

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA AND THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Lithuania and the Government of the Republic of Moldova, hereinafter referred to as the Contracting Parties,

- Desiring to intensify their economic cooperation to the mutual benefit of both States on a long term basis,
- Having as their objective to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,
- Recognising that the promotion and protection of investments, on the basis of this Agreement, will stimulate initiative in this field,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investment" shall mean every kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and in particular, though not exclusively, includes:

- a) movable and immovable property and any other property rights, such as mortgages, liens or pledges, and similar rights;
- b) shares in, and stock and debentures of a company and any other form of participation in a company;
- c) claims to money or to any performance under contract having an economic value;
- d) intellectual property rights, including industrial property rights, patents, trade marks, technical processes, know-how, goodwill and any other similar rights;
- e) any right to conduct economic activities conferred by law or under contract, including concessions to search for, extract and exploit natural resources.

Any alteration of the form in which the investments have been made does not affect their character as investment, provided such an alteration is made in accordance with the host country's laws.

2. "Returns" means the amounts, yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, and fees.

3. "Investor" means with regard to either Contracting Party:

- a) natural persons having the nationality of that Contracting Party in accordance with its laws;
- b) legal entities constituted in accordance with the laws of that Contracting Party.

4. "Territory" means in respect of either Contracting Party, the territory under its sovereignty including the territorial sea, as well as other marine or submarine areas over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

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

Each Contracting Party promotes in its territory investments by investors of the other Contracting Party and admits such investments in accordance with its laws and regulations.

## **Article 3. Protection and Treatment of Investments**

1. Investments by investors of a Contracting Party shall, at all times, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal in its territory of investments by investors of the other Contracting Party is not in any way impaired by unjustifiable or discriminatory measures.
2. Each Contracting Party shall accord to the investments, made in its territory by investors of the other Contracting Party, treatment not less favourable than that which it accords to the investments of its own investors or investors of any third State, whichever is more favourable.
3. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege extended to the investors of any third State by virtue of:
  - a) any existing or future customs union, common market, free trade area, other forms of economic cooperation or similar international arrangement to which either Contracting Party is or may become a party;
  - b) any advantages accorded by existing or future agreements relating to avoidance of double taxation or any other arrangement relating to taxation.
4. Returns from the investments and, in cases of reinvestment, the income ensuing therefrom, enjoy the same treatment and protection as the initial investments.
5. Each Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

## **Article 4. Expropriation**

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measure having equivalent effect (hereinafter referred to as expropriation), except in the public interest, under due process of law, on a non discriminatory basis and against payment of prompt, adequate and effective compensation.
2. The compensation mentioned in the paragraph 1 of this Article shall amount to the market value of the expropriated investment immediately before the expropriation occurred or the impending expropriation became public knowledge, whichever is the earlier, and shall be paid without undue delay. The compensation shall include interest calculated on the LIBOR basis from the date of expropriation.
3. Investors, whose assets are being expropriated shall, without prejudice to their rights under Article 9 of this Agreement, have a right to prompt review by the appropriate judicial or administrative authorities of the expropriating Contracting Party to determine whether such expropriation and any compensation therefor conforms to the principles of this Article and the laws of that expropriating Contracting Party.
4. Investors, affected by the expropriation, may not raise claims under the provisions of this article if compensation has been paid pursuant to similar provisions in another investment protection agreement by the expropriating Contracting Party.

## **Article 5. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, civil disturbance or other similar events in the territory of the other Contracting Party, shall be accorded by latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable. Resulting payments shall be made without delay and shall be freely transferable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- a) requisitioning of their investment or the part thereof by the latter's forces or authorities, or
- b) destruction of their investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party free transfer into and out of its territory of payments in connection with an investment, in particular:

- a) the initial capital and additional amounts for the maintenance or extension of the investment;
- b) returns;
- c) the proceeds from total or partial liquidation of the investment;
- d) funds in repayment of loans directly related to the investment;
- e) compensation provided for in Articles 4 and 5;
- f) the earnings of personnel engaged from abroad in connection with an investment in its territory.

2. Transfers shall be made in a freely convertible currency in which the original investment was made or in any other currency if so agreed by the investor, at the market rate of exchange prevailing on the date of transfer, and effected without undue delay in accordance with procedures established by the Contracting Party in whose territory the investment was made.

3. The Contracting Parties shall accord to the transfers referred to in paragraphs 1 and 2 of this Article treatment no less favourable than that accorded to transfers in connection with investments made by investors of any third State.

## **Article 7. Subrogation**

1. If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognise:

- a) the assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and
- b) that the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

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

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by negotiations through the diplomatic channels.

2. If the Contracting Parties cannot reach an agreement within six months from the beginning of the negotiations, it shall, upon the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The arbitration tribunal shall be constituted ad hoc as follows. Within two months from the date on which either Contracting Party receives from the other Contracting Party a request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall together, within a further two month period, select a third arbitrator who is a national of a third State. The third arbitrator, once approved by the two Contracting Parties, shall serve as Chairman of the arbitral tribunal.

4. If within the periods specified in the paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party, or is otherwise prevented from

discharging this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too 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 Party shall be invited to make the necessary appointments.

5. The arbitration tribunal shall decide on the basis of the rules contained in this Agreement and in other agreements in force between the Contracting Parties as well as of the principles of international law.

6. The tribunal shall determine its procedure subject to the provisions of this Agreement and international law. The tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding on the Contracting Parties.

7. Each Contracting Party shall bear the costs of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be born in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties and such award shall be binding on both Contracting Parties.

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

1. Disputes between a Contracting Party and an investor of the other Contracting Party relating to an investment of the latter in the territory of the former shall, if possible, be settled amicably. In an event of dispute the Contracting Party, in whose territory the investment was made, shall be notified in writing, including detailed information, by the investor.

2. If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute either to the competent courts of the Contracting Party in the territory of which the investment has been made or to international arbitration.

Each Contracting Party hereby consents to the submission of such dispute to international arbitration.

3. Where the dispute is referred to international arbitration the investor concerned may submit the dispute either to:

a) the International Center for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965, for arbitration or conciliation, or

b) an ad hoc arbitral tribunal to be established under the Arbitration Rules of United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify those Rules.

4. The arbitral tribunal shall decide the disputes in accordance with the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its territory of such awards.

5. During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

## **Article 10. More Favourable Provisions**

If the provisions of domestic law of either Contracting Party or obligations under international law, existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such regulation shall, to the extent that is more favourable, prevail over this Agreement.

## **Article 11. Consultations**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to hold consultations on the interpretation or application of this Agreement.

## **Article 12. Application**

1. This Agreement shall apply to the investments made in the territory of one of the Contracting Parties in accordance with its laws and regulations by investors of the other Contracting Party prior to as well as after the entry into force of this

Agreement, but shall not apply to any dispute concerning an investment which arose or could have arisen, or any claim which was settled, before its entry into force.

2. This Agreement shall also not apply to the matters, related to acquisition, use, exploitation or disposition of the land. These questions are regulated by the laws and regulations in force in either Contracting Party.

### **Article 13. Amendments**

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such a manner as may be agreed in written between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that all their respective internal procedures for its entry into force have been completed.

### **Article 14. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty days after the date on which Contracting Parties have exchanged written notifications informing each other that all their respective internal procedures for its entry into force have been completed.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for another ten (10) years period or periods, unless denounced in writing by either Contracting Party twelve months before expiration of current period of validity.

3. In respect to investments made prior to the date of termination of this Agreement, the foregoing Articles shall continue to be effective for a future period of ten (10) years from that date.

Done in duplicate at Vilnius on 20 September 1999 in the Lithuanian, Moldavian and English languages, all texts being equally authentic. In case of divergent interpretation, the English text shall prevail.

For the Government of

For the Government of

The Republic of Lithuania

The Republic of Moldova