

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE SLOVAK REPUBLIC
AND
THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN
ON
THE PROMOTION AND RECIPROCAL PROTECTION OF
INVESTMENTS**

The Government of the Slovak Republic and the Government of the Republic of Kazakhstan hereinafter referred to as „the Contracting Parties“,

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

Intending to create and maintain favourable conditions for investors of the State of one Contracting Party, who carry out investments in the territory of the State of the other Contracting Party,

Conscious that promotion and reciprocal protection of such investments on the basis of this Agreement stimulate business initiatives in this field,

Have agreed as follows:

**ARTICLE 1
Definitions**

For the purposes of this Agreement:

1. The term “investment” means every kind of assets invested by investors of the State of one Contracting Party in the territory of the State of the other Contracting Party in accordance with the national legislation of the State of the latter Contracting Party and, in particular, though not exclusively, includes:
 - a) movable and immovable property and any other property rights such as liens, leases or pledges;
 - b) shares in, stocks and debentures of, and any other form of participation in a company;
 - c) money claims or any implementation according to the contract having economic value;
 - d) intellectual property rights including rights with respect to copyrights, patents, industrial designs or models, technical processes, trade or service marks, trade

names, and know-how and goodwill, and other rights in accordance with national legislations of the State of the Contracting Parties;

- e) concessions having an economic value conferred by legislation or under contract, including concessions to research, cultivation, extraction or exploitation of 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 "return" means the amount yielded by investments and, in particular, though not exclusively, includes profit, interests, dividends, royalties, license compensations and other fees.
3. The term "investor" means any natural or legal person of the State of one Contracting Party who invests in the territory of the State of the other Contracting Party in accordance with the national legislation of the State of such Contracting Party and with provisions of this Agreement:
 - a) the term "natural person" means any natural person having the nationality of the State of one Contracting Party and who is authorized in accordance with national legislation of the State of such Contracting Party to establish investments; and
 - b) the term "legal person" means any legal person created and registered in accordance with the national legislation of the State of one Contracting Party.
4. The term "territory" means:
 - 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;
 - as regards the Republic of Kazakhstan - the territory of the State bounded by land, maritime and air borders, including the land territory, waters, inland and air space, over which the State exercises sovereignty and jurisdiction 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.

ARTICLE 2

Promotion and Protection of the Investments

1. Each Contracting Party shall encourage and create favourable conditions in its territory of the State for investments of investors of the State of the other

Contracting Party and shall admit such investments in accordance with national legislation of its State.

2. Each Contracting Party shall in its territory of the State accord fair and equitable treatment and full protection and security to the investments and returns from investments of investors of the State of the other Contracting Party.
3. None of the Contracting Parties shall in its territory of the State in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or other disposal of investments by investors of the State of the other Contracting Party.

ARTICLE 3

National Treatment and Most-Favoured-Nation Treatment

1. Each Contracting Party shall in its territory of the State accord to investors of the State of the other Contracting Party and their investments and returns from investments treatment which is no less favourable than that which it accords to its own investors or to investors of any third State and their investments as regards extension, management, maintenance, use, enjoyment, sale or other disposal of their investments.
2. Each Contracting Party shall accord to investors and their investments and returns from investments of the State of the other Contracting Party treatment according to paragraph (1) of this Article, whichever is more favourable.
3. The provisions of paragraphs (1) and (2) of this Article shall not apply to all actual or future advantages of any treatment accorded by either Contracting Party by virtue of its membership of, or obligations from a customs, economic or monetary union, a common market or a free trade area; to its own investors, to the investors of Member States of such a union, common market or free trade area, or of any other third State.
4. The provisions of paragraphs (1) and (2) of this Article shall not also apply to any advantages which any Contracting Party accords to investors of any third State by virtue of agreement on a avoidance of double taxation or any agreement relating wholly or mainly to taxation.

ARTICLE 4

Compensation for Losses

1. Investors of the State of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolt, insurrection, riot, state of national emergency or civil disturbances in the territory of the State of the other Contracting Party, shall be accorded by the latter Contracting Party, treatment, as

regards restitution, indemnification, compensation or other forms of settlement, not 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 for investors.

2. Without prejudice to paragraph (1) of this Article, investors of the State of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the State of the other Contracting Party resulting from:
 - a) requisitioning of their property by the other Contracting Party; or
 - b) destruction of their property by the other Contracting Party which was not caused in military action or was not required by the necessity of the situation,

shall be accorded restitution or a adequate compensation not less favourable than that, which would be accorded under the same circumstances to an investor of the State of the other Contracting Party or of any third State.

ARTICLE 5

Expropriation

1. Investments of investors of the State of one Contracting Party shall not be expropriated, nationalized, requisitioned or otherwise subjected to any other measures having an effect equivalent to expropriation, nationalization, requisition (hereinafter referred to as „expropriation“) in the territory of the State of the other Contracting Party, except measures adopted for public purposes on a non-discriminatory basis in accordance with national legislation and with prompt, adequate and effective compensation.
2. The compensation shall be equal to the market value of expropriated investments on the date preceding the date of the conduction of expropriation or before the expropriation became publicly known, whichever is earlier. Such compensation shall be including interest at a commercial rate established on a market basis from the date of expropriation until the date of payment. The compensation shall be paid in that currency in which investments were made by the investor, or with content of the investor in any other currency. The compensation shall be effectively realizable and freely transferable without restriction and unnecessary delay.
3. An investor of the State of any Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other competent and independent authority of the other Contracting Party, of his case and of the evaluation of his investments in accordance with the principles set out in this Article.
4. Where a Contracting Party expropriates the assets of a company, registered or founded according to national legislation of the State of that Contracting Party and in which investors of the State of the other Contracting Party have shares, the

provisions of this Article shall be applied within the limits necessary for securing immediate, adequate and effective compensation.

ARTICLE 6 Transfers

1. Each Contracting Party shall guarantee to investors of the State of the other Contracting Party, after fulfilment of their financial obligations, a free transfer of payments, including principals and returns related to their investments. Such transfers shall include, in particular, though not exclusively:
 - a) the initial capital and any additional capital for the maintenance and development of the investment;
 - b) returns;
 - c) proceeds accruing from the sale or the total or partial liquidation of investments;
 - d) payment under a contract, including payment made pursuant to a loan agreement;
 - e) compensation pursuant to Articles 4 and 5;
 - f) payments in connection with settlement of disputes;
 - g) earnings and other remuneration of personnel engaged from abroad in connection with the investment.
2. Each Contracting Party shall ensure to make transfers, referred to in paragraph (1) of this Article in a freely convertible currency at the exchange rate applicable on the date of the transfer in that Contracting Party in whose territory the investment was made.
3. In the absence of a market for foreign exchange, the rate to be applied shall 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, each Contracting Party may prevent or restrict transfer through equitable, non-discriminatory and good faith application of its national legislation relating to:
 - a) adoption of safeguard measures for a necessary period of time, which may be taken under exceptional circumstances such as serious macroeconomic difficulties or serious difficulties for the balance of payments for the host Contracting Party;

- b) bankruptcy, insolvency or the protection of the rights of the creditors;
 - c) issuing, trading or dealing with securities, futures, options or derivatives;
 - d) criminal offences;
 - e) financial reporting or record keeping of transfer when necessary to assist law enforcement or financial regulatory authorities;
 - f) foreign exchange operation;
 - g) ensuring the satisfaction of judgments, orders or awards in ad judicatory proceedings;
 - h) unpaid taxes or other obligatory payments.
5. Measures referred to in paragraph 4 (a) shall be neither arbitrary nor discriminatory, of limited duration and may not go beyond what is necessary to settle the difficulties connected with the balance of payments situation. A Contracting Party that imposes measures under this Article shall immediately inform the other Contracting Party about taking such measures.

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 State of the other Contracting Party, the latter Contracting Party shall recognize:
 - a) the assignment 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 State of the other Contracting Party

1. Any dispute between a Contracting Party and an investor of the State of the other Contracting Party in respect of an investment shall, as far as possible, be settled by the parties to the dispute in an amicable way.
2. If such dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, it shall be submitted upon request and choice of the investor or party of the dispute:
 - a) to the local competent court of the Contracting Party, in the territory of which investment has been made;
 - b) to the International Centre 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 (hereinafter referred to as "Washington 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).
3. An investor who has directed a dispute for consideration of a local court can address, nevertheless, to arbitration mentioned in paragraph 2 (b) or 2 (c) of this Article, if before rendering an award on a subject of consideration by local court the investor will declare that he will not continue the case more through national legal procedures and will withdraw it.
4. Without prejudice to the Article 26 of the Washington Convention each Contracting Party hereby gives its consent to the submission of dispute between such Contracting Party and investor of the State of the other Contracting Party for settlement in accordance with this Article.
5. The awards of arbitration shall be final and binding on the parties of the dispute. Each Contracting Party shall carry out promptly such award and shall make provision for the effective enforcement in the territory of its State of such awards.

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 by consultation.

2. If the dispute cannot be settled within six (6) months following the date on which such consultations were requested by either Party in a written form, it shall be submitted to an ad hoc arbitral tribunal (hereinafter referred to as "Arbitral Tribunal") in accordance with the provisions of this Article.
3. Such Arbitral Tribunal shall be constituted for each individual case in the following way: Within two (2) months from the date of 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. The Chairman shall be appointed within four (4) 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, in absence of any other arrangement, a request may be made by either Contracting Party to the President of the International Court of Justice to make such appointments. If the President is a national of the State of either Contracting Party or otherwise prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of the State 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 final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of its own arbitrator and representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by both 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 Party. In all other respect the Arbitral Tribunal shall determine its own procedure.
6. All questions in connection with dispute referred in paragraph 1 of this Article shall be settled in accordance with provisions of this Agreement and general principles of international law.

ARTICLE 10 **Consultations**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consult on the interpretation and/or application of this Agreement.

ARTICLE 11

Application of Other Rules and Special Commitments

1. If the provisions of national legislation of the State of either Contracting Party or international agreements of which the States of the Contracting Parties are parties, contain rules, whether general or specific, entitling investments made by investors of the State of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, the more favourable treatment shall be accorded.
2. Each Contracting Party shall guarantee the observance of the commitments it has entered into with respect to the investments of investors of the State of the other Contracting Party.

ARTICLE 12

Applicability of this Agreement

This Agreement shall apply to all investments made by investors of the State of any Contracting Party in the territory of the State of the other Contracting Party prior to its entry into force as well as investments made thereafter, but shall not apply to any dispute or claim concerning investments, which has arisen and (or) has been settled before its entry into force.

ARTICLE 13


Final Provisions

1. This Agreement shall enter into force on 90th day after the date of receiving of the last notification through diplomatic channels in which the Contracting Parties have notified each other in a written form about fulfilment of all intra-state necessary procedures for bringing it into force.
2. This Agreement shall remain in force for a period of ten (10) years and shall remain in force thereafter indefinitely unless either Contracting Party notifies the other Contracting Party in a written form 12 months in advance of its intention to terminate this Agreement.
3. In respect of investments made prior to the termination of this Agreement, the provisions of Article 1 to 12 shall remain in force for a further period of ten (10) years from the date of termination.
4. This Agreement may be amended on the base of mutual approval of the Contracting Parties by protocols in a written form, which will be integral part of this Agreement.

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

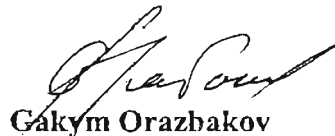
DONE in duplicate at Bratislava on the 21 day of November 2007, in the Slovak, Kazakh, Russian and English languages, all the texts being equally authentic. In the case of any divergence of interpretation of the provisions of this Agreement, the English text shall prevail.

**For the Government
of the Slovak Republic**



**Ján Počiatek
Minister of Finance
of the Slovak Republic**

**For the Government
of the Republic of Kazakhstan**



**Gakym Orazbakov
Minister of Industry and Trade**