

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

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

Desiring to intensify economic co-operation 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,

Governing by the Partnership and Co-operation Agreement between the European Communities and their Member States and Ukraine signed on 14 June 1994,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement: 1. The term "investment" shall mean every kind of assets 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 Contracting Party and shall include, in particular, though not exclusively: a) movable and immovable property, as well as any other property rights, such as mortgages, liens and pledges; b) shares, stocks and debentures of companies or any other form of participation in a company; c) claims to money or to any performance having an economic value associated with an investment; d) intellectual property rights which include, inter alia, copyrights, patents and rights relating to: literary and artistic works, including sound recordings, inventions in a 11 fields of human endeavour, industrial designs, trade secrets, know-how, trademarks, service marks and trade names; e) any right conferred by law or under contract and any licenses and permits pursuant to law, including concessions to search for, extract, cultivate or exploit natural resources. Any alteration of the form in which assets are invested or reinvested 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 laws of one of the Contracting Parties, having its head office in the territory of one of the Contracting Parties and recognized by its laws. 3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, shall include profits, interest, capital gains, shares, dividends, royalties or fees. 4. The term "territory" shall mean: a) in relation to the Slovak Republic, the land territory, internal waters and the air space above them, and, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law; b) in relation to Ukraine, the land territory under its sovereignty, sea and submarine areas, exceptional economic zone and the air space above them, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law. ARTICLE 2 Promotion and Protection of Investments 1. Each Contracting Party shall encourage and create 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. 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 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 accords to its

own investors or investors of any third State, whichever is more favourable. 3. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to its own investors or to the investors of any third State 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 resulting from: a) its membership in any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

**ARTICLE 4 Compensation for Losses**

1. When investments made by investors of either Contracting Party suffer 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 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 a 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 restitution or just 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 a freely convertible currency without delay.

**ARTICLE 5 Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalised, 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. 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 be equivalent to the value of the investment expropriated immediately before expropriation or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate from the date of expropriation to the moment of its actual payment, shall be made without delay, be effectively realisable and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right to a review by a judicial or other independent authority of that Contracting Party of its case and of the valuation of its investment in accordance with the laws and regulations of that Contracting Party and principles set out in this Article.

**ARTICLE 6 Transfers**

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns after fulfilment of tax obligations. The transfers shall be made in any freely convertible currency, without any restriction and delay. 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 accruing from total or partial sale or liquidation of the investments, f) the earnings of natural persons working in the territory of that Contracting Party in connection with an investment.

2. Without prejudice to measures adopted by the European Community transfer shall be affected, without undue delay, in any convertible currency at the market rate of exchange applicable on the date of transfer.

**ARTICLE 7 Subrogation**

1. If a Contracting Party or its designated Agency makes a payment to its own investors under a guarantee it has accorded for an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise: a) the assignment, whether under the law or pursuant to a legal transaction 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.

**ARTICLES 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 in connection with an investment in the territory of that other Contracting Party shall be subject to negotiations and consultations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months since the Ministry of Finance of Slovak Republic or the Ministry of Justices of Ukraine have received the notification on dispute origin, which must contain the substantiation of claims and detailing information on the point at issue, the investor shall be entitled to submit the case either to: a) a competent court of State of Contracting Party, on which territory investments have been made; b) the International Centre for Settlement of Investment Disputes (ICSID) established in accordance with 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, 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).

3. An investor who has submitted the dispute to a national court may, nevertheless, recourse to one of the Arbitral Tribunal mentioned in paragraphs 2 (b) to (c) of this Article, if before a judgement has been delivered on the subject matter by national court, the investor declares not to pursue the case any longer through national proceedings and withdraws the case.

4. The arbitral award shall be final and binding on the parties to the dispute and shall be enforced in accordance with national law.

**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, 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 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. The Arbitral 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 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 signatories, nothing in this Agreement shall prevent either Contracting Party or of any of its investors, who own investments in the territory of the other Contracting Party, from taking advantages of whichever rules are more favourable to his case. 2. If the treatment to be accorded by one Contracting Party to investments of 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 Applicability of this Agreement The provisions of 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 of this Agreement into force, but shall not apply to any dispute concerning an investment which arose, or any claim which was settled before the entry of this Agreement into force.

ARTICLE 12 Changes and amendments Changes and amendments of this Agreement can be made on mutual written consent of Contracting Parties and shall be formed in Protocols which constitute an integral part of this Agreement.

ARTICLE 13 Entry into Force, Duration and Termination 1. This Agreement shall come in force ninety days after the date receiving of last written notification of execution by the Contracting Parties of all constitutional procedures which are necessary for entering in to force of this Agreement. 2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement. 3. In respect of investments made prior to the date of 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 its termination.

Done at Kiev on 26 February 2007, in two originals in the Slovak, Ukrainian and English languages, all texts being equally authentic. In the case of differences in interpretation, the English text shall prevail.

For the Slovak Republic

For Ukraine