

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE SLOVAK REPUBLIC AND THE GOVERNMENT THE STATE OF KUWAIT ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

Desiring to create favourable conditions for the development of economic cooperation between them and in particular for investments by investors of one Contracting Party in the territory of the State of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of business initiative and to the increase of prosperity in both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of asset in the territory of one Contracting Party that is owned or controlled directly or indirectly by an investor of the other Contracting Party, and includes asset or right consisting or taking the form of:

- a) a company, shares, stocks, and other form of equity participation, and bonds, debentures, and other forms of debts interests in a company, and other debts and loans and securities issued by any investor of a Contracting Party;
- b) claims to money and claims to any other assets or performance pursuant to contract having an economic value;
- c) intellectual property rights, including but not limited to copyrights, trademark patents, industrial designs and patterns and technical processes, know-how, trade secrets, trade names and goodwill;
- d) any right conferred by law, contract or by virtue of any licenses or permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to undertake other economic or commercial activities or to render services;
- e) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

The term "investment" shall also apply to returns retained for the purpose of reinvestment and to proceeds from liquidation as these terms are defined hereinafter.

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

2. The term "investor" shall mean any natural or legal person of one Contracting Party who invests in the territory of the State of the other Contracting Party:

- a) the term "natural person" shall mean a natural person having the nationality of that Contracting Party in accordance with its laws;
- b) the Government of that Contracting Party;
- c) the term "legal person" shall mean any entity or company, which is incorporated or constituted in accordance with the laws and regulations of one of the Contracting Parties and which has its registered office, central administration, principal place of business in the territory of the State of one of the Contracting Parties.

The term company shall mean any legal entity, whether or not organized for pecuniary gain, and whether privately or governmentally owned or controlled, which is constituted under the laws of a Contracting Party or is owned or effectively controlled by investors of a Contracting Party, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association or other similar organization.

4. The term "returns" shall mean amounts yielded by an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, include profits, interest, capital gains, dividends, royalties, and management, technical assistance or other payments or fees, and payments in kind, regardless of its type.

5. The term liquidation shall mean any disposal effected for the purpose of completely or partly giving up an investment.

6. The term territory shall mean:

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

b) As regards the State of Kuwait, shall mean the territory of a Contracting Party including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated under the laws of a Contracting Party, as an area over which a Contracting Party may exercise sovereign rights or jurisdiction.

7. The term "freely convertible currency" shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and an amendment thereto, and widely exchanged in principal international exchange markets.

8. The term without delay shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

9. The term public purpose shall mean any purpose that is 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 for investors of the other Contracting Party to make investments in its territory and subject to its right to exercise powers conferred by its laws, shall admit such investment.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the State of the other Contracting Party in a manner consistent with recognized principles of International Law and the provisions of this Agreement. Neither Contracting Party shall in its territory in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

2. Once established, investments of investors of either Contracting Party shall not be subject to additional performance requirements which may be detrimental to their viability or adversely affect their use, management, conduct, operation, expansion, sale or other disposition.

## **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 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 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 Party by virtue of a Contracting Party's 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. When investments made by investors of either Contracting Party suffers a loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the State of the other Contracting Party, he shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter Contracting Party accords to its own investor or investor of any third state, whichever is more favourable to the investor.

2. Without prejudice to paragraph 1 of this Article, investor of one Contracting Party who in any of the events referred to in that paragraph suffers a loss in the territory of the State of the other Contracting Party resulting from:

- a) requisitioning of its investments or part thereof by its forces or authorities;
- b) destruction of its investments or part thereof by its forces or authorities which were not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt adequate and effective.

3. A claim to compensation in accordance with the principles and provisions of this Article shall also exist when, as a result of any action by a Contracting Party in any company in which investment is made by investors of the other Contracting Party, the investment is impaired in substance.

## **Article 5. Expropriation**

1. (a) Investments made by investors of one Contracting Party in the territory of the State of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures such as freezing or blocking of the investment, which have an effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as expropriation) by the other Contracting Party except for a public purpose-related to the internal needs of that Contracting Party and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with due process of law of general application.

(b) Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the valuation date"). Such compensation shall be calculated in a freely convertible currency to be chosen by the investor, on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at a commercial rate established on a market basis, however, in no event less than the prevailing LIBOR rate of interest or equivalent, from the date of expropriation until the date of payment.

(c) Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, appreciation, current returns, discounted cash flow value, book value and goodwill. The amount of compensation finally determined shall be promptly paid to the investor.

2. In light of the principles set out in paragraph 1 and without prejudice to the rights of the investor under Article 8 of this Agreement, the investor affected shall have the right to prompt review by a judicial or other competent and independent authority of the Contracting Party which made the expropriation, of its case, including the valuation of its investment and the payment of compensation therefore.

3. For further certainty, expropriation shall include situations where a Contracting Party expropriates (the assets of a company or enterprise that is incorporated or established under the laws in force in its own territory in which an investor of the other Contracting Party has an investment, including though the ownership of shares, stocks, debentures or other rights or interests.

## **Article 6. Transfer of Payments Related to Investments**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfilment of their financial obligations, the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

- a) the initial capital and any additional capital for the maintenance, management and development of the investment;
- b) returns;
- c) payments under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;
- d) royalties and fees for the rights referred to in Article 1 paragraph 1 (c);
- e) proceeds from the sale or liquidation of the whole or any part of the investment;
- f) earnings and other remuneration of personnel engaged from abroad in connection with the investment;
- g) payments of compensation pursuant to Articles 4 and 5;
- h) payments referred to in Article 7; and
- i) payments arising out of the settlement of disputes.

2. Transfers of payments under paragraph 1 shall be effected without delay or restrictions and, except in the case of payments in kind, in a freely convertible currency. 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. Transfers shall be made at the spot market rate of exchange prevailing in the host Contracting Party on the date of transfer for the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent rate applied to inward investments or the exchange rate determined in accordance with the regulations of the International Monetary Fund.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, such transfer shall be subject to measures from time to time, accorded by regulatory procedures of its government to impose reasonable restrictions for temporary periods to eliminate the situation of fundamental economic disequilibrium. Such measures shall be promptly notified to the other Contracting Party.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency (the "Indemnifying Party"), makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the State of the other Contracting Party (the Host State), the Host State shall recognize:

- a) the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an investment;
- b) the right of the Indemnifying Party to exercise all such rights and enforce such claims and to assume all obligations related to the investment by virtue of subrogation.

2. The Indemnifying Party shall be entitled in all circumstances to the same treatment in respect of:

- a) the rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above;
- b) any payments received in pursuance of those rights and claims,

As the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

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

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of any investment

of the latter in the territory of the State of the former Contracting Party shall, as far as possible, be settled amicably.

2. If such disputes cannot be settled within a period of six months from the date at which either Contracting Party to the dispute requested amicable settlement by delivering a notice in writing to the other Contracting Party, the dispute shall be submitted for resolution, at the election of the investor's Contracting Party to the dispute, through one of the following means:

- a) in accordance with any applicable, previously agreed dispute-settlement procedures;
- b) to international arbitration in accordance with the following paragraphs of this Article.

3. In the event that an investor elects to submit the dispute for resolution to international arbitration, the investor shall further provide its consent in writing for the dispute to be submitted to one of the following bodies:

- a) the local competent court of the Contracting Party which is a party of the dispute;
- b) to the international Center 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 if both Contracting Parties are parties to this Convention or
- c) 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 subparagraph b) and c).

4. Notwithstanding the fact that the investor may have submitted a dispute to binding arbitration under paragraph 3, it may, prior to the institution of the arbitral proceeding or during the proceeding, seek before the judicial or administrative tribunals of the Contracting Party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interests, provided it does not include request for payment of any damages.

5. Each Contracting Party hereby gives its unconditional consent to the submission of an investment dispute for settlement by binding arbitration in accordance with the choice of the investor under paragraph 3(a) and (b) or the mutual agreement of both Contracting Parties to the dispute under paragraph 3 (c).

6. (a) The consent given in paragraph 5, together with the consent given under paragraph 3, shall satisfy the requirement for written agreement of the Contracting Parties to a dispute for the purpose of each of, Chapter II of the Washington Convention, Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention), and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article, as may be mutually agreed by the parties to the dispute, must be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(c) Neither Contracting Party shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting Party shall have failed to abide by and comply with the award rendered in such dispute. However, diplomatic protection for the purposes of this sub-paragraph shall not include informal diplomatic exchanges for the sole purpose of facilitating settlement of the dispute.

7. An arbitral tribunal established under this Article shall decide the issues in dispute in accordance with such rules of law as may be agreed by the Contracting Parties to the dispute. In the absence of such agreement, it shall apply the law of the Contracting Party to the dispute, including its rules on conflict of laws, and such recognized rules of international law as may be applicable, taking into consideration also the relevant provisions of this Agreement,

8. For the purpose of Article 25 (2.1(b) of the Washington Convention, an investor, other than a natural person, which has the nationality of a Contracting Party which is a party to the dispute on the date of the consent in writing referred to in paragraph (6) and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting Party, shall be treated as a national of another Contracting Party.

9. The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out promptly any such award and shall make provision for the effective enforcement in its territory of such awards.

10. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment dispute between a Contracting Party and an investor of the other Contracting Party, a Contracting Party shall not

assert, as a defense, its sovereign immunity. Any counterclaim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whomsoever, whether public or private, including such other Contracting Party and its subdivisions, agencies or instrumentalities.

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

1. The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or other diplomatic channels.
2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by either Contracting Party, and unless the Contracting Party otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.
3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.
4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments, if the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-president of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or if he, too, 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 necessary appointments.
5. The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with this Agreement and such recognized rules of international law as may be applicable and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, 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 any of its investors, who own investments in the territory of the other Contracting Party, from taking advantage of whichever rules are more favourable 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 favourable than that accorded by this Agreement, the more favourable shall be accorded.
3. The two Contracting Parties agree to consult with one another in case either the European Union or the Gulf Cooperation Council introduces certain mandatory measures or regulations which may be incompatible with provisions of this Agreement, with a view to resolve the matter and/or amend this Agreement, as maybe deemed necessary.
4. The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

## **Article 11. Applicability of this Agreement**

This Agreement shall apply to investments made prior to or after its entry into force for the Contracting Parties concerned. This Agreement shall apply to investments existing at the time of or after its entry into force.

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

1. This Agreement is subject to an approval in accordance with procedures required In law of both Contracting Parties for bringing this Agreement into force and it shall enter into force on the 90th day after the date of Contracting Parties' notification confirming that all constitutional formalities required by law for bringing this Agreement into force have been fulfilled.

2. This Agreement shall remain in force for a period of twenty years and shall continue in force thereafter for similar period or periods unless, at least one year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.

3. In respect of investments made prior to the date of the termination of this Agreement the provisions of Articles I to 11 shall continue to be effective for a period of fifteen years from the date of its termination unless the Contracting Parties decide otherwise.

IN WITNESS WHEREOF, THE RESPECTIVE PLENIPOTENTIARIES OF BOTH CONTRACTING PARTIES HAVE SIGNED THIS AGREEMENT.

Done at Kuwait on this 22nd day of Safar 1430 H corresponding to 17th day of February 2009 in two originals in the Slovak, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the Slovak Republic

Peter Kazimir

State Secretary of the Ministry of Finance of the Slovak Republic

For the State of Kuwait

Khalifa M. Hamada

Undersecretary for the Ministry of Finance of the Slate of Kuwait