

AGREEMENT BETWEEN THE SLOVAK REPUBLIC AND THE REPUBLIC OF MACEDONIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to intensify their economic cooperation to the mutual benefit of both Contracting Parties,

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 this Agreement, stimulates business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement the following words shall have the meaning assigned before each;

1. The term investment means any kind of asset owned or controlled 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, debentures of, and any other form of participation or interest in a company or any business enterprise;
- c) claims to money or to any performance under contract having an economic value;
- d) intellectual property rights including copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill; and
- e) business concessions 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 are invested or reinvested shall not affect their character as an investment.

2. The term returns means the amounts yielded by investments and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties and fees.

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

- a) the term natural person means any natural person having the nationality of either Contracting Party in accordance with its laws; and
- b) the term legal person means any entity incorporated or constituted in accordance with, and recognized as legal person by its laws, having permanent residence in the territory of one of the Contracting Parties.

4. The term territory means:

- a) with respect to 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) with respect to the Republic of Macedonia: the land, water and airspace over which the Republic of Macedonia exercises sovereignty, sovereign rights and jurisdiction over such rights in accordance with international law.

5. The term 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. The term Public purpose means as established under the national legislation of each of the Contracting Parties.

Article 2. Promotion and Protection of the Investments

1. Each Contracting Party shall promote and protect investments in its territory made by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection 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 territory by investors of the other Contracting Party.

3. When a Contracting Party shall have admitted an investment on its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment including authorizations for engaging qualified managerial and technical personnel of their choice regardless of their respective nationality.

Article 3. National Treatment 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 Contracting Party by virtue of its membership of, or association with, a customs, economic or monetary union, a common market or a free trade area or by virtue of an international agreement or reciprocity arrangement of that customs, economic or monetary union, common market or free trade area.

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, insurrection, 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. The resulting payments from the compensation, whenever possible shall be done by undue delay and in a freely convertible currency.

2. The provision of paragraph (1) of this Article shall apply to 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:

a) requisitioning of their property by forces or authorities of the other Contracting Party; or

b) 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.

Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation 11) in the territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. Such compensation shall amount to the 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. The expropriation shall be earned out on a non-discriminatory basis in accordance with legal procedures.

2. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.

3. Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, the provisions of this Article shall apply.

Article 6. Transfers

1. Without prejudice to measures adopted by the European Community, each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfillment of their financial obligations, the free transfers of:

- a) returns;
- b) proceeds accruing from the sale or the total or partial sale or 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) the initial capital and 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 in a freely convertible currency and without undue delay.

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 Contracting Party, of any rights 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 be notified in writing, including detailed information and as far as possible, be settled by the parties to the dispute in an amicable way.

2. The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made shall be available for investors of the other Contracting Party on the basis of treatment no less favourable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to investors.

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

a) to local competent court of the Contracting Party which is a party to the dispute; or

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 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).

4. If an investor concerned with the dispute decides to submit the case to one of the authorities mentioned in paragraph (3) of this Article, then he shall have no right to submit it to any other authority.

5. 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.

6. The arbitration award shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment was made, including the rules related to conflict law and the rules and the universally accepted principles of international law.

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 (2) 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 (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, a request may be made by either Contracting Party to the President of the International Court of Justice to make the appointments. If the President is 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 on both Contracting Parties. 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 costs shall be borne by one of the Contracting Parties and this award shall be binding on both Contracting Parties.

Article 10. Application of other Rules and Special Commitments

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 advantage of whichever rules are more favourable to their cases.

Article 11. Applicability of this Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute arisen or any claim arisen out of events which occurred, or disputes or claims which had been settled, prior to its entry into force.

Article 12. Essential Security Interest

This Agreement shall not preclude the application by either Contracting Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests which may include interests deriving from its membership of a customs, economic or monetary union, a common market or a free trade area.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall be subject to approval in accordance with procedures required by both Contracting Parties for bringing this Agreement into force and it shall enter into force on the 90th day after the date of notification by the later Contracting Party confirming that all formalities required for bringing this Agreement into force have been fulfilled.
2. This Agreement shall remain in force for an initial period of ten (10) years and shall continue in force thereafter for a similar period or periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.
3. With respect to investments made prior to the date when the notice of termination of this Agreement become effective, the provisions of this Agreement shall remain in force of a further period often (10) years.
4. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter in force when each Contracting Party has notified the other that it has completed all requirements for entry in force of such amendment.

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

DONE in two originals at... on the.... day of in the Slovak, Macedonian and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

For the Slovak Republic

For the Republic of Macedonia