

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA ON PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Belarus and the Government of the Republic of Moldova, hereinafter referred to as the Contracting Parties, desiring to deepen economic cooperation for the mutual benefit of both countries and to create favorable conditions for increasing investments of investors of one State in the territory of another State, Conscious that the promotion and reciprocal protection of investments in accordance this Agreement will contribute to the development of business initiatives and prosperity in both countries, have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement, the following terms shall have the following meanings:

Investors:

In respect of the Republic of Belarus:

- a) individuals who are in accordance with the legislation of the Republic of Belarus of its citizens who invest in the territory of the Republic of Moldova;
- b) legal entities, including companies, partnerships, associations and other associations or organizations properly established or incorporated under the laws of the Republic of Belarus, with its seat, as well as performing the actual economic activity in the territory of the Republic of Belarus and the investment in the territory of the Republic of Moldova;

In respect of the Republic of Moldova:

- a) individuals who are in accordance with the legislation of the Republic of Moldova of its citizens who invest in the territory of the Republic of Belarus;
- b) legal entities, including enterprises, economic associations and any other organizations, as appropriate established or incorporated under the laws of the Republic of Moldova, having their seat, as well as performing the actual economic activity in the territory of the Republic of Moldova and the investment in the territory of the Republic of Belarus;

Investment - any kind of property, which is owned by the state investor of one Contracting Party and is embedded in the territory of the other Contracting Party in accordance with the legislation of that Contracting Party, and shall include, in particular, but not exclusively:

- a) movable and immovable property and any other property rights (such as mortgages, liens and security);
- b) stocks, shares, bonds and any other form of participation in companies;
- c) claims in respect of money or any performance obligations under the contract, which have any economic value;
- d) intellectual property rights (such as copyrights, patents for inventions, utility models, industrial designs, trademarks or service marks, trade names, indications of origin), know-how and goodwill;
- e) The right to engage in economic activities, including the rights to exploration, extraction or exploitation of natural resources, as well as all other rights granted by law, contract or by decision of the competent authority in accordance with the law.

Any change in the form in which assets are invested does not affect its character as an investment. The term "investment" includes all investments, regardless of when they were carried out - before or after the entry into force of this Agreement;

Revenues - amounts received by any of investments, and in particular, but not exclusively, include profits, interest, dividends, royalties, income from capital gains and royalties; legislation - the state law of the Contracting Party;

Territory - the territory of the State in which that State exercises sovereign rights or jurisdiction in which it is in accordance with international law;

Expropriation - alienated state authorities of one Contracting Party, part or all of the investment of the investor of the other Contracting Party in the public interest and in this Agreement shall be considered as a sanction for violation of the law.

## **Article 2. Facilitation of Implementation and Protection of Investments**

1. Each Contracting Party shall facilitate the implementation, to create favorable conditions for investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.

2. Investments of investors of each Contracting Party shall always be given equal treatment, as well as a comprehensive legal protection on the territory of the other Contracting Party in accordance with this Agreement. Each Contracting Party shall not prevent the adoption by unreasonable or discriminatory measures the management, disposal of investments and their maintenance and use in its territory by investors of the other Contracting Party. Each Contracting Party shall comply with any commitment made in relation to the investments of investors of the other Contracting Party.

## **Article 3. Investment Regime**

1. Each Contracting Party shall provide in its territory in respect of investments and income of investors of the other Contracting Party treatment no less favorable than that which it accords to investments and revenues of its own investors or to investments and returns of investors of any third state.

2. Each Contracting Party shall provide in its territory to investors of the other Contracting Party on the management, disposal of investment or maintenance and utilization of treatment no less favorable than that it accords to its own investors or investors of any third state.

## **Article 4. Exceptions**

1. The provisions of this Agreement regarding the provision of treatment no less favorable than that accorded to the investors of the Contracting Parties or to investors of any third State shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting State Party the benefit of any regime, preference or privilege resulting from any:

a) existing or possible future free trade agreement, a customs or economic union or a similar regional organization to which is or may become in the future one of the Contracting Parties; or

b) an international agreement or arrangement relating wholly or mainly to taxation or domestic legislation on these issues.

2. Each Contracting Party shall have the right to establish exceptions to the non-discriminatory basis for state investors of the other Contracting Party in specific industries and occupations, which exclude or restrict the activities of foreign investors. Such exceptions must be made in the form of annexes to this Agreement, which will be an integral part thereof. Each Contracting Party shall notify the other Contracting Party on the specified exceptions, alleged to be administered in the future in sectors and areas.

## **Article 5. Indemnification**

1. State Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of emergency, revolt, insurrection or riots in the territory of the second Contracting Party, the other Contracting Party shall be accorded treatment, no less favorable than that which that Contracting Party accords to its own investors or investors of any third state in regard to the recovery of damages, compensation or other settlement. Due in this regard, payments can be transferred without restriction.

2. Without prejudice to paragraph 1 of this Article investors of one Contracting Party who in any of the situations referred to in this paragraph shall be in the territory of the other Contracting Party losses due to requisitioning of their property by the authorities or forces the second or the destruction of their own forces or authorities of the second, despite the fact that it was not caused by the necessity of the situation, provided the second Contracting Party to compensation, which in any case will be timely, adequate and efficient. Due in this regard, payments will be transferred without restriction.

## **Article 6. Expropriation and Compensation**

Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be subject to expropriation, nationalization or other measures, the effect of which is equivalent to expropriation (hereinafter - the expropriation), except in the public interest, on a non-discriminatory basis and in providing timely, adequate and effective compensation. This compensation is the actual value of the expropriated investment at the time immediately preceding the implementation of expropriation or its disclosure, depending on what has taken place before, including interest calculated on the basis of the rate YBOK for the period from the date of expropriation until the date of payment, shall be paid in the currency of the original investment without undue delay, be effectively realizable and can be transferred without restriction.

An investor who has suffered damage has the right under the law of the Contracting Party carrying out the expropriation, to a prompt trial and analysis of the evaluation of the relevant investment according to the principles set out in this paragraph, judicial or other independent plenipotentiary authority of that Contracting Party.

## **Article 7. Free Transfer of Funds**

1. Each Contracting Party shall guarantee investors of the other Contracting Party, after fulfillment of their tax and non-tax obligations free transfer of payments related to investments of investors of the other Contracting Party, in particular:

- a) income as defined in paragraph 3 of Article 1 of this Agreement;
- b) repayments of loans, recognized by both Contracting Parties as investments;
- c) payments, intended to cover costs related to the management of investments;
- d) additional contributions required to maintain or expand the investment;
- e) proceeds from the sale or partial or complete liquidation of the investment, including a possible increase in value;
- f) the compensation provided for by Articles 5 and 6 of this Agreement.

2. Transfers referred to in paragraph 1 of this Article, be carried out without delay in a freely convertible currency at the prevailing at the date of transfer in accordance with the provisions of the exchange rate of the currency regulation law of the Contracting Party in whose territory the transfer is.

## **Article 8. Subrogation**

In the event that either Contracting Party has granted any financial guarantee against non-commercial risks in respect of investments made by an investor of its State in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation rights of the investor, if the first Contracting Party made payments under this warranty.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Parties**

1. For the purposes of resolving disputes relating to investments between one Contracting Party and an investor of the other Contracting Party consultations will be held between the parties to a dispute to resolve it friendly way.

2. If these consultations do not lead to resolution of the dispute within six months from the date of submission of the application for settlement of the dispute, the investor has the right to submit the dispute for resolution of their choice:

- a) the competent court of the Contracting Party in whose territory the investment has been made; or
- b) the International Centre for Settlement of Investment Disputes (ICSID) taking into account the relevant provisions where they can be applied, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature March 18, 1965 in Washington, DC; or
- c) an "ad hoc" arbitral tribunal which, unless the parties otherwise agree in dispute, should be established and act in accordance with the Arbitral Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party hereby consents to the transfer of an investment dispute to international arbitration of. The arbitration award shall be final and binding on both parties to the dispute and will be executed in accordance with the law of

the Contracting Parties.

4. A Contracting Party party to the dispute, will not be in the arbitral proceedings or execution of the decision of the arbitral tribunal to refer to defend its sovereignty, or the fact that the state investor of the other Contracting Party has received under the contract of insurance compensation covering the whole or in part the loss suffered.

5. Neither of the Contracting Parties should not attempt to resolve through diplomatic channels a dispute submitted to arbitration shall, except in cases when the other Contracting Party does not submit to the decision of the arbitral tribunal.

## **Article 10. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through diplomatic channels.

2. If the Contracting Parties fail to reach an agreement within twelve months after the dispute has arisen between them, the dispute shall be referred, at the request of either Contracting Party to an arbitration tribunal consisting of three members.

Each Contracting Party shall appoint one arbitrator, the two arbitrators shall elect a chairman of the court, which must be a citizen of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not responded to the invitation of the other Contracting Party to make such appointment within two months from the date of transmission of the notification of the dispute to an arbitration tribunal, the arbitrator shall be appointed at the request of the second Contracting Party, President of the International Court, established by the United Nations Charter as the principal judicial organ of the United Nations (hereinafter - the International court of Justice).

4. If both arbitrators can not reach an agreement about the choice of the Chairman of the tribunal within two months of their appointment, the Chairman shall be appointed at the request of either Contracting Party, by the President of the International Court.

5. If, in the cases provided for in paragraphs 3 and 4 of this Article, the President of the International Court can not perform the said function or if he is a citizen of either Contracting Party, the appointment shall be made Vice-Chairman. If the Vice President also can not do this or he is a citizen of either Contracting Party, the appointment shall be made the next most senior member of the International Court of Justice who is not a citizen of any of the Contracting Parties. Appointment of Chairman shall be held within three months from the date of referral to the International Court of Justice.

6. A tribunal established under this article shall take decisions by majority vote. These decisions are binding on both Contracting Parties. Each Contracting Party shall bear the costs of its appointed member of the tribunal and the costs associated with its participation in the arbitration proceedings. Chairman of the court costs associated with its participation in the arbitration proceedings, and other costs related to the consideration of the dispute, will be divided equally between the Contracting Parties. The Court itself defines the rules of their work.

## **Article 11. Applicability of other Regulations**

If the legislation of one Contracting Party or existing or subsequently agreed in addition to the present Agreement between the Contracting Parties obligations under international law contain a general or special rules, according to which the investments of investors of the other Contracting Party shall enjoy more favorable treatment than that which is set this Agreement, these rules shall prevail in relation to this Agreement to the extent and to the extent to which, and because they are more favorable.

## **Article 12. Investments Made Prior to the Entry Into Force of this Agreement**

This Agreement shall be from the date of its entry into force will apply to all investments in the territory of one Contracting Party made in accordance with its legislation by investors of the other Contracting Party, irrespective of whether they were made before or after the entry into force of this Agreement.

## **Article 13. Information Exchange**

The Contracting Parties shall instruct relevant state agencies to ensure a regular exchange of information on investment activities of mutual interest, obtained on the basis of reciprocity and the information of non-confidential nature may be published periodically in the media of both countries.

## **Article 14. Changes and Additions**

Changes and additions to this Agreement may be amended by mutual consent of the Contracting Parties.

## **Article 15. Entry Into Force**

The Contracting Parties shall notify each other in writing of the fulfillment of domestic procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of receipt of the last of the two above-mentioned notices.

## **Article 16. Duration and Termination**

This Agreement shall remain in force for ten years. It will be at the end of this period of ten years to remain in force until the expiration of twelve months from the date on which either Contracting Party in writing notifies the other of the termination of this Agreement. At the same time in respect of investments made prior to the termination of this Agreement, the provisions of Articles 1-12 concerning these investments, will remain in force for a period of ten years from the date of termination, without prejudice to the application in the course of these twenty years of general principles international law.

In witness whereof the representatives duly authorized by their respective Governments, have signed this Agreement.

Done in Chisinau on 28 May 1999 in two originals, each in the Russian and Moldovan languages, each of these texts being equally authentic and have equal legal force.

For the Government of the Republic of Belarus

For the Government of the Republic of Moldova