

# AGREEMENT

## Between Ukraine and the Republic of Yemen on promotion and mutual protection of investments

The Government of Ukraine and the Government of the Republic of Yemen (hereinafter referred to as the "Parties"),

Desiring to intensify economic cooperation to the mutual benefit of both States,

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

And

Recognizing that the promotion and reciprocal protection of investments under this Agreement stimulates the business initiatives in this area,

Agree as follows:

### Article 1.

#### Definition

For the purposes of this Agreement:

1. The term "investment" covers any kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party under the laws and regulations of the latter and shall include in particular, but not exclusively:

(A) movable and immovable property as well as any other property rights such as mortgages, liens, pledges and similar rights;

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

(C) claims to money or any performance having an economic value associated with an investment;

(D) intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

(E) concession according to public law and other rights granted by law or contract law decision in accordance with the national law of the Contracting Party which provided the investment.

Any alteration of the form in which assets are invested shall 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 "natural person" means any natural person having the nationality of either Contracting Party in accordance with its laws;

(B) The term "legal person" means any organization, whether registered or constituted or otherwise duly organized under the law of any of the Contracting Parties, including companies, associations, partnerships, corporations and others.

3. The term "returns" means amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, dividends, royalties and fees.

4. The term "territory" means the territory of each Contracting Party under its sovereignty, including also areas that are within the boundaries of the earth, the islands and the territorial sea and the exclusive economic zone and continental shelf and other maritime areas under its sovereignty and jurisdiction in accordance with international law.

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

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

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

## **Article 3. Most Favored Nation Regime**

1. Each Party shall in its territory accord investments and returns of investors of the other Contracting Party, which is fair and equitable and not less favorable than that it accords to investments and returns of investors of any third State.

2. Each Party shall in its territory accord to investors of the other Contracting Party in relation to the management, maintenance, use, enjoyment or disposal of their investments treatment which is fair and equitable and not less favorable than that it accords to investors of any third State.

3. The provisions of paragraphs 1 and 2 shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party arising from:

(A) any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either Contracting Party is or may become a party;

(B) any international agreement or arrangement relating wholly or mainly to taxation.

## **Article 4. Compensation for Losses**

1. When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they will be given the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the latter Contracting Party to its own investors or investors of any third State.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, without discrimination and accompanied by provisions for the payment of prompt, adequate and effective compensation. All immovable property or part thereof should not be expropriated except where such expropriation is designed social volition in accordance with the law and justice, carried out on terms appropriate compensation based on the market price of such property on the date of entry into force of a court decision, but not later than three months from that date. In case of delayed payment of compensation over this period should be revalued based on market prices at that time. In the event that invested funds that are the subject of this action, are foreign funds, such compensation shall be freely transferable abroad, despite any law or decree providing otherwise.

2. The investor will have the right to prompt review by a judicial or other independent authority of that Contracting Party of its case and evaluate its investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 shall also apply where a Contracting Party expropriates the assets of a company that received the status of the company, or constituted under applicable in any part of its own territory rights and in which investors of the other Contracting Party own shares.

## **Article 6. Transfers**

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns. Transfers shall be made in freely convertible currency, without any restriction and undue delay. Such transfers include in particular, but not

exclusively:

(A) capital and additional amounts to maintain or increase investments;

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

(C) funds in repayment of loans;

(D) royalties or fees;

(E) proceeds of sale or liquidation of the investment;

(F) earnings of natural persons under the laws and regulations of the Contracting Party in which investments have been made.

2. For the purposes of this Agreement, exchange rates shall be the official rates effective for the current transactions at the date of transfer, unless otherwise agreed.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency makes payment to its own investors under guarantees that it provided in connection with an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(A) transfer or by law or pursuant to a legal transaction in that country any right or claim by the investor to the former Contracting Party or its designated agency, as well as the fact

(B) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to the rights and claims of that investor and assume the obligations related to the investment.

2. Received by virtue of subrogation rights or claims shall not exceed the rights and claims of the investor.

## **Article 8. Disputes between a Contracting Party and an 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 an investment in the territory of the other Contracting Party shall be subject to negotiations 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 thus settled during the six months, the investor may refer the case either to:

(A) the International Centre for Settlement of Investment Disputes (ICSID), referring to the relevant provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington, DC, March 18, 1965, when both Parties have become a party to this Convention, or

(B) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. The arbitration shall be final and binding on both parties to the dispute.

## **Article 9. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2. If the dispute can not thus be settled within six months, it shall at the request of either Contracting Party be submitted to an arbitral tribunal under this Article.

3. The tribunal created for each individual case in the following way: within two months of receipt of the request for arbitration each Contracting Party shall appoint one member of the Court. These two members shall then select a national of a third State who on approval by the Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article, the appointments have been made, will be invited to the

President of the International Court of Justice to make the appointments. If it turns out that he is a citizen of either Contracting Party or if he is otherwise prevented from discharging the said function, shall be invited the Vice President to make the appointments. If the Vice President is a national of either Contracting Party or prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party shall be invited to make the appointments.

5. The Arbitral Tribunal shall reach its decision by majority vote. Such decisions will be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; expenses of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

## **Article 10. Application of other Rules and Special Commitments**

1. Where a matter is governed both by this Agreement and by another international agreement to which both Contracting Parties, nothing in this Agreement shall prevent either Contracting Party or any of their investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favorable in relation to his case.

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

## **Article 11. Application of the Agreement**

The provisions 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. But they do not apply to disputes that arose before the entry into force of this Agreement.

## **Article 12. Entry Into Force, Duration and Termination**

1. Each Party shall notify the other of the completion of the procedures required under its law for the entry into force of this Agreement. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter until one year before the expiry of the initial or any subsequent periods, any Contracting Party notifies the other Contracting Party in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, this Agreement shall remain in force for a period of ten years from the date of investment.

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

Signed in the city. Kiev February 19, 2001 in two originals, each in Ukrainian, Arabic and English languages, all texts being equally authentic.

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

For the Government

Ukraine

For the Government

Republic of Yemen