

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

The Slovak Republic and the Republic of Moldova (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 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, stimulates business initiatives in this field,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and in particular, though not exclusively, includes:

- a) movable and immovable property, and any other property rights, such as mortgages, liens, leases or pledges;
- b) shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived there from;
- c) monetary claims or any other claims and rights, under contract, having an economic value;
- d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, including, but not limited to, industrial property rights, copyrights and related rights, trademarks, patents, industrial design and technical processes, rights in plant varieties, geographical indications, know-how, trade secrets, trade names and goodwill;
- e) business concession having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets or rights are invested or reinvested shall not affect their character as an investment.

2. "returns" means the amount yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

3. investor means any natural or legal person of one Contracting Party who invest in the territory of the other Contracting Party:

- a) the term natural person means a natural person having the nationality of that Contracting Party in accordance with its laws and regulations; and
- b) the term legal person means any entity, which is incorporated or constituted in accordance with the laws and regulations of one of the Contracting Party and which has its registered office, central administration or principal place of business in the territory of one of the Contracting Parties. However, should such a legal person have only its registered office in the territory of one of the Contracting parties, its operations must possess a real and continuous link with the economy of one

of the Contracting parties and have real economic activities in the territory of one of the Contracting parties.

4. territory" means:

a) As regards the Slovak Republic, the land territory, internal waters and the air space above them, over which it exercise its sovereignty, sovereign rights and jurisdiction in accordance with international law;

b) As regards the Republic of Moldova, geographical area composed by the soil and subsoil, waters and air column over the soil and territorial waters, under which the Republic of Moldova exercises its sovereign rights and jurisdiction, in accordance with its legislation and international law.

5. 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. 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 in its territory for investors of the other Contracting Party to make investments in the territory of the State and shall admit such investments in accordance with its law and regulations.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protections and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its state territory by investors of the other Contracting Party.

## **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 in like circumstances accords to investments 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 investment, treatment which is fair and equitable and not less favourable than that, which it in like circumstances accords 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 Partys 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 other third State.

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

1. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrections, riot or other similar situations in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, treatment as regards restitution, indemnification, compensation or other forms of settlement, no 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 situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- Requisitioning of their property by forces or authorities of the other Contracting Party; or

- 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,

Shall be accorded restitution or adequate compensation in no less favourable than that, which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any other State.

## **Article 5. Expropriation**

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures which have an effect equivalent to nationalization or expropriation and which result to formal transfer of title or outright seizure (hereinafter referred to as expropriation) in the territory of the other Contracting Party except for 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 and under due process of law.

Such compensation shall amount to fair market value of the expropriated investments 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. Compensation shall be made in a freely convertible currency, or in other currency, according to the agreement between the investor and the Contracting Party which pays off the respective compensation.

2. In both expropriations and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfilment of their financial obligations, the free transfer of payments, including principals, and returns related to their investments. Such transfers shall include, in particular, though not exclusively:

- a) net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;
- b) proceeds accruing from the sale or the total or partial liquidation of investments;
- c) funds in repayment of loans related to investments;
- d) earnings of nationals or residents of the other Contracting Party who are allowed to work in connection with investments in its state territory;
- e) additional funds necessary for the maintenance or development of the existing investments; and
- f) compensation pursuant to Articles 4 and 5;

2. All transfers under this Agreement shall be made without delay in a freely convertible currency or any other currency, according to the agreement between the investor and the Contracting Party which is making the transfer. In case of such delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay.

3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may, in accordance with its laws and regulations, adopt or maintain measures relating to cross-border capital and payment transactions and particularly but not limited by the following cases:

- a) in the event of serious balance of payments 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 exchange policies; or
- c) in exceptional cases of economic sanctions.

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 shall be eliminated as soon as conditions permit; and
- c) shall be promptly notified to other Contracting Party.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee or indemnity given in respect of investments 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 State, of any right or claims from investors to the former Contracting Party or its designated agency; and

b) that the former Contracting Party or its designated Agency is entitled by virtue of subrogation to exercise the rights of and enforce the claims of those investors.

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 between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled by the parties to the dispute in an amicable way.

2. If the dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, it shall be submitted upon request and choice of the investor of the Contracting Party:

a) to the International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States in case both Contracting Parties are parties to this Convention; or

b) to an 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 consent to the submission of disputes to international arbitration set out in paragraph a) and b).

The award shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

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

1. The Contracting Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with this Agreement, or to discuss any matter relating to the interpretation or application of this Agreement. The Contracting Parties also agree to consult promptly whenever a Contracting Party believes that steps are necessary to assure compatibility between this Agreement and the Treaties Establishing the European Communities with a view to assuring compatibility.

2. If the dispute cannot be thus settled within six (6) months, it shall upon the request of either Contracting Party, be submitted to an 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 Arbitral 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 Arbitral 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.

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.

## **Article 10. Consultation and Exchange of Information**

1. Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures, or policies of the other Contracting Party may have on investments covered by this Agreement.

2. The consultations provided for by this Article shall include consultations concerning any steps that a Contracting Party may consider are necessary to ensure compatibility between the Agreement and the EC Treaty.

## **Article 11. 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 of any investors, who own investments in the territory of the other Contracting Party, from taking advantage of whichever rules are more favorable to his 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 favorable than that accorded this Agreement, the more favorable shall be accorded.

3. All references in this Agreement to measures of a Contracting Party shall include measures applicable in accordance with EU law in the territory of that Contracting Party pursuant to its membership in the EU.

## **Article 12. Applicability of this Agreement**

This Agreement shall apply to investments made prior to its entry into force for the Contracting Parties concerned as well as investments made thereafter. This Agreement shall apply to investments existing at the time of entry into force as well as to those established or acquired thereafter.

## **Article 13. Entry Into Force, Duration and Termination**

1. The present Agreement shall enter into force on the 90th day after the day of the last written notification on which either Contracting Party notifies the other Contracting Party, through diplomatic channels, that its internal legal requirements for its entry into force have been fulfilled.

2. This Agreement shall remain in force for a period of ten years and shall be extended thereafter for following ten years unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement.

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

In witness whereof, the undersigned duly authorised thereto, have signed this Agreement.

Done at Chişinău on 7th of April 2008; in two originals in the Slovak, Moldovan and English languages, all texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

For the Slovak Republic

For the Republic of Moldova