

# **Agreement between the Government of Ukraine and the Government of His Majesty Sultan and Yang Di-Pertuan Between the Government of Ukraine and the Government of His Majesty Sultan and Yang Di-Pertuan Brunei Darussalam on the Promotion and Mutual Protection of Investments**

The Government of Ukraine and the Government of His Majesty Sultan and Yang Di-Pertuan Brunei Darussalam (collectively referred to as the "Contracting Parties", separately "the Contracting Party"),

Desiring to create favorable conditions for strengthening economic cooperation between them and, in particular, for investors of one Contracting Party in the territory of the other Contracting Party,

Aware that the promotion and mutual protection of these investments in accordance with international agreements will stimulate the business initiative and prosperity of both countries,

Recognizing the importance of technology transfer and the development of human resources arising from such investments,

Have agreed as follows:

## **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 by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter, and includes, but is not limited to:

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

(B) shares, bonds and debt obligations of the company and any other form of participation in the company, as well as securities issued by a Contracting Party;

(C) claims in respect of money or any performance obligations under a contract relating to an investment having an economic value;

(D) the rights of industrial and intellectual property, including copyrights, patents, utility models, industrial designs, trademarks, trade names, commercial and trade secrets, technical processes, know-how and goodwill;

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

Any change in the form in which the assets invested does not affect their character as investments.

2. The term "territory" means the territory of each Contracting Party and the maritime regions, continental shelf and exclusive economic zone of each of the Contracting Parties over which it exercises sovereignty, sovereignty or jurisdiction in accordance with international law.

3. The term "proceeds" means cash received as a result of investments, including, but not limited to, profits, interest, capital gains, stocks, dividends, royalties, and fees.

4. The term "investor" means any citizen or legal entity that invests in the territory of the other Contracting Party:

(A) the term "citizen" means a natural person having the nationality of a Contracting Party in accordance with its applicable law;

(B) the term "legal entity" means:

(i) for Ukraine:

Any legal entity established or registered in accordance with the legislation of Ukraine.

(ii) for Brunei Darussalam:

Any legal entity, including a partnership, corporation, organization, firm, association or any other entity with or without legal personality, duly constituted or founded or otherwise organized in Brunei Darussalami with limited or unlimited liability, regardless of whether, Whether they are profitable or non-profitable.

## **Article 2. Promoting and Protecting Investment**

1. Each Contracting Party in its territory shall, as far as possible, encourage investment by investors of the other Contracting Party and admit such investments in accordance with its legislation. Each Contracting Party shall at all times ensure fair and equitable treatment of investments made in its territory by investors of the other Contracting Party.
2. Investments of investors of either Contracting Party shall at all times receive full protection and security in the territory of the State of the other Contracting Party. Profit from investments, and in the case of reinvestment, reinvestment profits enjoy the same protection as investment. No Contracting Party shall impose any excessive or arbitrary measures in respect of the management, maintenance, use and disposal of investments by investors of the other Contracting Party in its territory.
3. This Agreement also applies to investments made prior to its entry into force by investors of any Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter.

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

1. None of the Contracting Parties shall, in its territory, provide investments that are owned or controlled by an investor of the other Contracting Party, a treatment that is less favorable than that accorded to investors of their own investors or investors of any third State.
2. None of the Contracting Parties shall provide investors with any other Contracting Party in respect of their activities related to investments in its territory shall be treated less favorably than that accorded to its own investors or investors of any third State.
3. The provisions of paragraphs 1 and 2 of this Article shall not be interpreted to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefits of any regime, preferences or privileges that may be extended by the first Contracting Party in connection with:

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

(B) by any international agreement or arrangement which relates, in whole or in part, to taxation or to national legislation which is wholly or partly related to taxation.

## **Article 4. Nationalization or Expropriation**

1. Investments of investors of either Contracting Party shall not be expropriated or nationalized or subject to direct or indirect measures having an effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for state purposes, on a non-discriminatory basis Basis and with immediate, adequate and actual compensation.
2. Such compensation is calculated as the equivalent of the fair market value of the investment, right up to the time when the expropriation or threat of expropriation became known. Where market value can not be ascertained adequately, the compensation is determined in accordance with the internationally recognized principles of settlement. The compensation includes a percentage (LIBOK) from the date of expropriation to the date of payment. The amount of compensation is subject to due process review. The final amount of compensation paid to investors in a freely convertible currency can be effectively realized and redeemed in accordance with Article 6.

## **Article 5. Compensation for Damages**

1. Investors of a Contracting Party whose investments suffer losses through war, armed conflict, national emergency, coup, uprising, rebellion or other similar events in the territory of the other Contracting Party shall be accorded by the last Contracting Party a restitution, compensation or other counter-guarantee regime, not Less favorable than that which the latter Contracting Party grants to its own investors or investors of any third country, whichever is the more favorable.

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

(A) the requisitioning of their property by its forces or authorities or

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

Fair and adequate compensation will be provided.

3. Payments arising under this Article shall be made in a freely convertible currency and will be effectively realized and redeemed without delay in accordance with

## **Article 6. Free Remittances**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after the execution of all tax liabilities and other obligatory payments, the free transfer of payments related to investments, in particular:

(A) the amount of initial and additional capital used to hold, increase or increase investment;

(B) profits;

(C) repayment of loans;

(C) proceeds from general or partial sale or general or partial liquidation of investments;

(E) recoveries of losses provided for in Articles 4 and 5 of this Agreement;

(F) the amounts necessary for the execution of contractual payments, including the amounts necessary for the payment of royalties and other payments arising out of licenses, franchises, concessions and other similar rights;

(G) earnings of investors of one Contracting Party whose work is related to investments in the territory of the other Contracting Party.

2. Transfers shall be made promptly and, in any case, for a period not exceeding one month from the date on which the request for transfer was filed. Transfers are carried out at the market exchange rate applicable on the day of transfer.

3. If the market exchange rate does not exist, the exchange rate will correspond to the cross-rate received on the basis of the rates applied by the International Monetary Fund on the date of payment for the exchange of the relevant currency on the Special Loan Rights.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated authority carries out

Payments to its investors in accordance with the guarantee given in connection with an investment in the territory of the other Contracting Party or if the investment in the territory of one Contracting Party is insured against non-commercial risks in accordance with the system established by law and payments are made by the insurance company under the guarantee

Compensation for such investments, the last Contracting Party shall recognize:

(A) the transfer, by law or in accordance with a lawful agreement in that country, of any right or claim of the investor, the first Contracting Party or its designated authority, and

(B) that the first Contracting Party or its designated authority has the right, through subrogation, to enjoy the same rights and impose the same requirements as that investor, and will accept the same obligations associated with this investment.  
About transfers

Payments made under such a subrogation of rights and claims, the provisions of Article 6, as amended, shall apply.

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

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, wherever possible, be resolved through diplomatic consultations and negotiations.

2. If the dispute can not be resolved in this manner for a period of six months, it shall, at the request of either Contracting Party, be referred to the Arbitration in accordance with the provisions of this Article.

3. Arbitration is created for each individual case as follows. Within two months after receiving an application for arbitration, each of the Contracting Parties shall appoint one member of this Arbitration. These two members will then elect a Chairman who will be a citizen of the third State with which the two Contracting Parties maintain diplomatic relations. The chairman will be appointed within three months from the date of the last appointment of the other two members.

4. If the periods referred to in paragraph 3 above are not complied with, any Contracting Party may, in the absence of any other appropriate arrangement, invite the President of the International Court of Justice to make the necessary appointments. If he is a national of either Contracting Party or if other reasons prevent him from fulfilling the specified function, the Vice Chairman will be invited to make the necessary appointments. If it turns out that the Vice-Chairman is a national of either Contracting Party or is also unable to perform the specified function, a member of the International Court of Justice, following a seniority who is not a national of either Contracting Party, will be invited to make the necessary appointments.

5. The arbitral tribunal shall decide by a majority of votes, and its decisions will be binding. Each Contracting Party shall bear the costs of its member of arbitration and its representation in arbitration proceedings; The costs of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. Arbitration may determine any alternative cost sharing system. In relation to other matters, arbitration will determine its own procedures.

## **Article 9. Settlement of Investment Disputes**

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall, if possible, be settled by means of peaceful negotiations between the parties to the dispute.

(A) If any dispute can not thus be resolved within six months from the moment one of the parties to the dispute has been declared, it will, at the request of one of the parties to the dispute, be referred to the resolution in accordance with the Convention on the Settlement of Investment Disputes Between States and foreign persons, opened for signature in Washington on March 18, 1965 ("the Convention").

(B) If the dispute is submitted for reconciliation in accordance with the Convention, but the conciliation procedure is determined differently than by signing the settlement agreement, the dispute shall, at the request of one of the parties to the dispute, be submitted to arbitration in accordance with the Convention.

Each Contracting Party agrees to the admissibility of such a procedure.

3. Unless otherwise agreed by the parties to the dispute, the provisions of paragraphs 3 to 5 of Article 8 will be applied with appropriate modifications, provided that the appointment of arbitrators in accordance with paragraph 3 of Article 8 is carried out by the parties to the dispute, if the period specified in paragraph 3 Article 8 is not complied with, any party to the dispute may, in the absence of any other arrangement, invite the President of the International Arbitration Court to the International Chamber of Commerce in Paris to make the necessary appointments. The arbitration will determine its own procedures in accordance with the Rules of Arbitration of the United Nations Commission on International Commercial Law (995\_059).

4. During the arbitration procedure or enforcement, the Contracting Parties involved in the dispute will not object to the fact that the investor of the other Contracting Party has received partial or full compensation for his losses under the insurance contract. In this case, the amount of compensation in accordance with the arbitration award to be paid to the investor of the Contracting Party will not include the amount of compensation covered by the insurance company.

5. The arbitral award will be final and binding for the parties to the dispute. Each Contracting Party undertakes to comply with its national law.

## **Article 10. Other Obligations**

1. If the matter is governed simultaneously by this Agreement and by another international agreement to which the Contracting Parties are parties, nothing in this Agreement shall prevent the Contracting Parties or any of their investors who have investments in the territory of the other Contracting Party to enjoy the benefits of those rules which they are more favorable.
2. If the treatment to be provided by one Contracting Party to investors of the other Contracting Party in accordance with its laws or other specific provisions of the contracts is more favorable than that accorded by this Agreement, a more favorable regime will be granted.

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

1. 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.
2. The provisions of this Agreement do not apply to disputes arising from investments between an investor of one Contracting Party and the other Contracting Party prior to the entry into force of this Agreement.

## **Article 12. Changes**

1. The provisions of this Agreement may be amended by mutual agreement of the Contracting Parties.
2. Such additions will be made by additional protocols and will form an integral part of this Agreement.

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

1. Each Contracting Party shall notify the other Contracting Party in writing of the completion of its respective procedures required by its legislation for the entry into force of this Agreement. This Agreement will come into force on the date of the last diplomatic notice.
2. This Agreement shall remain in force for ten years. Thereafter, it will remain in force indefinitely, unless either Party notifies the other in writing of its intention to terminate its operation no later than twelve months before the expiration of the relevant time limit.
3. This Agreement shall remain in force irrespective of the existence of diplomatic or consular relations between the Contracting Parties.
4. In respect of investments made prior to termination

This Agreement, the provisions of this Agreement will continue to apply for a period of 10 years from the date of termination.

5. The attached Protocol forms an integral part of this Agreement.

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

Done in Kyiv on June 18, 2004, in two original copies, in the Ukrainian, Malay and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text will prevail.

FOR THE GOVERNMENT OF UKRAINE

(signature)

UNDER THE GOVERNMENT OF HIS MAJESTY OF SULLATAN AND JOHN DI-PERTUANA BRUNE-DARUSSALAM

(signature)

Minister of Economy and European Integration

Mykola Derkach

Permanent Secretary of the Cabinet of the Prime Minister

Pekhin Dato Hadji Yahia

Protocol

To the Agreement between the Government of His Majesty Sultan and Yang Di-Pertuan Brunei Darussalam and the Government of Ukraine on the Promotion and Mutual Protection of Investments

Upon signing the Agreement between the Government of Ukraine and the Government of His Majesty Sultan and Yang Di-Pertuan Brunei Darussalam on the promotion and mutual protection of investments, the undersigned have further agreed on the following provisions that will form an integral part of the Agreement:

1. Additional Article 3

(A) Measures taken by one of the Contracting Parties to achieve development goals to promote the creation of industry in their territory and apply only to their own nationals shall not be considered as contradictory to the obligations under Article 3, provided that such measures Do not significantly affect the investments made and permitted by investors of the other Contracting Party. Measures taken to protect public order and safety, health or morals shall not be construed as granting a "less favorable treatment" within the meaning of Article 3.

(B) The following, in particular, but not exclusively, shall be construed as "activities" within the meaning of paragraph 2 of Article 3: management, maintenance, sale or other investment management. The following, inter alia, shall be construed as "less favorable treatment" in the sense of Article 3: unequal treatment in the case of the imposition of restrictions on the sale of raw materials, auxiliary materials, energy resources or fuel or means of production or exploitation of any kind, unequal treatment in the case of restrictions on Trade in goods within or outside the country, as well as any other measures of a similar nature.

(C) The provisions of Article 3 shall not oblige either of the Contracting Parties to grant to resident investors of the other Contracting Party tax privileges, tax exemptions and rebates which, in accordance with national tax laws, are granted exclusively to resident investors in its territory.

(C) The Contracting Parties undertake, in accordance with their national legislation, to adhere favorably to applications for the entry and temporary stay of persons of any Contracting Party intending to enter the territory of the other Contracting Party in connection with an investment; Such a law applies also to the employees of one of the Contracting Parties intending to enter and temporarily stay for the purpose of employment in the territory of the other Contracting Party in connection with an investment. IN

In this regard, applications for employment permits should also be welcomed.

2. In the case that goods or persons connected with the investment must be delivered by means of transport, each Contracting Party shall not prohibit or create obstacles to the transport facilities of the other Contracting Party and must provide the necessary necessary permits for the carriage of such transport

According to its legislation.

FOR THE GOVERNMENT OF UKRAINE

FOR THE GOVERNMENT OF HIS MAJESTY

SULTANA AND YAN DI-PERTUANA BRUNE-DARUSSALAM

(signature)

(signature)

Minister of Economy and European Integration

Permanent Secretary

Cabinet of Prime Minister

Mykola Derkach

Pekhin Dato Hadji Yahia