Agreement between the Cabinet of Ministers of Ukraine and the Government of the Democratic Republic of the Congo on promotion and mutual protection of investments

The Cabinet of Ministers of Ukraine and the Government of the Democratic Republic of the Congo, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation for the mutual benefit of both States,

Intending to create and maintain favorable conditions for investors of one State in the territory of another State, and

Recognizing that the promotion and mutual protection of investments under this Agreement stimulate business initiatives in this field,

Agreed on the following:

Article 1. Definition

For the purposes of this Agreement:

1. The term "investment" covers any type of assets invested in connection with an economic activity of an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter, and includes, but are not limited to

(A) movable and immovable property, as well as any other property rights, such as mortgages, rights of maintenance, provision on the basis of such rights,

(B) shares, securities and debt obligations of companies or any other form of participation in the company,

(C) requirements for money or for any performance obligations that have an economic value associated with the investment,

(D) intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, company names and goodwill related to investment,

(E) any right granted in accordance with the law, or contract, and any licenses and permits in accordance withlegislation, including concessions for the exploration, extraction, development and exploitation of natural resources.

Any change in the form in which the assets are invested will not affect their character as investment.

2. The term "investor" means any natural or legal person who invests in the territory of the other Contracting Party

(A) the term "individual" will mean any individual having the nationality of either Contracting Party in accordance with its legislation

(B) the term "legal entity" means any organization that is incorporated or founded or otherwise properly organized in accordance with the laws of any of the Contracting Parties, including companies, associations, partnerships, corporations, and others.

3. The term "proceeds" means amounts received in consequence of investment and, in particular, but not exclusively, include profits, interest, capital gains, stocks, dividends, royalties and service charges.

4. The term "territory" means, in relation to each of the Contracting Parties, the territory under its sovereignty and the marine and underwater areas over which this Contracting Party carries out, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2. Promoting and Protecting Investment

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party for the purpose of investing in its territory and shall allow such investments in accordance with its legislation.

2. Investments of investors of either Contracting Party shall enjoy fair and equal treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. Most Favored Nation Regime

1. Each Contracting Party shall, in its territory, provide investment and income of investors of the other Contracting Party a treatment that is fair and equitable and equally as favorable as that accorded to investors and investors of any other State.

2. Each Contracting Party shall, in its territory, provide investors of the other Contracting Party with respect to the management, maintenance, use, receipt of profits and disposal of their investments, a regime which is just and equitable and equally favorable than that accorded to investors of any other State.

3. The provisions of paragraphs 1 and 2 of this Article shall not be interpreted to oblige one Contracting Party to extend to investors the other benefit of any regime, preferences or privileges which may be extended by the latter Contracting Party arising from

(A) Any customs union or free trade zone or a monetarist union or similar international agreements leading to such unions, or investments or other forms of regional co-operation to which either Contracting Party may become party,

(B) Any international agreement or arrangement that fully or substantially taxed.

Article 4. Compensation for Loss

1. When investments by investors of either Contracting Party are due to war, armed conflict, national emergency, coup, uprising, rebellion, or other similar events in the territory of the other Contracting Party, they shall be accorded to the latter Contracting Party a regime in respect of restitution, reparation, compensation or other A resolution that is no less favorable than that accorded by the latter Contracting Party to its owners or investors of any third State.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of the same Contracting Party who, during any of the events referred to in this paragraph, suffer losses in the territory of the other Contracting Party arising out of

(A) requisition of their property by its forces or authorities, or

(B) destruction of their property by its forces or authorities, which was not was caused by military actions, or not required by the necessary situation,

Fair and adequate compensation will be provided for losses incurred during the period of requisition or as a result of the ownership of the product.

The emerging payments will be freely transferable in freely convertible currency without delay.

Article 5. Expropriation

1. Investments of investors of any Contracting Party shall not be nationalized, expropriated or subjected to measures having the effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation) in the territory of the other Contracting Party, except for public purposes.

Expropriation will be conducted in due process, on a non-discriminatory basis and will be accompanied by conditions for the payment of immediate, adequate and effective compensation.

Such compensation will equal the market value of investments when expropriation or threat of expropriation has become commonplace, will include the percentage of surrendered expropriation, will be done without delay, will be such that is effectively implemented and freely translated into a freely convertible currency.

2. An injured investor will have the right to an immediate review by the judicial or other independent authority of that Contracting Party in his case, and the assessment of his investments in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply when a Contracting Party expropriates the assets of a

company which is established in accordance with the law applicable to any part of its own territory and to which investors of the other Contracting Party hold shares of those assets.

Article 6. Transfers

1. The Contracting Parties guarantee the transfer of payments that are applied to investment and income.

Transfers will be made in freely convertible currency, without any restrictions and unnecessary delay.

Such remittances include, but are not limited to

(A) capital and additional amounts to support or increase investment

(B) profit, interest, dividends and other current income;

(C) funds for loan repayment;

(D) royalty or fee for services;

(E) proceeds from sale or liquidation of investments;

(F) earnings of individuals in accordance with the laws and regulations of the Contracting Party in which the investment was made.

2. For the purposes of this Agreement, the exchange rates will be official courses valid for current transactions on the date of transfer, unless otherwise stated.

Article 7. Subrogation

1. If a Contracting Party or a designated intermediary makes payments to its own investors under the guarantee that it has provided in connection with an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize

(A) transfer, either by law or according to a lawful agreement in this country, any right or claim of the investor to the previous Contracting Party or its designated intermediary, as you,

(B) that the prior Contracting Party or its designated intermediary has the right, as a result of subrogation, to exercise the rights and to prescribe the claims of this investor and the obligations associated with this investment.

2. Obtained as a result of the subrogation of rights or claims will not go beyond the rights and requirements of the investor.

Article 8. Disputes between the Contracting Party and the Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with the investment in the territory of that other Contracting Party shall be settled by negotiation between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be resolved in this way within six months, the investor will be entitled to transfer the case to either:

(A) The International Center for the Settlement of Investment Disputes / ICSID /, bearing in mind the relevant provisions of the Convention on the Settlement of Investment Disputes between States and Citizens of Other States, opened for signature in Washington, DC, on March 18, 1965, in the case where both Contracting Parties have become parties to this Convention, or

(B) An international arbitrator or an international ad hoc arbitration tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The parties to the dispute may agree to change these Rules in writing.

Arbitral decisions will be final and binding for both parties to the dispute.

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 resolved through consultations or negotiations.

2. If such a dispute can not be resolved in this way within six months, it shall, at the request of any Contracting Party, be referred to the Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be established for each individual case as follows

Within two months after receipt of an arbitration award, each of the Contracting Parties shall appoint one member of this Court.

These two members shall then elect a citizen of a third State, who, after approval by the Contracting Parties, will be appointed Chairman of the Court (hereinafter referred to as the "Chairman").

The chairman will be appointed within three months from the date of appointment of the other two members.

4. If, during any of the periods specified in paragraph 3 of this article, the necessary appointments have not been made, the President of the International Court of Justice will be requested to make the necessary appointments.

If it turns out that he is a citizen of any Contracting Party or if other reasons prevent him from fulfilling the specified function, the Vice President will be invited to make the necessary appointments.

If it turns out that the Vice-President is also a citizen of any Contracting Party, or is unable to perform this function, a member of the International Court of Justice, following a seniority who is not a citizen of any Contracting Party, will be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes.

Such decisions shall be binding.

Each Contracting Party shall bear the costs of its members of the court and its representation in the arbitration proceedings

The expenses in respect of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

The Arbitral Tribunal will determine its own procedure.

Article 10. Application of other Rules and Special Obligations

1. If a matter is regulated simultaneously by this Agreement and another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent the Contracting Parties or any of its investors having investments in the territory of another Contracting Party to enjoy the benefits of those rules which are most favorable in relation to his case.

2. If the treatment to be granted by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other special provisions of contracts is more favorable than that accorded by this Agreement, will be granted more favorable.

Article 11. Application of this Agreement

The terms of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party, both before and after the entry into force of this Agreement.

Article 12. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other of the completion of the procedures required by its legislation for acquiring the validity of this Agreement.

This Agreement will come into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and continue to remain in force for the next five years thereafter, until one year before the start of the initial or any subsequent periods, one of the Contracting Parties shall not notify the other Contracting Party in writing of its intention to terminate this Agreement.

3. With respect to investments made prior to the termination of this Agreement, the terms of this Agreement shall remain in effect for a period of ten years, subject to termination.

In witness whereof the undersigned, being duly authorized, have signed this Agreement.

Made in Kinshasa on October 11, 2000 in two valid copies, each in Ukrainian and in French, all texts being equally authentic.

FOR THE CABINET OF MINISTERS OF UKRAINE

(signature)

FOR THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO

(signature)