

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA AND THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Slovenia and the Government of the Republic of Moldova, hereinafter referred to as the "Contracting Parties,"

Desiring to intensify economic co-operation between the two States,

Intending to encourage and create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investor" shall mean:

- a) Natural persons having the nationality of either Contracting Party in accordance with its laws,
- b) Legal persons, including corporations, commercial or other companies, associations, or any other entities which have their seat in the territory of either Contracting Party and are incorporated or constituted under the law of that Contracting Party,

Making or having made an investment in the other Contracting Party's territory.

2. The term "investment" shall mean 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 including, in particular, though not exclusively:

- a) Movable and immovable property as well as any rights in rem such as mortgages, liens, pledges and similar rights; in rem such as mortgages, liens, pledges and similar rights;
- b) Shares, stocks and other forms of equity participation in a company, and rights derived therefrom;
- c) Bonds, debentures and other forms of debt, and rights derived therefrom;
- d) Claims to money or to any performance having an economic value and associated with an investment;
- e) Rights in the field of intellectual property;
- f) Concessions conferred by law, by administrative act or under a contract, by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any alteration in the form in which assets are invested or reinvested shall not affect their character as investments, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

3. The term "returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, capital gains or other forms of income related to the investments.

4. The term "territory" shall mean, with respect to either Contracting Party, the territory under its sovereignty, including air space and maritime areas, over which the Contracting Party concerned exercises sovereignty or jurisdiction, in accordance with internal and international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote investments by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.
2. Each Contracting Party shall accord to investments of investors of the other Contracting Party in its territory fair and equitable treatment and full and constant protection and security.
3. Neither Contracting Party shall impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors of the other Contracting Party in its territory.
4. Each Contracting Party shall, within the framework of its legislation, give sympathetic consideration to applications of investors for necessary permits in connection with the investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice, regardless of their nationality.
5. Each Contracting Party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.

Article 3. National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords to its own investors and their investments or to investors of any third State and their investments with respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, whichever is more favourable to the investor.
2. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party or to their investments the benefit of any treatment, preference or privilege by virtue of:
 - a) Any existing or future membership in a free trade area, customs union or regional economic integration organisation or any multilateral agreement on investment,
 - b) Any international agreement relating wholly or mainly to taxation.
3. For the avoidance of doubt, it is confirmed that the treatment provided for in paragraphs 1 and 2 of this Article shall apply to the provisions of Articles 1 to 15 of this Agreement.

Article 4. Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures as well as international agreements which may affect the operation of the Agreement.
2. Each Contracting Party shall give sympathetic consideration to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph 1.
3. No Contracting Party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede law enforcement or would be contrary to its laws and regulations protecting confidentiality.

Article 5. Expropriation

1. Investments of investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation became publicly known (hereinafter referred to as the "valuation date").

3. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall also include interest at a commercial rate established on a market basis or at the London Inter-Bank Offered Rate (LIBOR) from the date of expropriation until the date of actual payment, whichever is more favourable to the investor.

4. The investor whose investments are expropriated shall have the right to prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 6. Compensation for Losses

1. Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party, as regards measures it adopts in relation to such losses, including compensation, indemnification or restitution, treatment no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is more favourable to the investor. Any payment made under this Article shall be immediately realisable and freely transferable.

2. Without prejudice to paragraph 1, an investor of a Contracting Party which in any of the events referred to in that paragraph suffers a loss resulting from:

- a) Requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party; or
- b) Destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

Shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be in accordance with paragraphs 2 to 4 of Article 5.

Article 7. Transfers

1. Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of funds related to their investments and in particular, though not exclusively:

- a) Initial capital and additional contributions for the maintenance or development of the investments;
- b) Returns;
- c) Funds in repayment of loans related to an investment;
- d) Proceeds from the sale or liquidation of all or part of an investment;
- e) Any compensation or other payment referred to in Articles 5 and 6 of this Agreement;
- f) Payments arising out of the settlement of a dispute;
- g) Earnings and other remuneration of nationals engaged from abroad in connection with the investment.

2. The transfers referred to in this Article shall be made without restriction or delay at the market rate of exchange applicable on the date of transfer and shall be made in a freely convertible currency.

3. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for conversion of currencies into Special Drawing Rights.

4. Notwithstanding paragraphs 1 to 3, a Contracting Party may prevent a transfer through the equitable, nondiscriminatory and good faith application of its laws relating to:

- a) Bankruptcy, insolvency or the protection of the rights of creditors;
- b) Issuing, trading or dealing in securities;
- c) Criminal or penal offences; or
- d) Ensuring compliance with orders or judgements in adjudicatory proceedings;

Provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of all rights and claims of such investor which that Contracting Party or its designated agency shall be entitled to exercise by virtue of subrogation to the same extent as its predecessor in title.

Article 9. Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to its investments, if investors of a Non-Contracting Party own or control the first mentioned investor and that investor has no substantial business activity in the territory of the Contracting Party under whose law it is constituted or organised.

Article 10. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party concerning an alleged breach of an obligation of the latter under this Agreement which causes loss or damage to the investor or its investment shall be settled amicably through negotiations.

2. If such a dispute cannot be settled within a period of three (3) months from the date of the written request for settlement, the investor concerned may submit the dispute to:

a) The competent court of the Contracting Party; or

b) Conciliation or arbitration through the International Centre for the Settlement of Investment Disputes ("the Centre"), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965 (the "ICSID Convention"); or

c) The Centre, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (the "Additional Facility Rules"), if the Contracting Party of the investor or the Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention.

d) An ad-hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party hereby consents unconditionally to the submission of an investment dispute to international conciliation or arbitration.

4. A legal person which is constituted or organised under the law of the Contracting Party, party to the dispute, and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting Party, shall for the purpose of Article 25(2)(b) of the ICSID Convention be treated as a "national of another Contracting State" and shall for the purpose of Article 1(6) of the Additional Facility Rules be treated as a "national of another State".

5. A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or contract of insurance.

6. Neither Contracting Party shall give diplomatic protection or bring an international claim in respect of any dispute referred to arbitration under this Article, unless the other Contracting Party shall have failed to abide by or comply with the award rendered in such a dispute.

7. The award shall be final and binding on both parties to the dispute and shall be recognised and enforced in accordance with internal and international law.

Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled amicably by negotiations through diplomatic channels.

2. If the dispute cannot thus be settled within three (3) months of the date on which such negotiations were requested in writing by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed chairman of the tribunal. The chairman shall be appointed within three (3) 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, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise 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 or is otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decision by a majority of votes. The decisions of the tribunal shall be final and binding on both Contracting Parties.
6. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party, and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the chairman, as well as any other costs. The tribunal may make a different decision regarding the sharing of the costs.
7. In all other respects, the arbitral tribunal shall determine its own rules of procedure.

Article 12. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments of investors of either Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 13. Application of the Agreement

This Agreement shall apply to all investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations existing at or made after its entry into force.

Article 14. General Exceptions

1. Nothing in this Agreement shall be construed so as to prevent a Contracting Party from taking any action in pursuance of its international obligations for the maintenance of international peace and security or which it considers necessary for the protection of its essential security interests.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party, or a disguised investment restriction, nothing in this Agreement shall be construed to prevent a Contracting Party from taking any measure necessary for the maintenance of public order.
3. The provisions of this Article shall not apply to Article 5, Article 6 or paragraph 1(e) of Article 7.

Article 15. Consultations

Each Contracting Party may propose to hold, whenever necessary, consultations on any matter affecting the implementation of this Agreement. These consultations shall be held at a place and a time to be agreed upon through diplomatic channels.

Article 16. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the next calendar month following the month of receipt of the latter of the notifications with which the Contracting Parties notify each other that the requirements of their national legislation for the entry into force of the Agreement have been fulfilled.

2. This Agreement shall remain in force initially for a period of five (5) years and shall be considered as renewed on the same terms for a period of five (5) years and so forth, unless at least twelve (12) months before its expiration 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 termination of this Agreement the provisions of Articles 1 to 15 shall remain in force for a further period of five (5) years from the date of termination of this Agreement.

Done in duplicate at Ljubljana on 10th April 2003 in the Slovenian, Moldavian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Slovenia

Tea Petrin, (s)

For the Government of the Republic of Moldova

Stefan Odagiu, (s)