

# **AGREEMENT between the Government of Ukraine and the Federal Government of the Federal Republic of Yugoslavia on the Reciprocal Promotion and Protection of Investments**

The Cabinet of Ministers of Ukraine and the Federal Government of the Federal Republic of Yugoslavia (hereinafter - Parties)

Desiring to create favorable conditions for expansion of economic cooperation between the Contracting Parties;

Intending to create and maintain favorable conditions for mutual investments;

Recognizing that the involvement and protection of investments will strengthen the business and a significant increase in the contribution to the development of economic relations between the Contracting Parties

Agree as follows:

## **Article 1. Definition**

1. The term "investment" covers any kind of values that are invested investors of either Contracting Party in the territory of the other Contracting Party in accordance with its national law, including but not limited to:

(A) movable and immovable property owned by the investor, as well as other related rights such as mortgages, liens, pledges and similar rights;

(B) shares, obligations and any other securities owned by the investor;

(C) intellectual property, including copyright and other related rights, trademarks, inventions, including patents, designs, models and goodwill, as well as processes, knowledge and experience (know-how);

(D) the right to conduct economic activities, including the rights to explore for, develop, extract or exploit natural resources provided under the legislation or agreements.

Change the type of investment, which will be invested funds will not affect their character as investments.

2. The term "investor" shall mean:

(A) a natural person having the nationality of either Contracting Party and who invests in the territory of the other Contracting Party;

(B) the legal person created under the national law of one Contracting Party in the territory of the Contracting Party, and who invests in the territory of the other Contracting Party.

3. The term "income" shall mean the amounts received from investments, but not exclusively, profits, interest, dividends, royalties, fees for licenses, patents and similar income.

4. The term "territory" shall mean the area covered by the land border and sea area, seabed and its subsoil, located on territorial waters over which the Party exercises its sovereign rights or jurisdiction in accordance with its laws, regulations and international law.

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

1. Each Contracting 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 and regulations.

2. Investments of investors of either Contracting Party shall at any time be accorded fair and equitable treatment, full

protection and security in the territory of the other Contracting Party.

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

1. Each Party shall provide in its territory investments by investors of the other Contracting Party, which is not less favorable than that it accords to its investors and their investments or to investors of any third country and their investments, depending on whichever is most favorable.

2. Each Party shall in its territory accord to investors of the other Contracting Party as regards management, maintenance, use, revenue and disposition of their investments treatment no less favorable than that it accords to its own investors and their investments or to investors any third country and their investments, depending on which one is the most favorable.

3. The provisions of paragraphs. 1 and 2 of this Article shall be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preferences or privileges which may be extended by the former Contracting Party resulting from:

(A) its participation in the customs union, free trade area, monetary union or similar international agreement establishing similar associations or other forms of regional cooperation, to which is or may be any of the Contracting Parties; or

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

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

1. Investors of one Contracting Party whose investments made in the territory of the other 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, provided the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other solutions, no less favorable than that which the latter Contracting Party shall accord to investors of any third country.

Payments for specified reasons will be made without delay and shall be freely transferable.

2. Without prejudice to the provisions of paragraph. 1 of this Article, investors of either Contracting Party who are lost in the territory of the other Contracting Party during any of the events referred to in this paragraph resulting from:

(A) requisitioning of their property by its forces or authorities of the other Contracting Party,

(B) destruction of their property by its forces or authorities of the other Contracting Party which was not caused by military operations or were not necessary due to the situation,

Will be given the necessary restitution or adequate compensation.

Payments for specified reasons will be made without delay and shall be freely transferable. By the time the compensation amount in its bear interest at rates of LIBOR.

### **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 - expropriation) in the territory of the other Contracting Party, except in the public interest. The expropriation will be carried out according to justice without discrimination and be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation will be equal to the market value of the expropriated investment immediately before the date of expropriation or before, when the impending expropriation became public, depending on what happened before, will include interest from the date of expropriation at LIBOR until the payments will be made without undue and such delays will effectively realizable and freely transferable.

2. The investor will have the right under the laws and regulations of the Contracting Party which made the expropriation, to prompt review by the judiciary of that Contracting Party of its case and evaluate its investment in accordance with the principles set out in this Article.

### **Article 6. Transfers**

1. Each Party shall, after all obligations of investors of the other Contracting Party guarantee investors of the other

Contracting Party under the laws and regulations of the first Contracting Party the free transfer of payments relating to investment, including but not limited to:

(A) capital and other cash needed to maintain and increase investments;

(B) income;

(C) proceeds from total or partial liquidation of investments;

(D) proceeds from repayment of loans, based on investments;

(E) compensation that included in Articles 4 and 5 of this Agreement.

2. Transfers of payments mentioned in p. 1 of this Article shall be taken without undue delay, in convertible currency at the official exchange rate applicable on the date of transfer to the territory of the Contracting Party in which the investment was made.

## **Article 7. Subrogation**

1. If one Contracting Party or its designated agency makes payment to its investors under the guarantee, which was provided in connection with an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize:

(A) the transfer by law or pursuant to a legal transaction of any rights or claims of the investor of the first Contracting Party or its authorized body and

(B) that the first Contracting Party or its designated agency as a result of the right of subrogation to exercise the right or to implement the requirements of the investor and assume the obligations related to the investment.

2. Subrohovani rights or claims shall not exceed the original rights or claims of the investor.

3. Subrohovani rights and obligations of the insured investor to also include transfer payments in accordance with Article 6.

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

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

2. If the dispute referred to in p. 1 of this Article, the Contracting Parties can not be settled within six months from the date when one Contracting Party notified in writing to the other Contracting Party, it will, at the request of either Contracting Party submitted to Arbitration Court.

3. The tribunal referred to in p. 2 of this article will be created on ad hoc basis for each individual case as follows: within three months of receipt of a written request for arbitration, each Contracting Party shall appoint one member of the court. Within two months, two members elected by mutual agreement the third arbitrator - a third State, who on approval of the Contracting Parties shall be appointed Chairman of the Court.

4. If within the periods specified in paragraph 3 of this Article, the appointment is done, each Party will in the absence of any other agreement invite the President of the International Court of Justice to make the appointments. If the President is a citizen of either Contracting Party or if he is otherwise prevented from discharging the said function, the appointment should do Deputy Chairman. If you find that Deputy Chairman is a national of either Contracting Party or that he can not perform the said function, the appointments have to make a member of the International Court of Justice next in seniority who is not a national of either Contracting Party.

5. The Arbitral Tribunal shall reach its decision on the basis of the provisions of this Agreement and on the main principles of international law. The tribunal shall reach its decisions by majority vote. Its decisions are final and binding nature of the Contracting Parties. The tribunal determines its own procedure.

6. Each Contracting Party shall bear the costs of its member and its representation in the arbitration process. The cost of the Chairman and other costs will be borne in equal parts by both Contracting Parties.

## **Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes between an investor of one Contracting Party and the other Contracting Party in respect of the obligations of the latter arising from this Agreement with respect to investments by investors of the first Contracting Party shall be resolved as far as possible, through negotiations.

2. If the disputes mentioned in p. 1 of this Article can not be settled through negotiation within six months, both parties to the dispute may refer the dispute to address the competent court of the Contracting Party is a party to the dispute.

3. Instead of applying the decision n. 2 of this Article investors of either Contracting Party may refer the dispute to arbitration solution:

(A) ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(B) the International Centre for Settlement of Investment Disputes, which is established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in. Washington, DC, March 18, 1965 (Convention ICSID).

4. The decision of the Arbitration Court shall be final and binding on both parties to the dispute and will be carried out in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made.

## **Article 10. Application of other Rules**

If the laws of the Contracting Parties or present or future international agreements between the Contracting Parties or other international agreements to which is whether the two Contracting Parties shall provide provisions according to which investments by investors of the other Contracting Party shall be accorded treatment more favorable than that accorded this agreement, such laws and agreements shall apply to the extent in which they are favorable, and will prevail over this agreement.

## **Article 11. The Relations between the Contracting Parties**

Representatives of the Contracting Parties shall consult where necessary with regard to matters concerning this Agreement. Consultations will be held on the proposal of one Contracting Party at the time and place agreed through diplomatic channels.

## **Article 12. Application of the Agreement**

The provisions of this Agreement relating to investments by investors of either Contracting Party both before and after the entry into force of this Agreement and shall apply from the date of entry into force.

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

1. This Agreement shall enter into force on the date of exchange of the last notification of the completion of the necessary procedures, according to the laws of the Contracting Parties.

2. This Agreement shall remain in force for a period of ten years and will be automatically extended for subsequent periods of five years unless either Contracting Party notifies in writing the other Contracting Party not later than 12 months before the expiry of its intention to terminate the Agreement.

3. With respect to investments made before the expiration of this Agreement, the provisions of Art. 1 - 12 will remain valid for a period of 10 years from the date of termination.

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

Signed in the city of Belgrade, January 9, 2001 in two originals, each in Ukrainian, Serbian and Russian, all texts being equally authentic. In case of divergence of interpretation of this Agreement will govern the Russian text.

According to Cabinet of Ministers

Ukraine

According to the Federal Government

Federal Republic of Yugoslavia