AGREEMENT

BETWEEN

THE SLOVAK REPUBLIC

AND

…….

FOR THE PROMOTION

AND

RECIPROCAL PROTECTION

OF INVESTMENTS

The Slovak Republic and ……. (hereinafter referred to as the "Contracting Parties");

PREAMBLE

INTENDING to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING the need to promote and protect foreign investments and to support cooperation between investors and the Host State with the aim of fostering the economic prosperity and sustainable development of both States,

AIMING to ensure the balance between interests of investors and Host State,

AFFIRMING the mutual supportiveness of investment, environment and labour policies in this respect,

REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law,

DETERMINED to prevent and combat corruption, including bribery, in international investment and to encourage investors to respect internationally recognised corporate social responsibility standards and principles, such as the OECD Guidelines for Multinational Enterprises,

Have agreed as follows:

SECTION A – DEFINITIONS AND SCOPE

Article 1- Definitions

For the purposes of this Agreement:

1. The term “enterprise” means any for profit entity constituted or organized under applicable law of the contracting parties, whether privately or governmentally owned or controlled, including a corporation, partnership, sole proprietorship, association, or similar organization.
2. The term “investment” means the following kinds of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, inter alia, the commitment of capital or other resources, the expectation of gain or profit the assumption of risk, a certain duration and the investor performs via its investment substantial business activities in the Host State:
    a) an enterprise;
    b) shares, stocks and other forms of equity participation in an enterprise;
    c) bonds, debentures and other debt instruments of an enterprise;
    d) a loan to an enterprise;
    e) any other kind of interest in an enterprise;
    f) an interest arising from:
        (i) a concession conferred pursuant to the law of a Party or under a contract, including to search for, cultivate, extract or exploit natural resources,
        (ii) a turnkey, construction, production or revenue-sharing contract; or
        (iii) other similar contracts;
    g) intellectual property rights;
    h) other moveable property, tangible or intangible, or immovable property and related rights;
    i) claims to money or claims to performance under a contract.

    For greater certainty, the investment does not include:

a) claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party.

b) the domestic financing of such contracts; or

c) any order, judgment, or arbitral award related to sub-subparagraph (a) or (b);

d) private equity funds;

e) futures, swaps, forwards, options, and other derivatives traded in nonregulated, over the counter, market.

3. The term "investor" means:

a) a natural person who is cumulatively a national and permanent resident of the Home State; a natural person who is a dual national shall be deemed to be exclusively a national of the state of his or her dominant and effective nationality;

b) an enterprise other than a branch and a representative office or a sovereign wealth fund], which is constituted or organised under the law of the Home State and has its seat, together with substantial business activities in the territory of the Home State.

4. The term “territory” means the territory of a Contracting Party as defined by the land territory, internal waters and the airspace above them over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.

5. The term “Host State“ means the Contracting Party in which the investment is located.

6. The term „Home State“ means the Contracting Party which is the state of origin of the investor.

7. The term „returns“ means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income.

8. The term “ICSID Additional Facility Rules“ means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes.

9. The term “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965.

10. The term “disputing parties” means the claimant and the respondent.

11. The term “claimant” means investor or alleged investor seeking a remedy for the alleged breach of the Agreement by the Host State under Section C [Investor State Dispute Settlement].

12. The term “respondent” means the Contracting Party that is a party to proceedings under Section C.

Article 2 - Scope

1. This Agreement applies to measures adopted or maintained by a Host State relating to investors and their investments.

2. This Agreement shall apply to investments in the territory of a Host State that are made in accordance with its law by investors, whether investments were made before or after entry into force of the Agreement.

3. This Agreement shall not apply to claims or disputes arising from events which occurred prior to its entry into force.

4. This Agreement shall apply without prejudice to the obligations of the Host State deriving from their membership or participation in any existing or future customs unions, economic union, regional economic integration agreement or similar international agreement such as the European Union. Consequently the provisions of this Agreement may not be invoked or interpreted, neither

in whole nor in part, in such a way as to invalidate, amend or otherwise affect the obligations of the Slovak Republic arising from the Treaties on which the European Union is founded as well as from the primary and secondary law of the European Union.

5. This Agreement shall not apply to measures by a Host State in public health insurance and pension schemes.

SECTION B - PROMOTION AND PROTECTION OF INVESTMENTS

Article 3 – Promotion of investments

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
2. The Contracting Parties recognise that it is inappropriate to weaken or reduce the level of protection provided by domestic health, safety, labour or environmental laws, regulations or standards with the sole intention to encourage investment. Accordingly, a Contracting Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws, regulations or standards in order to encourage investment of an investor from the other Contracting Party.
3. Each Contracting Party shall publish, or otherwise make publicly available, its laws and regulations of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.

Article 4 - Right to Regulate

1. For the purpose of this Agreement, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.
2. For greater certainty, the mere fact that a Home state regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Section.
3. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy:
   a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy;
   b) or in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy,

   does not constitute a breach of the provisions of this Section.
4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy or requesting its reimbursement where such measure is necessary in order to comply with international obligations between the Parties or has been ordered by a competent court, administrative tribunal or other competent authority, or requiring that Party to compensate the investor therefor.

Article 5 - Standard of Treatment

1. Each Contracting Party shall accord to investments and returns of investors of the other Contracting Party, and to investors with respect to their investments, at all times fair and equitable treatment and full protection and security in accordance with paragraphs 2 to 4.
2. A breach of the obligation of fair and equitable treatment referenced in paragraph 1 may be found only where a measure or series of measures constitutes:

a) denial of justice in criminal, civil or administrative proceedings;

b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;

c) manifest arbitrariness;

d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or

e) abusive treatment of investors, such as coercion, duress and harassment.

3. For greater certainty, 'full protection and security' refers to the Party's obligations relating to physical security of investors and investments.

4. For greater certainty, a breach of another provision of this Agreement, or of a separate international agreement does not establish a breach of this Article.

5. Upon a proposal of a Contracting Party the Contracting Parties shall duly consider the amendment of the paragraph 2. of this Article in order to add another elements which constitute breach of the fair and equitable treatment obligation.

Article 6 - National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall accord to investors of the other Contracting Party and their investments and returns treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments and returns with respect to the management, conduct, operation, maintenance, use, enjoyment, expansion and sale or other disposition of investments in its territory.

2. Each Contracting Party shall accord to investors of the other Contracting Party and their investments and returns treatment no less favourable than that it accords, in like circumstances, to investors of any third state or to their investments and returns with respect to the management, conduct, operation, maintenance, use, enjoyment, expansion and sale or other disposition of investments in its territory.

3. For greater certainty, a determination of whether an investment or an investor is in like circumstances for the purposes of paragraphs 1 and 2 shall be made based on an assessment of the totality of circumstances related to the investor or the investment, including the business sector in which the investor operates, character of the measure, its nature, purpose, duration or and rationale.

4. For greater certainty, the "treatment" referred to in paragraph 2 includes neither procedures for the resolution of investment disputes between investors and states provided for in other international investment treaties, nor investment contracts concluded between Host State and investors promoting investment of such investors. Substantive obligations in other international investment treaties and other trade agreements do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply to:

   a) government procurement;

   b) subsidies or grants provided by a Host State, including government-supported loans, guarantees and insurance.

Article 7 - Expropriation

1. A Party shall not nationalise or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalisation or expropriation ("expropriation"), except:

a) for a public purpose;

b) under due process of law;

c) in a non-discriminatory manner; and

d) on payment of prompt, adequate and effective compensation.

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. The compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay, to the country designated by the investor and in the currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.

4. Expropriation may be direct or indirect:

a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

b) indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

5. The determination of whether a measure or series of measures of a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:

a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

b) the duration of the measure or series of measures of a Party;

c) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and

d) the character of the measure or series of measures, notably their object, context and intent.

6. For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.

7. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreements ("TRIPS Agreement").

8. For greater certainty, the revocation, limitation or creation of intellectual property rights, to the extent that these measures are consistent with the TRIPS Agreement, do not constitute expropriation.

Article 8 - Compensation for Losses

1. Investors of a Contracting Party whose covered investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot, or any other similar event in the territory of the other Party shall be accorded by the latter Party, with respect to

restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by the latter Party to its own investors or to the investors of any third state, whichever is more favourable to the investor

2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from:

   a) requisitioning of their covered investment or a part thereof by the latter's armed forces or authorities; or

   b) destruction of their covered investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation;

   shall be accorded prompt, adequate and effective restitution or compensation by the other Party. The amount of such compensation shall be determined in accordance with the provisions of paragraph 2 of Article 7, from the date of requisitioning or destruction until the date of actual payment.

Article 9 – Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made without restriction or delay in a freely convertible currency and at the market rate of exchange applicable on the date of transfer. Such transfers include:

   a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;

   b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, or other forms of returns or amounts derived from the covered investment;

   c) proceeds from the sale or liquidation of the whole or a part of the covered investment;

   d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;

   e) payments made pursuant to Articles 7 and 8;

   f) earnings and other remuneration of foreign personnel working in connection with an investment; and

   g) payments of damages pursuant to an award issued under Section C.

2. Unless otherwise agreed with the investor, each Contracting Party shall ensure that the investor can make such transfers at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

3. Nothing in this Article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner and not in a way that would constitute a disguised restriction on transfers, 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;

   d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

   e) the satisfaction of judgments in adjudicatory proceedings.

   f) compulsory contributions to social security, public retirement and compulsory savings programs; or

   g) compliance with taxation laws.

Article 10 - Denial of Benefits

1. A Party may deny the benefits of this Section to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

   a) an investor of a third country owns or controls the enterprise; and

   b) the denying Party adopts or maintains a measure with respect to the third country that:

      i. relates to the maintenance of international peace and security; and

      ii. prohibits transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.]

Article 11 - Subrogation

1. If a Contracting Party, or an agency thereof, makes a payment under an indemnity, guarantee or contract of insurance it has entered into in respect of an investment made by one of its investors in the territory of the other Contracting Party, the other Contracting Party shall recognize that the Contracting Party or its agency shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Contracting Party or an agency thereof, or by the investor if the Contracting Party or an agency thereof so authorizes. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

Article 12 – Prudential Measures

1. Nothing in this Agreement shall prevent a Contracting Party from adopting or maintaining measures for prudential reasons, including for:

   a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and

   b) ensuring the integrity and stability of a Contracting Party's financial system.

2. [Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Contracting Party's commitments or obligations under the Agreement.

3. Nothing in this Agreement shall be construed as requiring a Contracting Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.]

Article 13 - Taxation measures

1. Except as provided in this Article, nothing in this Agreement shall impose obligations on Contracting Parties with respect to taxation measures.

2. Article 5 shall apply to all taxation measures, except that a claimant that asserts that a taxation measure involves an expropriation may submit a claim to arbitration under Section C only if:

   a) the claimant has first referred to the competent tax authorities of both Contracting Parties in writing the issue of whether that taxation measure involves an expropriation; and

   b) within 180 days after the date of such referral, the competent tax authorities of both Contracting Parties fail to agree that the taxation measure is not an expropriation.

3. For the purposes of this Article, the "competent tax authorities" means:

   a) for the Slovak Republic, the Ministry of Finance of the Slovak Republic

   b) for the ……, …….

4. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under any tax treaty. In the event of any inconsistency between this Agreement and any such treaty, that treaty shall prevail to the extent of the inconsistency. In the case of a tax treaty between the Contracting Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that treaty.

Article 14 - Essential Security

1. Nothing in this Agreement shall be construed:

   a) to require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests; or

   b) to prevent a Party from taking an action that it considers necessary to protect its essential security interests:

      i. connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology undertaken, and to economic activities, carried out directly or indirectly for the purpose of supplying a military or other security establishment;

      ii. taken in time of war or other emergency in international relations; or

      iii. relating to fissionable and fusionable materials or the materials from which they are derived;

   c) prevent a Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.

SECTION C - INVESTOR-STATE DISPUTE SETTLEMENT

Article 15 – Scope and general provisions

1. Under conditions set out in this Section the claimant may submit to the arbitration a claim that the respondent has breached an obligation under Articles 5 to 14 of this Agreement where the claimant claims to have suffered damage as a result of the alleged breach.

2. The respondent consents to the settlement of the dispute with the claimant in the proceedings set out in this Section.

3. Claims may be submitted only to the extent the measure relates to the existing business operations of an investment and the investor has, as a result, incurred damage with respect to the investment.

4. For greater certainty, with respect to the damage alleged by the claimant and without prejudice to the alleged breach of this Agreement, the respondent may submit a counterclaim related to the investment that the claimant has contributed to the damage by its conduct or negligence or that it has not taken all reasonable steps to mitigate possible damages.

5. For greater certainty, the claimant may not submit a claim under this Section if the investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

6. A claim with respect to restructuring of debt issued by the respondent may only be submitted under this Section in accordance with Annex I.

7. The UNCITRAL Transparency Rules, shall apply in connection with proceedings under this Section.

8. Delivery of any notice and other documents under this Section C on the respondent shall be made to the place named for the respondent below:

   a) for the Slovak Republic to the Ministry of Finance of the Slovak Republic;

   b) for the … … .

Article 16 – Consultations

1. A dispute should as far as possible be settled amicably through consultation which may include the use of non-binding, third-party procedures. Such a settlement may be agreed at any time, including after the claim has been submitted to arbitration pursuant to Article 17.
2. Without prejudice to paragraph 1, the claimant may not submit a request for consultations if the dispute or claim relating to the measure underlying the claim under this Agreement was resolved via other legal remedies.
3. The claimant shall submit to the other Party a request for consultations setting out:
   a) the name and seat of the claimant;
   b) evidence establishing that the claimant is an investor of the other Party and that it owns or controls the investment.
   c) shareholder structure of the claimant, identification of the ultimate beneficial owner of the investment in question;
   d) the provisions of the Agreement alleged to have been breached;
   e) the legal and the factual basis for the claim, including the measures/treatment at issue; and
   f) the relief sought and the estimated amount of damages claimed;
4. A request for consultations must be submitted within:
   a) three years after the date on which the claimant or, as applicable, its investment as a locally established enterprise, first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the investor or, as applicable, its investment as a locally established enterprise, has incurred loss or damage thereby; or
   b) two years after an investor or, as applicable, its investment as a locally established enterprise, ceases to pursue claims or proceedings before a tribunal or court under the law of a Party, or when such proceedings have otherwise ended and, in any event, no later than 10 years after the date on which the investor or, as applicable, its investment as a locally established enterprise, first acquired or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby.

Article 17 – Submission of Claim to Arbitration

1. If a dispute has not been resolved in 6 months after submission of request for consultations, the claimant may submit the claim to arbitration
   a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the Host State and Home State are parties to the ICSID Convention;
   b) under the ICSID Additional Facility Rules, provided that either the Host State or the Home State is a party to the ICSID Convention;
   c) under the UNCITRAL Arbitration Rules; or
   d) if the claimant and the Host State agree, to any other arbitration institution or under any other arbitration rules.

   In case of any conflict between the provisions of this agreement and the provisions of applicable arbitration rules, the provisions of this Agreement shall prevail.
2. The claimant may only submit the claim to arbitration if, cumulatively
   a) delivers to the respondent, with the submission of a claim,
      i. its consent to the settlement of the dispute in the arbitration under conditions set out in this Section; for greater certainty the consent includes the counterclaim pursuant to paragraph 4. of Article 15.

ii. the name of the arbitrator that the claimant appoints; and

iii. any changes to the information provided by claimant in its request for consultations.

b) no more than 18 months elapsed from submission of request for consultations, unless the disputing parties agreed on longer period;

c) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and

d) waives its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.

Letters (c) and (d) above do not apply for injunctive, declaratory or other non-pecuniary legal remedy provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

Article 18 – Constitution of Arbitral Tribunal

1. Unless the claimant and respondent otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by the claimant and another by the Host State and the third, who shall be the presiding arbitrator, shall be a national of a third country appointed by agreement of the claimant and the respondent.

2. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of the claimant or the Host State, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The claimant and the Host State do not lose their right to appoint arbitrators according to paragraph 1 until the appointing authority does so.

3. Arbitrators appointed pursuant to this Article shall have demonstrated expertise in public international law. It is desirable that they have expertise in particular, in international investment law, in international trade law and the resolution of disputes arising under international investment or international trade agreements.

4. The Arbitrators shall be independent. They shall not be affiliated with any government. They shall not take instructions from any organisation, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration. In so doing they shall comply with Annex II of this Agreement (Code of Conduct). In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment dispute under this or any other international agreement.

Article 19 – Applicable law

1. When rendering its decision, the Tribunal established under this Section shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.

2. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

3. Where serious concerns arise as regards matters of interpretation of a provision of the Agreement relevant for the dispute, the Contracting Parties may submit to the tribunal a joint interpretation of the respective provision which shall be binding on a tribunal. For greater certainty, the joint interpretation shall only interpret existing provision of the Agreement to be applied in a given dispute instead of creating a new rule.

Article 20 – Anti-circumvention

1. For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the investment subject to the dispute and the Tribunal determines, on the basis of the facts of the case, that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim under this Section. The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

Article 21 - Third party funding

1. Where there is third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third party funder.
2. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.
3. A tribunal shall order security for costs if it considers that there is a reasonable doubt that the claimant funded by the third party funder would be not capable of satisfying a costs award. If the security for costs is not posted in full within 60 days after the Tribunal’s order or within any other time period set by the Tribunal, the Tribunal shall discontinue the proceedings.

Article 22 - Claims manifestly without legal merit

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.
2. An objection shall not be submitted under paragraph 1 if the respondent has filed an objection pursuant to Article 23.
3. The respondent shall specify as precisely as possible the basis for the objection.
4. On receipt of an objection pursuant to this Article, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.
5. The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.
6. This Article shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

Article 23 - Claims unfounded as a matter of law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent

that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 17 is not a claim for which an award in favour of the claimant may be made under this Section, even if the facts alleged were assumed to be true.

2. An objection under paragraph 1 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.

3. If an objection has been submitted pursuant to Article 17, the Tribunal may, taking into account the circumstances of that objection, decline to address, under the procedures set out in this Article, an objection submitted pursuant to paragraph 1.

4. On receipt of an objection under paragraph 1, and, if appropriate, after rendering a decision pursuant to paragraph 3, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

Article 24 - Discontinuance

1. If, following the submission of a claim to arbitration under Article 17, the claimant fails to take any steps in the proceeding during 180 consecutive days or such period as the disputing parties may agree, the investor is deemed to have withdrawn its claim and to have discontinued the proceeding. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered the authority of the Tribunal shall lapse.

Article 25 - Final award

1. If the Tribunal makes a final award against the respondent, the Tribunal may only award monetary damages and any applicable interest. For greater certainty, the Tribunal shall not award punitive damages.

2. Monetary damages shall not be greater than the loss suffered by the claimant by the breach of the Agreement by the respondent reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any restitution of property or repeal or modification of the measure.

3. The Tribunal shall order that the costs of the proceedings and other reasonable costs, including costs of legal representation and assistance, be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. If only parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

Article 26 - Enforcement of Awards

1. Subject to paragraph 2, a disputing party shall recognise and comply with an award without delay.

2. A disputing party shall not seek enforcement of a final award until:

   a) in the case of a final award issued under the ICSID Convention:

      i. 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

      ii. enforcement of the award has been stayed and revision or annulment proceedings have been completed;

b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or any other rules applicable pursuant to Article 17 paragraph 1d):

i. 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

ii. enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

3. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where the execution is sought.

4. A final award issued pursuant to this Section is an arbitral award that is deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

SECTION D
SETTLEMENTS OF DISPUTES BETWEEN THE CONTRACTING PARTIES

Article 27 - Settlements of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement, that is not resolved through consultations or other diplomatic channels within 180 days, shall be submitted on the request of either Contracting Party to arbitration for a binding decision or award by a tribunal in accordance with UNCITRAL Arbitration Rules, except as modified by the Contracting Parties or this Agreement.

2. Unless the Contracting Parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each Contracting Party and the third, who shall be the presiding arbitrator, appointed by agreement of the Parties. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, 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.

3. Expenses incurred by the arbitrators, and other costs of the proceedings, shall be paid for equally by the Contracting Parties. However, the tribunal may, in its discretion, direct that a higher proportion of the costs be paid by one of the Contracting Parties.

4. Article 19 shall apply mutatis mutandis to arbitrations under this Article.

SECTION E - FINAL PROVISIONS

ARTICLE 28 - Entry into Force, Duration and Termination

1. This Agreement is subject to an approval in accordance with procedures required by law of both Contracting Parties and it shall enter into force on the 90th day after the date of the last Contracting Party's notification confirming ratification of it.

2. This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given notice of termination to the other Contracting Party.

3. In respect of investments made prior to the date of the termination of this Agreement the provisions of this Articles 1 to 28 of this Agreement shall continue to be effective for a period of five (5) years from the date of its termination, unless the Contracting Parties agree otherwise.

4. Upon the entry into force between the Contracting Parties of an international agreement providing for a multilateral investment tribunal and/or a multilateral appellate mechanism applicable to disputes under this Agreement, the relevant parts of this Agreement shall be amended to make disputes under this Agreement subject to the jurisdiction of the multilateral mechanism.

5. Annexes I and II of this Agreement is an inseparable part of this Agreement and shall have the same binding effect as the Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized thereto, have signed this Agreement.
DONE in duplicate at _____ on the _____ day of _____ in the Slovak, ……. and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

For	**For**
the Slovak Republic	**……..**
_____	_____

ANNEX I - PUBLIC DEBT

1. For the purposes of this Annex:

   "negotiated restructuring" means the restructuring or rescheduling of debt of a Contracting Party that has been effected through

   a) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or

   b) a debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt subject to restructuring have consented to such debt exchange or other process; and

   "governing law" of a debt instrument means a jurisdiction's laws applicable to that debt instrument.

2. No claim that a restructuring of debt of a Contracting Party breaches an obligation under Section B of this Agreement may be submitted, or if already submitted continue, under Section C of this Agreement if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 5 of this Agreement.

3. Notwithstanding Article 20, paragraph 1, subparagraph b) of this Agreement and subject to paragraph 2 of this Annex 2, an investor of a Contracting Party may not submit a claim under Section C of this Agreement that a restructuring of debt of a Contracting Party breaches an obligation under Section B except for the Article 5 of this Agreement[1] unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 18 of this Agreement.

4. For greater certainty, "debt of a Contracting Party" means a debt instrument of any level of government of a Contracting Party.

[1] For greater certainty, mere differences in treatment accorded by a Contracting Party to certain investors or investments on the basis of legitimate policy objectives in the context of a debt crisis or threat thereof, including those differences in treatment resulting from eligibility for debt restructuring, do not amount to a breach of Article 5 of this Agreement.

ANNEX II - CODE OF CONDUCT FOR ARBITRATORS

Definitions

1. In this Code of Conduct:

"arbitrator" means a member of a tribunal established pursuant to Section C or Section D;

"candidate" means an individual who is under consideration for selection as an arbitrator;

"assistant" means a person who, under the terms of appointment of an arbitrator, conducts, researches or provides assistance to the arbitrator; and

"staff", in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

Responsibilities to the process

2. Throughout the proceedings, every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Arbitrators shall not take instructions from any organisation or government with regard to matters before a tribunal. Former arbitrators must comply with the obligations established in paragraphs 15 and 16 of this Code of Conduct.

Disclosure obligations

3. Prior to confirmation of his or her selection as an arbitrator under Section Investor-State Dispute Settlement, a candidate shall disclose any past or present interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. A candidate or arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct to the disputing parties and the non-disputing Party only.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding at the earliest time the arbitrator becomes aware of it. The arbitrator shall disclose such interests, relationships or matters by informing the disputing parties and the non-disputing Party, in writing, for their consideration.

Duties of arbitrators

6. Upon selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding and with fairness and diligence.

7. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

8. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with paragraphs 2, 3, 4, 5, 10, 11, 12, 13, 14, 16, 17 and 18 of this Code of Conduct.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

Independence and impartiality of arbitrators

10. An arbitrator must be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political

considerations, public clamour, loyalty to a disputing party or a non-disputing Party or fear of criticism.

11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere, with the proper performance of his or her duties.

12. An arbitrator may not use his or her position on the tribunal to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.

13. An arbitrator may not allow financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.

14. An arbitrator must avoid entering into any relationship or acquiring any financial interest that is likely to affect him or her impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of former arbitrators

15. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived any advantage from the decision or ruling of the tribunal.

Confidentiality

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in particular, disclose or use any such information to gain a personal advantage or an advantage for others or to affect the interest of others.

17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Section C [Investor State Dispute Settlement] or Section D [Settlements of disputes between the contracting parties].

18. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's view regarding the deliberations.

Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred.

Replacement

20. Where a disputing party considers that an arbitrator does not comply with the requirements of the Code of Conduct, that disputing party shall send a notice of challenge to the appointing authority, and inform the other disputing party, within 15 days from the time it became aware of the circumstances underlying the arbitrator's non-compliance with the Code of Conduct. The notice of challenge shall state the specific grounds for the challenge.

21. After receiving such a notice, the appointing authority shall, after hearing the disputing parties and after providing the arbitrator subject to the notice of challenge an opportunity to submit any observations, issue a decision within 60 days of receipt of the notice of challenge and notify the disputing parties and the other arbitrators.

22. If the appointing authority decides pursuant to paragraph 21 of the Code of Conduct that an arbitrator has not complied with the requirements of the Code of Conduct, such arbitrator shall resign from the tribunal and a new arbitrator shall be appointed by the disputing party that had appointed the resigning arbitrator. In case it is the presiding arbitrator who shall resign from the tribunal, a new presiding arbitrator shall be [a national of a third country] appointed by agreement of the disputing parties. If the new arbitrator has not been appointed within 30 days of the date of the appointing authority's decision, the appointing authority, on the request of either disputing party, shall appoint, in his or her discretion, the new arbitrator.

23. The arbitration proceedings shall be suspended for the period taken to carry out the procedure provided for in paragraphs 20 through 22 of the Code of Conduct.