

**Draft**

**A G R E E M E N T**

**B E T W E E N**

THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA

AND

THE GOVERNMENT OF THE REPUBLIC OF ESTONIA

ON THE PROMOTION AND RECIPROCAL PROTECTION

OF INVESTMENTS

The Government of the Republic of Moldova and the Government of the Republic of Estonia, hereinafter referred to as the Contracting Parties,

Desiring to intensify their economic co-operation for the mutual benefit of both countries,

Intending to create and maintain favourable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party,

Recognising that the promotion and protection of investments under this Agreement will stimulate business initiatives and will increase economic prosperity of the Contracting Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term investor shall mean any natural person or any legal person of one Contracting Party that makes investments in the territory of the other Contracting Party:

a) the term natural person shall mean any individual having the nationality of either Contracting Party in accordance with its legislation;

b) the term legal person shall mean any entity, which is constituted in accordance with the legislation of one of the Contracting Parties and which has its registered office, central administration or principal place of business in the territory of that Contracting Party.

2. The term investment shall mean every kind of good invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party including, in particular, the following:

a) movable and immovable property and any other property rights;

b) shares, stocks and debentures of a company or any other form of participation in a company;

c) claims to money or to any performance under contract having financial value and associated with an investment;

d) intellectual and industrial property rights, technical processes, know-how and goodwill;

e) rights to undertake economic and commercial activities conferred by law, by an administrative act or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments provided that such a change has been made in accordance with the legislation of the Contracting Party in whose territory the investment is made.

3. The term returns shall mean the amounts yielded by an investment and includes, in particular, profit, dividends, interest, capital gains, royalties and fees.

4. The term territory shall mean geographical area composed of the soil and subsoil, internal waters and air space over the soil and territorial waters of the Contracting Party, over which that Contracting Party exercises its sovereign rights and jurisdiction, in accordance with its legislation and international law.

## **Article 2. Promotion and Admission of Investments**

1. Each Contracting Party shall in its territory promote, as far as possible, investments by investors of the other Contracting Party. Each Contracting Party shall admit such investments in accordance with its legislation.

2. When a Contracting Party admits an investment in its territory, it shall, in accordance with its legislation, grant the necessary permits, licences and contracts for technical, commercial or administrative assistance connected with such an investment.

## **Article 3. Protection**

1. Investments made by investors of one Contracting Party in the territory of the other

Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security.

2. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures management, and disposition of investments by the other Contracting Part.

## **Article 4. National Treatment and Most Favoured Nation Treatment**

1. Each Contracting Party shall accord in its territory to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State, whichever is more favourable to the investor concerned.

2. Each Contracting Party shall accord in its territory to investors of the other Contracting Party regarding measures management, and disposition of investments by the other Contracting Part, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

3. The treatment granted under paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and to their investments the benefit of any treatment, preference or privilege resulting from its membership of, or association with, any existing or future:

a) free trade area, customs union, economic union, monetary union or other regional economic integration organisation; or

b) any benefits under the agreements on double taxation or any arrangement which relates to taxation.

4. Measures that have to be taken for reasons of public security and order or public health shall not be deemed as less favourable treatment within the meaning of this Article.

## **Article 5. Expropriation**

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having equivalent effect to nationalisation or expropriation (hereinafter referred to as "expropriation") except for public interest, in accordance with due process of law, on a non-discriminatory basis and against payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation or public notice them, depending on what will be the first action (hereinafter referred to as the "valuation

date").

3. Such fair market value shall be calculated in a freely convertible currency at the market

Rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest calculated at a commercial rate established on the market basis for the currency of valuation from the date of expropriation until the date of payment. Compensation shall be paid without delay, shall be effectively realisable and freely transferable.

4. The investor affected shall have the right, under the legislation of the Contracting Party making the expropriation, to a prompt review, by a judicial authority or other competent and independent authority of that Contracting Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.

5. Where a Contracting Party expropriates the assets of a company which is incorporated according to its legislation in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation to such investors of the other Contracting Party.

## **Article 6. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned. Resulting payments shall be paid without delay, be effectively realisable and freely transferable.

2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:

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

b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay, be effectively realisable and be freely transferable.

## **Article 7. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfilment of their fiscal obligations, the free transfer of all payments relating to their investments. Such transfers shall include, in particular:

a) initial capital and additional amounts needed for the maintenance or increase of the investment;

b) returns as defined in Article 1;

c) funds necessary to repay loans related to an investment;

d) compensation provided for under Articles 5 and 6;

e) proceeds from the total or partial sale or liquidation of an investment;

f) earnings and other remuneration of personnel engaged from abroad in connection with an investment;

g) payments arising out of the settlement of a dispute.

2. Transfers under this Agreement shall be made without delay in a freely convertible currency at the market rate of exchange prevailing for that currency on the date of the transfer and in accordance with the legislation in force in the territory of the Contracting Party where investment was made.

3. The provisions of this Article shall not be construed so as to prevent a Contracting Party from fulfilling in good faith its obligations as a member of an economic and monetary union.

## **Article 8. Application of other Provisions**

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement include a regulation, whether general or specific, entitling investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.
2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

## **Article 9. Subrogation**

If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency and the right of the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title.

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

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled amicably through diplomatic channels.
2. If the dispute cannot be settled within six months from the start of the negotiations, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.
3. The arbitral tribunal shall be set up in the following way: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third country as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary 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 necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority in office that is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall issue its decision on the basis of this Agreement and rules and universally accepted principles of international law.
6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.
7. The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.
8. Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman, shall be borne in equal parts by the two Contracting Parties.

## **Article 11. Disputes between a Contracting Party and Investors of the**

OTHER CONTRACTING PARTY

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party in connection with an investment on the territory of the first Contracting Party shall be settled, as far as possible, amicably through consultations and negotiations.
2. If such a dispute cannot be settled amicably within six months from the date either party to the dispute requested amicable settlement, the dispute may be submitted, at the choice of the investor, to:

- a) the competent court of the Contracting Party in whose territory the investment was made; or
- b) an ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law; or
- c) the International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18th March 1965, in case both Contracting Parties become members of this Convention. As long as a Contracting Party which is party in the dispute has not become a Contracting State of the Convention mentioned above, the dispute shall be dealt with pursuant to the rules of the Additional Facility for the Administration of Conciliation, Arbitration and FactFinding Proceedings of the ICSID.

In case where the investor chooses to submit the dispute to a national court or arbitration as provided under the subparagraphs (b) and (c) above, such choice shall be irrevocable for the investor.

3. The arbitration shall be based on:

- a) the provisions of this Agreement and of the other agreements in force between the Contracting Parties;
- b) the rules and universally accepted principles of international law; and
- c) the legislation of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law.

4. Each Contracting Party shall give its consent to the submission of disputes to international arbitration set out in subparagraphs (b) and (c).

5. Neither of the Contracting Parties, which is a party to the dispute, may raise an objection, at any step of the arbitral proceedings or of the execution of an arbitration award, on account of the fact that the investor, which is the opposing party to the dispute, had received an indemnification covering the whole or part of its losses by virtue of a guarantee or an insurance contract.

6. The arbitration award shall be final and binding on the parties in the dispute. Each Contracting Party undertakes to execute the award in accordance with its legislation.

## **Article 12. Scope of Application**

This Agreement shall apply to investments made by investors of one of the Contracting Party in the territory of the other Contracting Party, in accordance with its legislation prior

To or after the entry into force of this Agreement. However, this Agreement shall not apply to any investment dispute that may have arisen or any claim which was settled before its entry into force.

## **Article 13. Entry Into Force, Duration, Amendment and Termination**

1. The Contracting Parties shall notify each other in writing through diplomatic channels that their legal requirement necessary for the entry in force of this Agreement has been fulfilled. This Agreement shall enter into force on the thirtieth day following the date of the receipt the latter notification.
2. This Agreement shall remain in force for a period of five years. Thereafter it shall remain in force for consecutive periods of ten years unless, six months before the expiration of any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to terminate the Agreement.
3. Either Contracting Party may propose the other Contracting Party to amend the Agreement. The amendments will be concluded as additional protocols to the Agreement. The protocols will enter into force according to this Agreement
4. In respect of investments made prior to the date termination of this Agreement, its provisions shall continue to be effective for a further period of ten years from the date of its termination.

IN WITNESS WHEREOF, the respective plenipotentiaries duly authorised by their states have signed this Agreement.

DONE at....., on..... 20.., in duplicate, in Moldovan, Estonian and

English languages, all texts being equally authentic.

In a case of divergence of interpretation, the English text shall prevail.

For and on behalf of the Government of the Republic of Moldova

For and on behalf of the Government of the Republic of Estonia