

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF UKRAINE ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the United Arab Emirates and the Government of Ukraine (hereinafter collectively referred to as the "Contracting States" and each referred to as a "Contracting State"),

Desiring to create favorable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting State in the territory of the other Contracting State;

Recognizing the need to protect investments by the Contracting States and by natural and juridical persons of the Contracting State and to stimulate the flow of investments and individual business initiative with a view to the economic prosperity of the Contracting State,

## **Article 1 . Definitions**

For the purposes of this Agreement:-

(1) (a) The term "investment" shall comprise every kind of asset invested by the Government or by a natural or juridical person of one Contracting State in the territory of the other Contracting State in accordance with the laws, regulations and administrative practices of that State. Without restricting the generality of the foregoing the term "investment" shall include in particularly:

(i) movable and immovable property as well as any other property rights in rim such as mortgages, liens, pledges, usufruct and similar rights;

(ii) shares, liquid assets placement stocks and debentures of companies or other rights or interests in such companies, loans and bonds issued by a Contracting State or any of its natural or juridical persons and returns retained for the purpose of reinvestments;

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

(iv) copyrights, trademarks, patents, industrial designs and other industrial property rights, know-how, trade secrets, trade names and good will;

(v) any rights conferred by law or contract and any licenses and permits pursuant to law, including the rights to search for extraction and exploitation of natural resources.

(b) The said term shall refer:

in respect of investments in the territory of the United Arab Emirates, and Ukraine to all investments approved and classified as investments by competent authorities of the United Arab Emirates and Ukraine in accordance with its legislation and administrative practices.

Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the admission, if any, granted in respect of the assets originally invested;

(2) The term "investor" shall mean the Government of a Contracting State or any of its natural or juridical persons who invest in the territory of the other Contracting State.

(3) The term "natural person" shall mean with respect to either Contracting State a natural person holding the nationality of that State in accordance with its laws.

(4) The term "juridical person" shall mean with respect to either Contracting State, any entity established in accordance with,

and recognized as juridical person by the law of the State, such as public and private companies, corporations, business associations, authorities, partnerships, foundations, firms, institutions establishments, agencies, development funds, enterprises, cooperatives, and organizations or other similar entities irrespective of whether their liabilities are limited or otherwise; and any entity established outside the jurisdiction of a Contracting State as a juridical person and in which such State or any has a predominating interest.

(5) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, share dividends, royalties or fees, and any payments in kind.

(6) The term "territory" means:

(i) with respect to Ukraine all land territory comprising Ukraine, the territorial sea and airspace above;

(ii) with respect to the United Arab Emirates all land territory comprising the United Arab Emirates, the territorial sea and airspace above;

(7) "Associated activities" include the organization, control, operation, maintenance and disposition of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business; making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares and the purchase of foreign exchange for imports.

(8) The term "freely usable currency" means the United States Dollar, Pound Sterling, Euro, Japanese Yen or other currency that is widely used to make payments for international transactions and for which there are ready buyers in the principal exchange markets.

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

(1) Each Contracting State shall encourage and create favorable condition for investors of the other Contracting State to make investments in its territory and, in exercise of powers conferred by its laws, regulations and administrative practices, shall admit such investments and activities associated therewith;

(2) Once established, investments shall at all times enjoy full protection and security, in a manner consistent with international law;

(3) Each Contracting State shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting State. Each Contracting State shall ensure that the management, use, enjoyment, acquisition or disposal of investments or rights related to investment and its associated activities in its territory of investors of the other Contracting State shall not in any way be subjected to or impaired by arbitrary, unreasonable or discriminatory measures;

(4(a) Each Contracting State shall endeavor to take the necessary measures and legislation for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State;

(b) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State shall grant them all assistance, consents, approvals, licenses and conditions as shall, from time to time, be determined by the laws and regulations of the host State.

(5) With respect to its tax policies, each Contracting State should strive to accord fairness and equity in the treatment of investment of investors of the other Contracting State.

(6) The Contracting States shall periodically consult between themselves concerning investment opportunities within the territory of each other in various sectors of the economy to determine where investments from one Contracting State into the other may be most beneficial in the interest of both Contracting States.

(7) To attain the objectives of this Agreement, the Contracting States shall encourage and facilitate the formation and establishment of the appropriate joint legal entities between the investors of the Contracting States to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host State.

(8) Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities including the issuance of visas and permits of stay to such managerial personnel and to their families in accordance with the laws, regulations and administrative practices of the two Contracting States.

(9) Contracting States shall seek as far as practicable to avoid performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced or which specify that goods or services must be purchased locally, which impose any other similar requirements;

(10) Each Contracting State shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorization and properties.

(11) Each Contracting State shall make public all laws, regulations, administrative practices and procedures that pertain to or affect investments.

### **Article 3 . National and Most - Favored - Nation Treatment**

(1) Each Contracting State shall in its territory accord investments and returns of investors of the other Contracting State treatment not less favorable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State whichever is the most favorable;

(2) Each Contracting State shall in its territory accord investors of the other Contracting State, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other activity associated therewith, treatment not less favorable than that which it accords to its own investors or to investors of any third state whichever is the most favorable.

(3) The investor of each Contracting State shall abide and honor the terms and conditions of the investment contract and the concession agreement that he signed with either of the Contracting State or local authority or local government.

### **Article 4. Exception**

The provisions of this Agreement relating to the granting of treatment not less favorable than that accorded to its own investors or the investors of any third state shall not be construed so as to oblige one Contracting State to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union, an economic union or free trade area or a common external tariff area or a monetary union or similar international agreement or other forms of regional or sub-regional cooperation arrangement to which either of the Contracting States is or may become a party; or

(b) the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(c) any international or regional or sub-regional agreement or other arrangement relating wholly or mainly to taxation or movement of capital or any domestic legislation relating wholly or mainly to taxation.

### **Article 5. Compensation for Damage or Loss**

(1) Investors of one Contracting State whose investments in the territory of the other Contracting State suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or other similar events in the territory of the latter Contracting State shall be accorded by the latter Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the latter Contracting State accords to its own investors or to investors of any third state whichever is the most favorable.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting State resulting from:

(a) requisition of their investment or property by its forces or authorities;

(b) destruction of their investment or property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded prompt and adequate compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be in freely usable currency and freely transferable without undue delay.

### **Article 6. Nationalization or Expropriation**

(1) (i) Investments of either Contracting State or its natural or juridical persons shall not be subject to sequestration, confiscation or any similar measures and shall enjoy full and complete protection and safety in the territory and in the

maritime areas of the other Contracting State;

(ii) Neither Contracting States shall take any measures of expropriation or nationalization or freezing or any other measures having effect of this position or to subject the investment to any measures direct or indirect tantamount to expropriation including the levying of taxes, the compulsory sale of all or part of an investment or the impairment or deprivation or its management or control.

All such actions refer to as (expropriation) except when the expropriation:

(a) is done for public purpose.

(b) is accomplished under due procedures of law.

(c) is not discriminatory.

(d) does not violate any specific provision or contractual stability or expropriation contains in an investment agreement between the natural and juridical persons concerned and the party making the expropriation.

(e) is in accordance with and from a competent court.

(f) the investor shall have the right to refer to the administrative or juridical bodies to make sure that expropriation has been made in accordance with the principles of the international law.

(g) the investor shall have the right to contest against the expropriation or any such measures to the competent court of the Contracting State with have taken these measures.

(h) is accompanied by prompt, adequate and effective compensation.

(2) such compensation shall be computed on the basis of the fair market value of the investment immediately prior to the point of time when the decision for nationalization or expropriation was announced or become publicly known and shall be determined in accordance with recognized principles of valuation such as market value where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. In the event that payment of compensation shall be paid in an amount which would put the investor in a position no less favorable than the position in which he would have been had the compensation been paid immediately on the date of expropriation or nationalization. To achieve this goal the compensation shall include an appropriate interest at a commercially reasonable rate as agreed upon by both Contracting States or at such rate as prescribed by law, for the currency in which the investment is denominated from the date of nationalization or expropriation until the date of payment;

(3) Where a Contracting State nationalizes or expropriates the investment of a juridical person which is established or licensed under the law in force in its territory and in which the other Contracting State or any of its investors owns shares, stocks, debentures or other rights of interest, it shall ensure that prompt, adequate and effective compensation is received and allowed to be repatriated. Such compensation shall be determined and paid in accordance with the provisions of paragraph (2) of this Article;

(4) The provisions of paragraph (1) of this Article shall also apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

## **Article 7 . Repatriation of Capital and Returns**

(1) Each Contracting State shall guarantee without undue delay the transfer out of its territory in any freely usable currency of:

(a) the net profits, dividends, royalties, technical assistance and technical service fees, interests and other returns, accruing from any investment by an investor of the other Contracting State.

(b) the proceeds accruing from the sale, total or partial liquidation of any investment made by an investor of the other Contracting State.

(c) funds in repayment of borrowings.

(d) the earnings of nationals of the other Contracting State who are allowed to work in connection with an investment in its territory, and

(e) amounts spent for the management of the investment in the territory of the Contracting State or a third state.

(2) Without restricting the generality of Article 3 of this Agreement the Contracting States undertake to accord to transfer referred to in paragraph (1) of this article a treatment as favorable as that accorded to transfers originating from investments made by investors of any third state;

(3) The exchange rates applicable to such transfers in paragraph (1) of this article shall be rate of exchange prevailing at the time of remittance.

## **Article 8. Subrogation**

(1) If a Contracting State (or its designated Agency) makes payment to any of its investors under an indemnity or a guarantee it has granted in respect of an investment or any part thereof in the territory of the host State, or has otherwise become subrogated to any of the rights of such investors with respect to such investment, the host State shall recognize:

(a) The right of the other Contracting State (or its designated Agency) arising from the assignment, indemnity or other subrogation, whether under law or pursuant to a legal transaction and

(b) that the other Contracting State (or its designated Agency) is entitled by virtue of subrogation to enforce such right.

(2) If such other Contracting State acquires any amounts in such manner as above, it shall be accorded in respect thereof treatment not less favorable than that accorded to the funds of investors of the host State or of any third State, whichever is most favorable, deriving from investments or associated activities similar to those in which in which the party indemnified.

(3) Notwithstanding the provisions of paragraph one and two of this Article subrogation can take place only after the approval of the host Contracting State.

## **Article 9. Settlement of Investment Disputes between the Investor and the Host State**

(1) Disputes or differences between one Contracting State and an investor of the other Contracting State concerning an investment shall, if possible, be settled amicably;

(2) If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within a period of six months from the date either party requested amicable settlement and the parties have not agreed to any other dispute settlement procedures, the investor concerned may choose one or both of the following means of resolutions:

(a) file complaint with and seek relief from the competent administrative authority or agency of the Contracting State in whose territory the investment was made.

(c) file suit with the competent court of law whose territory the investment was made.

(3) The dispute relating to the amount of compensation and any other dispute agreed upon by both parties may be submitted to an international Arbitral Tribunal including the ICSID (INTERNATIONAL CENTER FOR SETTLEMENT OF INVESTMENT DISPUTES) only after the written consent of both contracting parties.

The international Arbitral Tribunal mentioned above shall be especially constituted in the following way:

Each party to the dispute shall appoint an arbitrator. The two arbitrators shall appoint a chairman who shall be a national of a third state which shall have diplomatic relations with both Contracting States. The arbitrators shall be appointed within two months and the chairman within four months from the date when the concerned party notified the other party of its submission of the dispute to arbitration.

If the necessary appointments are not made within the period specified in the previous paragraph, either party may, in the absence of any other agreement, request the chairman of the International Arbitration Institute of the Stockholm chamber of commerce to make the necessary appointments. The Arbitral Tribunal shall determine its own arbitral procedures by referring either to the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington on March 18, 1965 provided that both Contracting States are members of the International Center for Settlement of Investment Dispute (ICSID) or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The Arbitral Tribunal shall reach its award based upon the provisions of this Agreement, the relevant domestic laws, the agreements both Contracting States have concluded and the generally recognized principles of international law.

The Arbitral Tribunal shall meet in a third state selected by common accord by the parties concerned or, if the choice has not been made within forty five (45) days of the appointment of the final member of the Tribunal, in Stockholm. The tribunal

shall reach its decision by a majority of votes. The award shall be final and binding on both parties.

When the tribunal renders an award, it shall state its legal basis and, upon request of either party, shall interpret it.

Each party shall bear the costs of the arbitrator it has appointed and of its own expenses during the arbitration proceedings. The expenses of the Chairman of the Tribunal and other costs shall be borne equally by both parties.

(4) In addition to the foregoing provisions of this Article, disputes between investors of a Contracting State in whose territory the investment was made may be settled by international arbitration in accordance with the arbitration clause between the parties.

(5) Neither Contracting State shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting State has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

## **Article 10 . Settlement of Disputes between Contracting States**

(1) Should any dispute arise concerning the interpretation or application of this Agreement the Governments of the Contracting States shall try to settle the dispute amicably;

(2) If the dispute cannot be so settled it shall, upon the request of either Contracting State, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted in the following way: within two months of the receipt of the request for arbitration, each Contracting State shall appoint one arbitrator. The two arbitrators shall then select a national of a third state who, on the approval by the two Contracting States, shall act as chairman of the Tribunal (hereinafter referred to as "the Chairman") the Chairman shall be appointed within two months from the date of appointment of the other two arbitrators.

(4) If within the period specified in Paragraph (3) of this Article either Contracting State shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting State 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 State shall be invited to make the appointment.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes, such decision shall be binding. Each Contracting State shall bear the costs of its own arbitrator and its counsel in the arbitral proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting States. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting States. The Arbitral Tribunal shall determine its own procedure.

## **Article 11. Application to Investments**

This Agreement shall apply to investments made in the territory of either Contracting State in accordance with its legislation or rules or regulations by investors of the other Contracting State prior to as well as after the entry into force of this Agreement.

## **Article 12. Relations between Governments**

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

## **Article 13. Application of other Rules and Special Commitments**

(1) Where a matter is governed simultaneously both by this Agreement and by other agreements to which both the Contracting States are parties or general principles of law commonly recognized by both Contracting States or domestic law of the host State, nothing in this Agreement shall prevent either Contracting State or any of its investors who own investments in the territory of the other Contracting State from taking advantage of whichever rules are the more favorable to their cases.

(2) Investments subject to special contracts or commitments undertaken by one Contracting State with respect to the investors of the other Contracting State shall be governed, notwithstanding the provisions of this Agreement, by the terms of those contracts and commitments insofar as their provisions are more favorable than those provided by this Agreement.

## **Article 14. Consultation**

The Contracting States shall whenever necessary hold Consultation on any matter relating to the Interpretation or application of this Agreement.

## **Article 15. Amendment**

This Agreement may be amended at any time by a written request of either Contracting State.

## **Article 16. Entry Into Force**

This Agreement shall enter into force thirty (30) days after the latter date on which either Contracting State notifies the other that its constitutional requirements for the entry into force of this Agreement have been fulfilled.

## **Article 17. Duration and Termination**

(1) This Agreement shall remain in force for a period of twenty (20) years and shall continue in force thereafter for similar period or periods unless, one year before the expire of the initial period or any subsequent period, either Contracting State notifies the other in writing of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting State;

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination of this Agreement.

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

Done in duplicate at this \_\_\_ day of 2003, corresponding to \_\_\_\_\_, in the Arabic, Ukrainian and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

FOR THE GOVERNMENT OF UKRAINE

## **Protocol**

On signing the Agreement between the Government of the United Arab Emirates and the Government of Ukraine concerning the Promotion and Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement.

### **1. With respect to Article 2**

The U.A.E. companies and companies established jointly by U.A.E. investors and Ukrainian investors shall have the right to exercise the general powers granted under the laws of the both Contracting States for the attainment of their general purposes and objectives. They shall have the right to issue and execute any decision in accordance with the provisions of this Agreement which they may be deemed necessary to achieve their objectives, they shall have the right to establish subsidiary companies and lor to participate in other companies in the industrial, manufacturing, agricultural, touristic and high-technology projects which may be of mutual benefit to the interests of the two Contracting States.

### **2. With respect to Article 3**

(a) All activities involving the purchase, sale, and transport of raw and secondary materials, energy, fuels, and means of production and operation of all types shall be accorded treatment not less favorable than that accorded to the investment

or associated activities carried out by the nationals of the host State or third state investors whichever is the most favorable. There shall be no impediment to the normal exercise of such activities, provided they are carried out in accordance with the laws and regulations of the host State and in observance of the provisions of this Agreement. Restricting any of these activities shall be deemed "treatment less favorable" if directed in a discriminatory way against investors of the other Contracting State. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favorable" within the meaning of this Article.

(b) The Contracting States shall facilitate in the light of their domestic laws the issuance of entry visas and authorizations pertaining to sojourn, work and travel of the nationals of one Contracting State pursuant to an investment in the territory of the other Contracting State.

(c) Whenever goods or persons connected with the making of investments are to be transported, either Contracting State shall neither exclude nor hinder transportation enterprises of the other Contracting State and shall issue permits as required to carry out such transports. This includes the transportation of:

(i) goods directly intended for an investments within the meaning of this Agreement or acquired in the territory of either Contracting State or of any third state by or on behalf of an enterprise in which assets within the meaning of this Agreement are invested;

(ii) persons traveling in connection with the making of investments.

### 3. With respect to Article 6

(a) The provisions of this Article shall apply to any measure of expropriation, nationalization, dispossession or other similar measure for example freezing or blocking of assets or funds unless provided for by United Nations decisions concerning investments made by investors of the other Contracting State wherever they may be, and irrespective of the place where they may be deposited .

(b) The provision of this Article shall also apply to the transfer of an investment to public ownership, the subjection of an investment to public control or to any other measure the effects of which would be tantamount to expropriation of nationalization.

### 4. With respect to Article (9) & (10)

Notwithstanding the provision of Article (9) &(10) of this Agreement Any dispute that may arise with respect to any matter regarding this Agreement shall be submitted to International arbitration or to the ICSID only after the written consent of both Parties.

### 5. With respect to Article 3

It is agreed by both contracting parties that the most favourable treatment shall not apply to any investment disputes.

Done in duplicate at this \_\_\_ day of 2003, corresponding to \_\_\_\_\_, in the Arabic, Ukrainian and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

FOR THE GOVERNMENT OF UKRAINE