

# **Agreement between the Government of Ukraine and the Government of the Republic of Cuba for the Promotion and Reciprocal Protection of Investments**

The Government of Ukraine and the Government of the Republic of Cuba, hereinafter referred to as the "Parties"

Desiring to create favorable conditions for greater economic cooperation between the two countries and,

In particular for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments, according to international agreements, stimulate economic initiatives that will increase the development of the Contracting Parties

Agree as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

1. The term "investment" would cover any kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party under current legislation and the latter include in particular, but not exclusively,

The term "investment" generally means:

A. Movable and immovable property, as well as other rights such as mortgages and similar rights;

B. shares, stocks, bonds, dues and any other securities;

C. Claims to money and the claim of the obligations under the contract, which has an economic value;

D. copyrights, trademarks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

E. Any economic right conferred by law or contract, and any license or permit under the laws of economic activity, including search, mining, development and exploitation of natural resources.

2. The term "investor" means any natural or legal person of a Contracting Party that has made, makes or intends to make investments in the territory of the other Contracting Party.

3. The term "natural person" means according to each of the Contracting Parties person who is a national of that State under its laws.

4. The term "legal person" means, according to each of the Contracting Parties, any institution established in one of them and recognized her as such public institutions, companies and financial associations, foundations, associations, regardless of whether they have limited liability or not.

5. The term "returns" means the amounts derived from investments or in connection with them, including profits, dividends, interest, capital gains, royalties, management, technical, and other rates or income nature, income and reinvested earnings of the capital.

6. The term "territory" shall mean the definitions, land and sea areas. The latter include both surface and underwater territory held by the Contracting Party, which under international law extends their right to sovereignty and jurisdiction.

Any change in the legal form in which assets were invested, will not affect their character as investment.

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

1. Each Party shall encourage and create 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 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 Regime**

1. Each Party shall provide in its territory to investments and returns of investors of the other Contracting Party treatment no less favorable than that accorded to investments and returns of investors relevant third countries.
2. Each Party shall provide in its territory to investments and returns of investors of the other Contracting Party the same legal MFN in the same activity as that set by the state for investment and profits of their own investors that have a similar legal status.
3. The provisions of this Article shall not apply to the privileges and benefits that each Contracting Party shall recognize or recognize third country, based on its dependence on customs or economic union involvement in the common market, free trade zones, regional or subregional agreements, multilateral economic agreements or as a result of agreements made to avoid double taxation or to facilitate cross-border trade.

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

1. Where investments of investors of either Contracting Party suffer losses owing to war, armed conflict, state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be the latter Contracting Party treatment, with respect to restitution, indemnification, compensation or other settlement, not less favorable than that which the latter Contracting Party shall accord to investors of any third country.
2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:
  - a) searching of their property by its forces or authorities;
  - b) destruction of their property by its forces or authorities which was not caused in combat action or were required necessity of the situation, shall be accorded just and adequate compensation for the losses sustained during the searching or the result of the destruction of property.

Resulting payments shall be freely transferable in freely convertible currency without delay.

## **Article 5. Nationalisation and Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party if it does not require public or national interests.

Expropriation conducted by due process of law, without discrimination and accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall be equal to the market value of the investment when the expropriation or impending expropriation became public knowledge, shall include interest at LIBOR rate from the date of expropriation until the date of payment will be paid in the currency, which was made an investment, or by agreement with any other acceptable to the investor's currency, will be effectively implemented and carried out without delay.

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

## **Article 6. Transfer of Funds**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, according to the investments made in its territory, free transfer of dividends and other payments paid after taxes and other duties specified applicable law. Dividends and other payments above include, but not limited to, the following:

- Income from investments, as defined in Article 1;
- Reimbursement provided for in Article 4;
- Compensation provided for in Article 5;
- Revenue from the sale or liquidation, total or partial, of investments;
- Income of individuals in accordance with the laws and regulations of the Contracting Party received them in connection with an investment in the territory of the Contracting Party.

## **Article 7. Subrogation**

In the case where a Contracting Party or one of its agencies provide the insurance guarantee against non-commercial risks for investments made by one of its investors in the territory of the other Contracting Party and has made payment based on the financial guarantee indicated the Party will be recognized as being subrogated on the rights and have the same credit status as the investor who had an insurance. For payments to be carried out for the Contracting Party or its agencies on the basis of a given subrogation shall be applied in accordance with Articles 4, 5 and 6 of this Agreement.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes that may arise between a Contracting Party and an investor of the other Contracting Party related investments can be resolved between the parties concerned, if possible, amicably.
2. If the dispute can not be settled within six months after it began, evidenced in writing, the investor can apply to the choice:
  - a) the relevant authorities of the competent tribunal of the Contracting Party in whose territory the investment;
  - b) the arbitration court under the provisions of 3 - 5 Article 9 of the Agreement.
3. Contracting Party involved in court, abstain during the arbitration or the arbitration resolution of challenging the circumstances that an investor of another Contracting Party has received compensation from an insurance policy for the loss of or together.

## **Article 9. Settlement of Disputes between Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through consultation both Parties through diplomatic channels.
2. If such disputes can not be settled within three months from the date on which one Contracting Party notified in writing the other Contracting Party, they will, at the request of either Contracting Party caused by the Arbitration Court ad hoc as defined in this Article.
3. The Arbitral Tribunal shall be constituted as follows: within two months after receipt of the request of arbitration, each Contracting Party shall appoint one member of the Court. The two members shall immediately choose a third country, to be appointed Chairman. The Chairman shall be appointed within three months from the date of appointment of the other two members.
4. If within the terms defined in paragraph 3 of this Article, the appointments have not been made, either Contracting Party may, in the absence of other agreement, request the President of the International Court of Justice to make the appointment. If it turns out that he is a citizen of either Contracting Party or if other reasons prevented from discharging the said function, the Vice-President of the Court shall be invited to make the appointment. If the Vice President is a national of either Contracting Party or prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointment.
5. The Arbitral Tribunal shall reach decisions by majority vote and its decisions are final in nature. Each Contracting Party shall bear the costs of its arbitrator and its representation in the process. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal will set its own rules of procedure.

## **Article 10. Scope**

This Agreement shall apply to investments of investors of either Contracting Party have been committed in the territory of the other Contracting Party to entry into force, provided that these investments are and used to date under the law and apply to investments that will be made later in the spirit and with the permission of this Agreement.

## **Article 11. Application of other Rules**

1. Where the issue covered by this Agreement and by another international agreement to which both Contracting Parties are parties or general international law, so most of the Contracting Parties and their investors apply law to be in the most favorable case.

2. If one Contracting Party on the basis of laws, rules, regulations or individual agreements adopted for investors of the other Contracting Party is more favorable rules than those provided in this Agreement, you will be given more favorable treatment.

This Agreement may be amended or supplemented by agreement signatories.

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

1. This Agreement shall enter into force on the day on which the Parties mutually testify in writing that the relevant constitutional formalities required for the entry into force of international agreements have been made. Remain in force for an initial period is 10 years and will be extended for further periods of 5 years.

Each Party will abandon the Agreement, after notifying in writing six months before the end of its term.

2. In case of refusal, the provisions under articles 1 - 11 of this Agreement will continue to apply to investments made prior to failure, for 10 years.

Signed in the city. Kiev May 20, 1995 in duplicate, Ukrainian and Spanish languages, both texts being equally authentic.

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Ratified

Law of Ukraine on November 15, 1996 N 515/96-VR.

For the Government of Ukraine

For the Government of the Republic of Cuba

(signature)

(signature)