturity date in accordance with the percent rate by the National Bank of Party.

4. The provisions of this Article shall apply to the provision of compensation to investors in cases where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the applicable laws of its own territory and in which investors of the other Contracting Party own shares.

5. The affected investor is entitled to ask the competent authorities of the Contracting Party carrying out the expropriation of the review of the case.

6. The investor is entitled to payment of compensation as decided by the competent authorities of the Contracting Party which carried out the expropriation, or by decision of the International Court of Arbitration in accordance with Article 8 of the Agreement.

## Article 6. Transfer of Payments, Income and Movement of Movable Property In Connection with Investments

1. Each Party shall guarantee the transfer of payments related to investments and returns in accordance with the laws of their country under treatment no less favorable than investors of any third country. Such payments include in particular, but not exclusively,

a) net profits, interest, dividends, payments for technical assistance and services, percent earnings and other financial income received as a result of investments after payment of taxes in accordance with applicable law,

b) funds belonging to investors due to total or partial liquidation of investments;

c) funds in repayment of loans recognized as investments.

d) any dividends or other income citizens of the country of the investor for work done in the country in which the investment was made,

e) capital and additional amounts to maintain or increase investment.

2. For current transactions referred to in paragraph 1 of this Agreement, the transfer of foreign exchange rate is the official exchange rate in each State Party at the time of transfer, unless it decides otherwise.

3. Exchange rates will be determined in accordance with a record of courses on the relevant stock exchanges on the territory of each Party. Bank payments should be equitable for both sides.

## Article 7. Subrogation

If a Contracting Party or its authorized competent authority makes a payment to its investors under a guarantee on investments in the territory of the other Contracting Party shall take such party or its competent authority on the basis of subrogation to the respective rights of the former investor as enshrined in this agreement.

## Article 8. Disputes Relating to Investments between a Contracting Party and Investors of the other Party

1. Disputes that may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party concerning

a) obligations that may be one Party to the investors of the other Contracting Party in connection with an investment of an investor

b) violation of any rights or entitlements established under this Agreement or the rights and claims arising from the Agreement in respect of investments of this investor.

Any disputes which may arise between an investor of one Contracting Party and the other Contracting Party, as far as possible be settled by mutual consultations and negotiations.

2. If within six months from the date of written request has not been reached mutual agreement of the parties may dispute at the request of either Party be submitted for decision either

a) the competent local court of the Contracting Party of any degree, or

b) the International Center for Settlement on Investment Disputes (ICSID) for arbitration use the Convention on settlement of disputes regarding investments between States and Nationals of Other States, opened for signature in Washington, DC, March 18, 1965, unless both Parties become members of this Convention;

c) International Court of Arbitration, ad hoc arbitration under the rules of the United Nations Commission on International Trade Law.

3. Independently of the provisions of paragraph 2 of this Article relating to the referral of the dispute to assess the arbitral tribunal, the investor has the right to choose the appropriate procedural rules.

4. The award recognized and enforced by the Parties in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York 1958.

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

1. Any disputes between Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiation between the Parties through diplomatic channels.

2. If the dispute can not be settled within six months from the start of negotiations, at the request of either Contracting Party be submitted to arbitration in accordance with the provisions of this Article.

3. The arbitral tribunal shall in each case be constituted as follows: within two months of receipt of the request for arbitration, each Contracting Party shall designate one arbitrator. The two arbitrators then choose a third country national, who shall be appointed with the consent of both parties under the presiding arbitrator. The Chairman shall be appointed within two months of the appointment of two members of the tribunal.

4. If the necessary appointments have not performed within the period referred to in paragraph 3 of this Article or failure to reach a different agreement, each Party may request the President of the International Court of Justice to make the necessary appointment. If the President is a national of either Contracting Party or if he has any obstacle in performing this function, the appointment will be asked Vice-President of the International Court of Justice. If the Vice-President a national of either Contracting Party or if he too is prevented from performing this function, the appointment will be asked by the oldest member of the International Court of Justice who is not a national of either party and may unhindered perform their function.

5. The arbitral tribunal shall establish its own rules of procedure and shall take its decisions by majority vote. Arbitral award shall be final and binding on both parties. Each Contracting Party shall pay only expenses of its own arbitrator and its participation in the arbitral proceedings; expenses of the Chairman and other expenses shall be borne equally by the Parties. The arbitral tribunal is empowered to determine which of the parties will bear most of the expenditure; its decision is binding on both parties.

## Article 10. Application of International Agreements

1. If a question addressed simultaneously and that another international agreement to which both Contracting Parties are bound, 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 has not used code which is for him favorable.

2. Each Party shall respect the contractual obligations it incurred to investors of the other Contracting Party.

## Article 11. Application of the Agreement

1. This Agreement applies to all investments made in accordance with the current policy of the State in whose territory the abovementioned investments were made.

2. The provisions of paragraph 1 of this Article in respect of investments made by investors of one Contracting Party in the territory of the other Contracting Party before the entry into force of this Agreement after its entry into force.

3. The provisions of this Agreement may be amended or supplemented by agreement between the parties.

## Article 12. Entry Into Force, Duration and Termination of the Agreement

1. This Agreement shall enter into force thirty days when one party notifies the other Party through diplomatic channels Completion of the formalities required by its laws for the entry into force of this Agreement.

2. This Agreement shall remain in force for ten years and after that period until it is terminated in accordance with the provisions in paragraph 3 of this Article.

3. This Agreement shall be automatically extended for the next ten years, unless terminated in writing by one Party at the latest one year before the expiry date or at any time after its expiry.

4. For investments made prior to the adoption of a notice of termination of this Agreement shall be subject to the provisions of Article 1-10 of this Agreement for a further ten years after its expiry.

Done at Bratislava on 22 June 1994 in two originals, each in Slovak and Ukrainian languages, both texts being equally authentic.

For the Government of the Slovak Republic:

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For the Government of Ukraine:

Mikhail Reznik