

# Agreement between the Slovak Republic and the Republic of Tajikistan on the Promotion and Reciprocal Protection of Investments

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

Desiring to intensify economic cooperation to the benefit of both countries,

Intending to create and maintain favorable conditions for investments by investors of one State in the territory of another State,

And conscious 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

For the purposes of this Agreement, the following terms shall have the following meanings:

1. Investment - all assets invested in connection with economic activities by investors of either Contracting Party in the territory of the other Contracting Party in accordance with its own laws; the term includes in particular, though not exclusively,

a) movable and immovable property and related rights in rem, such as mortgages, guarantees, pledges and other similar rights,

b) shares, stocks and debentures of companies or any other form of participation in the assets of companies and enterprises;

c) claims to money for any activity having an economic value associated with investments or the right to it,

d) 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,

e) rights conferred by law or by contract, license or permit issued under law, including concessions to search for, extract, cultivate or to exploit natural resources.

Any alteration of the form in which the values are invested does not affect their character as investments.

2. Investor - any natural or legal person who invests in the territory of the other Contracting Party,

a) a natural person - a person who holds the citizenship of either Contracting Party in accordance with its laws and regulations.

b) legal entity - a person registered, established and recognized as a legal entity in accordance with the law of the country of the Contracting Party;

3. Revenues - amounts yielded by investments, particularly, but not exclusively, profits, interest, capital gains, shares, dividends, royalties or fees;

4. Territory - the territory of the Slovak Republic or the territory of the Republic of Tajikistan, of which at least one Contracting Party shall, in accordance with international law, sovereign rights for the purpose of exploring and exploiting the natural resources of that territory; in relation to the Republic of Tajikistan and its marine areas, including the seabed and of the territorial sea adjacent to the outer limits of that territory.

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

1. Each Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and the investment 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 Treatment and Most-favoured-nation Clause**

1. Each Contracting Party shall accord to the investments and returns of investors of the other Contracting Party on the territory of its State a fair and equitable treatment which is no less favorable than that accorded to investments or returns of its own investors or investments or returns of investors of any third State.
2. Each Contracting Party shall accord to investors of the other Contracting Party, in the territory of its State, the proper and fair treatment which is no less favorable than that accorded to its own investors or investors of any of the States in respect of the management, maintenance, use, exploitation or management of their investments. a third State, if more advantageous.
3. The provisions of paragraphs 1 and 2 shall not be construed to oblige one Contracting Party to accord to investors of the other Contracting Party such treatment, advantages or privileges as one Contracting Party may grant under:
  - a) a customs union or a free trade area or monetary union, or similar international agreements leading to such unions or the institutions or by other forms of regional co-operation, each Contracting Party is or may become a member,
  - b) an international agreement or arrangement relating wholly or mainly to taxation.

## **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 to its own investors or investors of third countries.
2. Notwithstanding paragraph 1, 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 its forces or authorities of the other Contracting Party,
  - b) destruction of their property by its forces or authorities of the other Contracting Party which was not caused in combat action or by the necessity of the situation,

provide fair and reasonable compensation for the damage suffered during the grabbing and the destruction of property. Resulting payments shall be freely transferred without delay in a freely convertible currency.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent 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 on the basis of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and fair compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or value at a time when the future expropriation became public knowledge. Refund will include interest from the date of expropriation investments on factual payment to be made without delay, be effectively realizable and freely transferred in freely convertible currency.
2. The investor affected shall have the right to ask for an urgent review of the particular case and of valuation of its investments judicial or other independent authority of the Contracting Party in accordance with the principles contained in this Article.
3. Paragraph 1 shall also apply to cases where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the applicable law on its territory and in which investors of the other Contracting Party

own shares.

## **Article 6. Transfers**

1. Each Party shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in freely convertible currency, without any restriction and undue delay. Such transfers include in particular, but not exclusively

- a) capital and additional amounts to maintain or increase investment,
- b) profits, interest, dividends and other current income,
- c) funds in repayment of loans,
- d) royalties or fees.
- e) proceeds from the sale or liquidation of the investment,
- f) income of individuals under the law of the Party where the investments were made.

2. Transfers of payments, which are considered under this Article shall be made in freely convertible currency at the official rate at the time of the transfer and in accordance with the monetary policy of the Party in whose territory the investment was made, if the different partners agree otherwise.

## **Article 7. Assignment of Rights**

1. If a Contracting Party or its designated agency makes a payment to its own investors as a guarantee for an investment in the territory of the other Contracting Party, the other Party shall recognize:

- a) the assignment of any right or claim by the investor to the Contracting Party or its authorized agencies regardless of whether the referral is made under the Act or pursuant to a legal negotiations in this country,
- b) that the Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

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

1. Any disputes which may arise between a Contracting Party and investors of the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall be settled by negotiation between the parties to the dispute.

2. If a dispute between an investor of one Contracting Party and the other Contracting Party can not be settled within six months, the investor is entitled to submit the dispute either

- a) the International Center for Settlement on Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on settlement of disputes regarding investments between States and nationals of other States, opened for signature in Washington, DC, March 18, 1965, when both parties become members of the Convention;
- b) an arbitrator or international arbitration tribunal established an ad hoc basis under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The parties may agree in writing to modify these Rules. The arbitration award shall be final and binding on the parties to the dispute.

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

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, where possible, be settled through consultation and negotiation.

2. If the dispute can not be thus settled within six months, at the request of either Contracting Party shall 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 appoint one arbitrator, the arbitral tribunal. The two arbitrators shall select a national of a third State, who shall be appointed with the consent of both parties under the presiding arbitrator (the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two arbitrators.

4. If the necessary appointments have not performed within the periods specified in paragraph 3, may request the President of the International Court of Justice to make the appointment. If the President is a national of either Contracting Party or any other reason unable to carry out this mandate, to appoint the Vice-President shall request the International Court of Justice. If the Vice-national of either Contracting Party or if for any other reason unable to carry out this mandate, the appointment is requested by the oldest member of the International Court of Justice who is not a national of any of the Parties.

5. The arbitral tribunal shall take its decisions by a majority vote. Such decisions shall be binding. Each Contracting Party shall reimburse only the expenses of its arbitrator and the costs of its participation in the arbitration, the expenses of the President and the other costs shall be borne equally by the Contracting Parties. The arbitration panel shall determine its own rules of procedure.

## **Article 10. Application of other Regulations and Special Obligations**

1. In the event that a question relating to this Agreement is dealt with concurrently by this and another international agreement to which both Parties are bound, nothing in this Agreement shall prevent a Party or any of its investors owning an investment in the territory of the other Party from using any a prescription that is more favorable to him.

2. If the treatment provided by one Party to investors of the other Contracting Party in accordance with the law or with other specific contractual provisions more favorable than that granted by this Agreement will be used this favorable treatment.

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

The provisions of this Agreement 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.

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

1. Each Party shall notify the other of the completion of constitutional procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for ten years and shall remain in force even after that period if the year before the expiry of the initial period of one or the other Party in writing notifies the other Party of its intention to terminate the Agreement.

3. The provisions of this Agreement relating to investments made before the expiration of this Agreement shall remain in force for ten years from the date of termination.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto have signed this Agreement.

Done at Bratislava on 14 February 1994 in two copies, each in Slovak, Tajik and Russian languages, all texts being equally authentic. In case of divergence in the interpretation of the term it is considered crucial for Russian texts.

For the Slovak Republic

Július Tóth

For the Republic of Tajikistan:

Izatullo Khayojevich Khayojev