

# **AGREEMENT BETWEEN THE REPUBLIC OF MOLDOVA AND THE STATE OF KUWAIT ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Republic of Moldova and the State of Kuwait, hereinafter referred to as the " Contracting States " and each as a " Contracting State",

wishing to intensify economic cooperation between the two Contracting States,

intending to create favorable conditions for investment by to investors of one Contracting State in the territory of the other Contracting State,

recognizing that mutual encouragement and protection of investment will stimulate entrepreneurship and lead to increased prosperity in both Contracting States,

have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1) The term "investment" means any kind of property owned or under the direct or indirect control of an investor of a Contracting State and invested in the territory of the other Contracting State in accordance with the laws and regulations of that State. Without prejudice to the above definition, the term "investment" shall include:

- a) movable and immovable property, as well as any property rights in rem, such as mortgages, guarantees, pledges, usufruct and similar rights;
- b) shares, shares and bonds in companies or other participation rights in such companies, loans and securities issued by a Contracting State or by its investors and the income withheld for reinvestment;
- c) debts, services, monetary receivables or any fact with economic value;
- d) intellectual and industrial property rights, including, but not limited to, copyrights, trademarks, patents, industrial projects, know-how, trade secrets, trade names and goodwill and other industrial property rights;
- e) any commercial concessions granted by law or by virtue of a contract and any licenses and permits obtained by law, including concessions for research, exploitation, extraction, gain or use of natural resources, any rights of production, use and marketing of products.

A possible change in the way the goods are invested or reinvested will not affect their investment character.

2) The term "investor" means any natural or legal person, including the Government of a Contracting State, which makes investments in the territory of the other Contracting State.

3) The term "natural person" means, in relation to any Contracting State, a natural person who is a national of that State in accordance with its laws.

4) The term of "legal person" means, in relation to any Contracting State, any entity established and recognized as a legal person under the law of each Contracting State, such as institutions, development funds, enterprises, agencies, cooperatives, partnerships, corporations, authorities, foundations, companies, firms, households, organizations and business associations or other similar organizations whether their responsibilities are limited or otherwise organized; and any organization established outside the jurisdiction of a Contracting State as a legal person and in which the State or its nationals or any legal person established under its law has a predominant shareholding.

- 5) The term "property" or "control" means ownership or control exercised through subsidiaries and branches located anywhere.
- 6) The notion "income" means the amounts obtained from an investment and in particular, but not exclusively, will include profits, income, capital increases, dividends, royalties, fees and other similar earnings.
- 7) The term "territory" means the entire territory of a Contracting State recognized by international law, including any area beyond the territorial sea which in accordance with international law is or may be designated under the law of the Contracting State as an area over which a Contracting State may exercise sovereign rights and its jurisdiction.
- 8) The term "mixed activities" includes, but is not limited to:
- (i) households, control and support of subsidiaries, agencies, offices or other facilities for the conduct of entrepreneurial activity;
  - (ii) the organization of companies, the acquisition of companies or the participation in or ownership of companies; the management, control, support, use, merger and expansion, and sale, liquidation, dissolution or disposition of other measures relating to organized or acquired companies;
  - (iii) the preparation, performance or entry into force of contracts associated with an investment;
  - (iv) the acquisition, ownership or use by any legal means of personal property of all kinds, tangible or intangible;
  - (v) leasing of real property related to the development of entrepreneurial activity;
  - (vi) lending funds at market terms and conditions to local financial institutions, including procuring and issuing equitable shares on local financial markets, and, in accordance with national regulations and practices, procuring foreign exchange for the operations of investment firms.

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

- 1) Each Contracting State shall take measures to promote and maintain favorable conditions for existing or future investments and for the profits reinvested by investors of the other Contracting State, and, by applying laws, regulations, practices and administrative procedures, shall allow investments to be made in the territory.
- 2) The investments of each Contracting State or any of its investors shall enjoy full protection and security in the territory of the other Contracting State. No Contracting State shall affect by arbitrary or discriminatory measures the management, support, use, merger or other mixed activity associated with investments made by investors of the other Contracting State in its territory.
- 3) Each Contracting State shall endeavor to adopt and implement the measures necessary for the provision of appropriate facilities, incentives and other forms of investment incentives made by investors of the other Contracting State.
- 4) The investors of each Contracting State may have recourse to the authorities of the host State for the provision of appropriate facilities, incentives and other forms of encouragement and the Host State shall grant them any assistance, permits, approvals, licenses and authorizations in the proportions and terms and conditions be periodically defined by the laws and regulations of the host State.
- 5) With regard to fiscal policy, each Contracting State shall endeavor to respect the fairness and fairness of the investment treatment of investors of the other Contracting State.
- 6) The Contracting States shall consult regularly on investment opportunities in their territories in various branches of the economy to determine where the investments of one Contracting State in the other may be most useful in the interests of both Contracting States.
- 7) For the purpose of fulfilling the provisions of this Agreement, the Contracting States shall encourage and facilitate the formation and establishment of appropriate legal structures for the establishment, development and implementation of investment projects in various economic branches in accordance with the laws and regulations of the Host State.
- 8) Investors of each Contracting State shall be permitted to employ top managerial personnel and necessary technical personnel of whatever nationality in the proportions permitted by the laws of the Host State. The Contracting States shall make available all necessary facilities, including the issuance of visas and residence permits to such managerial and technical personnel and their families in accordance with the laws and regulations of both Contracting States.

9) Investments already made in the Host State shall not be subject to additional requirements which would impede their development and operation, which require or impose an obligation to export the goods produced or which specify that the goods and services must be procured locally, or which impose any other additional requirements and restrictions that may be considered discriminatory for the viability of the investment.

10) Each Contracting State recognizes that in order to maintain a favorable climate in its territory for the investments of investors of the other Contracting State, the first Contracting State shall take effective action with respect to confirmed claims and rights in force associated with investment agreements, investment authorizations and property rights. Each Contracting State shall provide investors of the other Contracting State with the right of access to its courts of law, agencies and administrative tribunals, and other bodies exercising judicial authority, and the right to employ persons of their choice who are in any case qualified. according to the laws and regulations in force of the forum for the decision of confirmed claims and the rights in force associated with their investments.

11) The Contracting States recognize in accordance with the provisions of this Article that equal conditions of competition shall be maintained if the investments owned or under the control of a Contracting State or the agencies and executive bodies are in competition in the territory of that State with the owned investments. or under the control of investors of the other Contracting State.

12) Each Contracting State shall make public all relevant laws, regulations, administrative directives and procedures affecting the investments of investors of the other Contracting State in its territory.

13) Each Contracting State shall fulfill obligations which may be linked to the investments of investors of the other Contracting State.

### **Article 3. Most-favored-nation Treatment and National Treatment**

1) Each Contracting State shall accord to investments and mixed activities associated with such investments, carried out by investors of the other Contracting State in its territory a fair and equitable treatment. This treatment will be no less favorable than that accorded in situations similar to investments and mixed activities to its own investors or to the investors of any third State which is more favorable.

2) Each Contracting State shall accord to investors in the other Contracting State, in respect of compensation, transfers, income, management, maintenance, use, acquisition or disposal of its own investments or mixed activities, treatment no less favorable than that accorded to its own investors. or investors of any third State which is more favorable.

3) At the same time, the provisions of this Article concerning the treatment not less favorable than that accorded by one of the Contracting States to its own investors or to the investors of any third State shall not be construed to compel that Contracting State to apply to the other. Contracting State any treatment, preference or privilege resulting from:

a) any existing or future customs union or similar international agreements to which each Contracting State is or may become a party, or

b) any international or regional agreement, or subregional, or other arrangement that fully or partially reflects taxation or capital movements or any national legislation that fully or partially reflects taxation.

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

1) Where investments made by investors of any Contracting State suffer losses due to war, another armed conflict, a state of national emergency, revolution, insurrection, civil unrest or other similar events in the territory of the other Contracting State, the investors shall be granted to the last Contracting State a treatment, in respect of restitution, damage, compensation or other settlement, no less favorable than that accorded by the last Contracting State to its own investors or to investors of any third State which is more favorable.

2) Without prejudice to paragraph (1), investors of a Contracting State who, in the cases provided for in this paragraph, suffer damage or loss in the territory of the other Contracting State, resulting from:

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

b) the destruction of their property by the forces or authorities that was not caused by the combat action or was not required by the situation, will be granted prompt and adequate compensation for damages and losses incurred during the requisition or as a result of destruction of their property. The resulting payments will be freely transferable without delay.

### **Article 5. Seizure and Confiscation**

1) The investments of each Contracting State or of any of its investors shall be accorded total protection and security in the territory of the other Contracting State.

2) The investments of each Contracting State or any of its investors shall not be subject to seizure, confiscation or any similar measure based on the legislative process in force.

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

1) a) The investments of investors of any Contracting State shall not be nationalized, expropriated or subjected to other measures having equivalent effect to nationalization or expropriation by the other Contracting State, except for public purposes in connection with the domestic needs of that State on a non-discriminatory basis. prompt, adequate and effective compensation.

b) Such compensation shall be calculated and determined in accordance with the recognized principles of valuation according to the fair market value of the investment immediately before or during the time if the expropriation became publicly known, whichever was the earlier. If the market value cannot be promptly established, the compensation will be determined, taking into account the principles of fairness, among others, invested capital, reinvested value, appreciation, current income, goodwill, and other relevant factors. In cases where the payment of compensation is delayed, such compensation will be paid in amounts that will put the investor in a no less favorable situation than the situation in which he could receive compensation immediately on the date of expropriation or nationalization. To achieve this goal, the compensation will include interest calculated at the current LIBOR rate on the date of nationalization or expropriation until the date of payment. The affected investor shall have the right, according to the Contracting State carrying out the expropriation or nationalization, a prompt review of his case by a judicial or other independent authority of that State and an assessment of his own investment in accordance with the principles set out in this paragraph. The amount of the final compensation will be promptly paid to the investor in freely convertible currencies and will be allowed to be transferred freely and without delay.

c) Where a Contracting State nationalizes or expropriates the investment of a legal person which is founded and licensed under the law in its territory and where the other Contracting State or any of its investors holds shares, shares, bonds or other rights, or revenue, it will ensure that prompt, adequate and effective compensation is received and allowed and transferred. Such compensation shall be determined and paid in accordance with the provisions of paragraph 1).

2) The provisions of this Article shall also apply to the current income obtained from an investment, also in the liquidation process, to the receipts from the liquidation.

## **Article 7. Free Transfer**

1) Each Contracting State shall guarantee to the investors of the other Contracting State the free transfer of payments related to an investment, in particular:

a) principal and additional amounts for the purpose of maintaining or increasing the investment;

b) incomes;

c) payment of loans;

d) copyrights and fees for the rights described in Article 1 (1) d);

e) the receipts from the total liquidation or sale or of any part of the investment;

f) the salaries of natural persons of the other Contracting State arising out of the activities and services connected with an investment in its territory;

g) the amounts spent for the management and maintenance of the investment;

h) the compensation payments described in Articles 4 and 6;

i) the payments described in Article 8.

2) These transfers shall be made without delay at the applicable exchange rate.

3) For the purposes of this Agreement, the exchange rate shall be determined in accordance with the official rate

coordinated by the International Monetary Fund or, in the absence of such rates, the official exchange rate of the Special Drawing Rights or the United States Dollar or any other convertible currencies accepted by both Contracting States.

## **Article 8. Subrogation**

1) If a Contracting State (or its designated Agency) makes payment to any of its investors in accordance with an indemnity or guarantee which it has assumed in connection with an investment or any part thereof in the territory of the other Contracting State, or is otherwise subrogated by any rights of such investors in connection with the investments, the latter State shall recognize:

- a) the right of the other Contracting State (or its designated Agency) to reflect the distribution, allowance or other subrogation conferred by law or legal transaction, and
- b) that the other Contracting State (or its designated Agency) is justified by virtue of the subrogation to apply similar rights to the same extent as any of its designated predecessors.

2) With regard to the transfer of payments made under the claims and rights applied, Article 6 and Article 7 shall apply *mutatis mutandis*.

## **Article 9. Settlement of Disputes between a Contracting State and an Investor**

1) Any dispute over an investment between a Contracting State and an investor of the other Contracting State shall, as far as possible, be settled amicably between the Parties through negotiations.

2) If a dispute cannot be settled within six months of the date on which the dispute arose at the initiative of one of the parties to the dispute, it shall, at the request of the investor of the other Contracting State, be subject to conciliation or arbitration.

In the absence of a special agreement, the dispute shall be submitted at the request of the investor for conciliation or arbitration in accordance with the Convention for the Settlement of Investment Disputes between States and Nationals of Other States (Convention), signed on March 18, 1965.

3) The judgment shall be binding and shall not be subject to any remedy other than that provided for in the Convention. The decision will be applied in accordance with national law.

4) During the arbitration proceedings or the entry into force of the judgment, the Contracting State involved in the dispute shall not use as its defense:

- a) its immunity;
- b) the objection that the investor of the other Contracting State has received compensation under the insurance contract for total or partial loss.

5) If the Convention is not applicable, the investment dispute shall be submitted, at the request of the investor, by an ad hoc Arbitration Tribunal. This Arbitral Tribunal shall be as follows:

a) The Arbitral Tribunal shall consist of three arbitrators. Each State shall appoint one arbitrator. These two arbitrators shall by common accord elect a President who shall be a national of a third State with which both Contracting States have diplomatic relations. The arbitrators shall be appointed within two months from the date on which one of the parties to the dispute has informed the other of its intention to submit the dispute to arbitration.

If the appointments have not been made within the above period, either Party may invite the President of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments within two months.

b) The Arbitral Tribunal shall adopt its decision by a majority of votes. Its decision will be final and binding on both parties to the dispute, and will enter into force in accordance with national law.

c) The Arbitral Award shall be made in accordance with the provisions of this Agreement and with the general rules of international law, as well as with the national laws of the corresponding Contracting States.

d) Each party to the dispute shall bear the costs related to its arbitrator and the consultations in the arbitration proceedings. The costs of the President and other costs of the arbitration proceedings shall be borne equally by both parties to the dispute unless the Tribunal decides otherwise.

6) a) No Contracting State shall grant diplomatic immunity or grant international claims, associated with a dispute, to one of its investors and the other Contracting State shall agree to submit to or be subject to arbitration in accordance with the Convention, if that other Contracting State he will not be able to respect and accept the decision taken in this dispute.

b) Diplomatic immunity for the purpose of paragraph (a) shall not include informal diplomatic exchanges to facilitate the settlement of disputes.

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

1) Any dispute between the Contracting States concerning the interpretation and application of this Agreement shall, as far as possible, be settled through amicable consultations by the Contracting States through diplomatic channels.

2) If a dispute cannot be settled in this way for six months, it shall, at the request of any Contracting State, be submitted to an ad hoc Arbitral Tribunal, in accordance with the provisions of this Article.

3) The Tribunal shall be constituted as follows: each Contracting State shall designate a member, these two members shall nominate a national of a third State as President approved by the Governments of both Contracting States. These members shall be appointed for two months, and this President for three months from the date on which either Contracting State has informed the other Contracting State of its intention to submit the dispute to an Arbitral Tribunal.

4) If the periods specified in paragraph 3) of this Article have not been observed, any Contracting State 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 a Contracting State or is otherwise prevented from exercising that function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of a Contracting State or is otherwise prevented from exercising that function, appointments shall be made by the next member of the Court who is not a national of any Contracting State.

5) The Arbitral Tribunal shall adopt its decision by a majority of votes. His decision will be binding. Each Contracting State shall bear its own expenses and representations in arbitration proceedings; the expenses of the President and other expenses shall be borne equally by both Contracting States. The Arbitral Tribunal may establish a separate decision on the distribution of costs. In any other case, the Arbitral Tribunal shall establish its own rules of procedure.

## **Article 11. Relations between the Contracting States**

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

## **Article 12. Other Provisions**

1) If the legislation of any Contracting State or the obligations arising under international law, existing or subsequently established between the Contracting States, contains an additional rule to this Agreement, which generally or in particular justifies the investments of investors of the other Contracting State, at more favorable treatment than In this Agreement, this rule will be extended if more favorable, prevailing over this Agreement.

2) Each Contracting State shall fulfill any other obligations which it has assumed in connection with the investments of investors of the other Contracting State in its territory.

## **Article 13. Application of the Agreement**

This Agreement shall apply to all investments made before its entry into force by investors of any Contracting State in the territory of the other Contracting State and accepted in accordance with the respective legislation of the other Contracting State.

## **Article 14. Entry Into Force**

This Agreement shall enter into force one month after the date of exchange of the instruments of ratification.

## **Article 15. Duration and Termination**

1) This Agreement shall remain in force for a period of (30) thirty years and shall be extended thereafter for a similar period

or periods, unless either Contracting State notifies the other Contracting State in writing by one year, at the expiration of the initial or subsequent period of application, of its intention to terminate it.

2) The provisions of this Agreement shall remain in force for a period of (20) twenty years from the date of termination of this Agreement for investments made prior to the notice of termination.

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

Done in Chisinau on March 29, 2002, in two originals, in the Moldovan, Arabic and English languages, all texts being equally authentic. In case of differences in the interpretation of the texts in the Moldovan and Arabic languages, the English text will prevail.

FOR THE REPUBLIC OF MOLDOVA

FOR THE STATE OF KUWAIT

## **Protocol**

At the moment of signing the Agreement between the Republic of Moldova and the State of Kuwait on the promotion and mutual protection of investments, the undersigned Plenipotentiaries have agreed, in addition, on the following provisions, which shall be considered as an integral part of the said Agreement.

### **1. With Respect to Article 2:**

a) The provisions of Article 2 shall not oblige the Contracting State to extend to the investors of the other Contracting State privileges in respect of taxes, exemptions or reductions of taxes guaranteed only to its own investors.

b) The Contracting States shall have a benevolent attitude, within the limits of their national laws, towards applications for entry, stay or temporary residence of persons from the other Contracting State who wish to enter the territory of the other Contracting State in connection with an investment; the same applies to employees of each of the Contracting States who wish, in connection with an investment, to enter the territory of the other Contracting State in order to work there. Applications for work permits will also be kindly examined.

c) When goods or persons connected with an investment are to be transported, each of the Contracting States shall not exclude transport undertakings from the other Contracting State, and shall not obstruct them, and shall issue the necessary permits for such transport. This includes the transport of:

(i) goods intended for investment within the meaning of this Agreement, or acquired in the territory of a Contracting State, or of any third State, by an enterprise, or on its behalf, in which assets are invested, within the meaning of this Agreement;

(ii) persons traveling in connection with an investment.

### **2. Regarding Article 3:**

The following shall be considered as "less favorable treatment" within the meaning of Article 3: restrictions on the purchase of intermediate products, as well as raw materials or auxiliary products, energy or fuel, or means of production or operations; obstacles in the marketing of products in the country or abroad; as well as any other measures with similar effects. Measures to be taken for reasons of security and public order, public health or mortality shall not be considered as "less favorable treatment" within the meaning of Article 3.

### **3. With Respect to Article 6:**

The provisions of Article 6 shall apply to any measure, direct or indirect, of expropriation, nationalization, or other similar measures, such as freezing, freezing of assets, collection of abusive taxes, obligation to sell all or part of the investment, or any measure that would lead to the loss or degradation of the economic value of this investment; whether the result of this or a series of such measures, or others, will be equivalent to expropriation or nationalization, including, as other examples,

any State intervention, obstruction of the administration or removal of the administration, transfer, use, confiscation, payment or establishing control of any kind regarding such an investment.

#### **4. Regarding Articles 4, 6 and 7:**

a) the term "without delay" ("prompt"), within the meaning of Articles 4, 6 and 7, shall be deemed to be satisfied if the return to the country of origin or the transfer takes place within the time limits normally required for carrying out the transfer formalities. This period will be considered from the date on which the application was submitted, and in no case will it exceed two months;

b) the income from investments, and, in the case of their reinvestments, the income resulting from reinvestments, will enjoy the same facilities and the same protection as the initial investment.

#### **5. Regarding Article 7:**

The transfers referred to in Article 7 of this Agreement shall mean transfers from foreign currency accounts in the Republic of Moldova belonging to investors in the State of Kuwait.

If an investor from the State of Kuwait does not have enough foreign currency to make the transfer, the Republic of Moldova will provide foreign currency for the transfer of:

a) income from investments;

b) the amounts due from the total or partial liquidation;

c) the allowances referred to in Articles 4 and 6;

d) income from investments made by investors in the State of Kuwait, if the competent state bodies of the Republic of Moldova have given their special approval, to the respective investor to sell their products on the domestic market of the Republic of Moldova; and

e) the salaries of all employees who have been allowed to work in connection with an investment made by a Kuwaiti investor in the territory of the Republic of Moldova.

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

Done in Chisinau, on March 29, 2002, in two originals, in the Moldovan, Arabic and English languages, all texts being equally authentic. In case of differences in the interpretation of the texts in the Moldovan and Arabic languages, the English text will be the reference.