Agreement between the Government of Ukraine and the Government of the People's Republic of China on Encouragement and Mutual Protection of Investments

The Government of Ukraine and the Government of the People's Republic of China, hereinafter referred to as the "Contracting Parties", Desiring to encourage, protect and create favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party,

Based on the principles of sovereignty, equality and mutual benefit, with a view to developing economic cooperation between the two States,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

1. The term "investments" means all types of valuables which are invested in the territory of a Contracting Party which accepts investments in accordance with its legislation, including, in particular:

a) movable and immovable property and property rights;

b) shares or other forms of participation in enterprises and companies;

c) the right to claim cash and any liabilities that have economic value;

d) copyright, industrial property rights (such as patents, utility designs, industrial designs or designs, trademarks and service marks, trade names, indications of origin), know-how and goodwill;

e) the right to engage in economic activities, provided in accordance with legislation or treaties, including, in particular, the right to explore and exploit natural resources.

2. The term "investor" means in relation to each of the Contracting Parties:

- natural persons who are nationals of that Contracting Party in accordance with its legislation;

- enterprises and companies established in accordance with the legislation in force in the territory of this Contracting Party;

- provided that the individual, enterprise or company is entitled in accordance with the laws of that Contracting Party to make investments in the territory of the other Contracting Party.

3. The term "profits" means the amounts received as a result of an investment and, in particular, but not limited to: profits, dividends, interest and royalties.

4. The term "territory" means:

- the territory of Ukraine and the territory of the People's Republic of China, respectively;

- maritime areas adjacent to the coast of the Contracting Party concerned over which that Party exercises sovereign rights or jurisdiction in accordance with international law.

Article 2.

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments and shall allow such investments in its territory in accordance with its legislation.

2. Each Contracting Party shall, in accordance with its legislation, provide assistance in obtaining visas and work permits for nationals of the other Contracting Party in connection with investments made in its territory.

Article 3.

1. Each Contracting Party undertakes to ensure in its territory equal treatment and protection in respect of investors of the other Contracting Party and activities related to such investments.

2. The treatment referred to in paragraph 1 of this Article shall be no less favorable than that accorded to investments of investors of any third country and to activities related to such investments.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to benefits and advantages which the Contracting Party grants or will grant in the future to investors of any third country or to their investments on the basis of:

- its participation in a free trade area, customs or economic union, organization of economic mutual assistance or in an international agreement providing for benefits and advantages similar to those provided by the Contracting Party to the participants of these organizations and entered into force before the date of signing this Agreement;

- international agreement or other agreement on taxation;

- agreements on cross-border trade.

Article 4.

1. Investments of investors of one of the Contracting Parties made in the territory of the other Contracting Party may not be nationalized, requisitioned or subjected to other measures having similar nationalization or requisition consequences (hereinafter "requisition"), except when such measures are carried out in public interests, in compliance with the procedure established by law, on a non-discriminatory basis and are accompanied by the payment of compensation.

2. The compensation provided for in paragraph 1 of this Article shall be calculated on the basis of the real value of the investments at the time of their requisition and shall be paid without undue delay, be convertible and freely transferable from one Contracting Party to the other Contracting Party.

3. If investments of investors of a Contracting Party are damaged in the territory of the other Contracting Party as a result of war, state of emergency, social unrest or other similar circumstances, the Contracting Party in whose territory the investments are made shall, if it takes measures to compensate for losses or other measures. these investors are treated no less favorably than those granted to investors in any third country.

Article 5.

Each of the Contracting Parties shall, in accordance with its legislation, guarantee to the investors of the other Contracting Party the transfer of amounts in connection with investments, including:

a) profits as defined in paragraph 3 of Article 1 of this Agreement;

b) amounts from full or partial liquidation of investments;

c) payments for technical assistance, maintenance and management experience;

d) payments made in accordance with the loan agreement in connection with investments;

e) wages and other remuneration received by nationals of the other Contracting Party for work and services performed in connection with investments made in the territory of the first Contracting Party, in the amount provided by its legislation.

Article 6.

Transfers of amounts in accordance with Articles 4 and 5 of this Agreement shall be made at the exchange rate applicable on the date of transfer in accordance with the rules of currency regulation of the Contracting Party in whose territory the investment is made.

Article 7.

If a Contracting Party or an intermediary designated by it makes a payment to an investor on the basis of a guarantee issued by it in respect of an investment of an investor of that Contracting Party, the first Contracting Party or its appointed intermediary shall receive by subrogation the relevant investor rights under this Agreement.

Article 8.

This Agreement shall also apply to 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 until the entry into force of this Agreement.

Article 9.

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

2. If the dispute cannot be settled in this way within six months from the date on which the dispute has been settled by one of the Contracting Parties, it shall, at the request of either Contracting Party, be referred to an arbitral tribunal "ad hoc".

3. The arbitral tribunal shall consist of three arbitrators and shall be constituted as follows: within two months from the date of receipt by one of the Contracting Parties of the written notification of the other Contracting Party of the dispute to arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within two months from the date of the appointment of the second arbitrator, select a third arbitrator, a national of a third State having diplomatic relations with both Contracting Parties, appointed by the Chairman of the arbitral tribunal with the permission of the Contracting Parties.

4. If the arbitral tribunal is not established within four months from the date of receipt of the written notification of the referral to the arbitral tribunal, either Contracting Party may, unless otherwise agreed, propose to the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the Contracting Parties or for another reason is unable to perform the specified function, the following senior member of the International Court of Justice who is not a national of either Contracting Party may be invited to make the necessary appointments.

5. The arbitral tribunal shall establish its own rules of procedure. The Court shall give its decision in accordance with the provisions of this Agreement and the generally accepted principles of international law.

6. The arbitral tribunal shall render its decision by a majority of votes, which shall be final and binding on both Contracting Parties. At the request of either Contracting Party, the arbitral tribunal shall explain the reasons for its decision.

7. Each Contracting Party shall bear the costs associated with the activities of the arbitrator appointed by it and its representation in the arbitration proceedings. Expenses related to the activities of the Chairman and other expenses shall be borne by the Contracting Parties in equal parts.

Article 10.

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning the amount of compensation in the event of requisition may be submitted to an arbitral tribunal.

2. Such an arbitral tribunal shall be constituted for each case as follows: each of the parties to the dispute shall appoint one arbitrator, and the two arbitrators shall select a national of a third State having diplomatic relations with both Contracting Parties as arbitrator. The first two arbitrators shall be appointed within two months, and the chairman shall be elected within four months from the date of the written notification of the referral of the dispute to arbitration. If the arbitral tribunal is not established within the specified period, each of the parties to the dispute may propose to the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

3. The arbitral tribunal shall establish its own rules of procedure. In this case, the court may, in determining the procedure, adopt as a guide the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

4. The arbitral tribunal shall reach its decision by a majority of votes.

Such a decision will be final and binding on both parties to the dispute. Each Contracting Party undertakes to comply with the award of the arbitral tribunal in accordance with its national law.

5. The arbitral tribunal shall render its decision in accordance with the provisions of this Agreement, the law of the Contracting Party in whose territory the investment is made, including its colonial rules, and the generally accepted

principles of international law.

6. Each of the parties to the dispute shall bear the costs associated with the activities of the arbitrator appointed by it and its chairmanship in the arbitration proceedings. Expenses related to the activities of the chairman and other expenses of the party will be borne in different shares.

Article 11.

If one Contracting Party in accordance with its legislation or international agreements to which both Contracting Parties to investments of investors of the other Contracting Party or activities related to such investments treatment more favorable than the treatment provided by this Agreement shall be applied more favorable mode.

Article 12.

1. Representatives of both Contracting Parties shall, as necessary, meet to:

a) study the application of this Agreement;

b) exchange of information on legal issues of investments and on the possibilities of their implementation;

c) settlement of disputes arising in connection with investments;

d) study of other issues related to investments;

e) consideration of proposals for possible changes and additions to this Agreement.

2. If either Contracting Party offers to hold consultations on any of the matters referred to in paragraph 1 of this Article, the other Contracting Party shall immediately respond and consultations shall be held alternately in Kyiv and Beijing.

Article 13.

1. This Agreement shall enter into force thirty days after the date of written notification by the Contracting Parties to each other of the completion of their respective constitutional procedures and shall remain in force for a period of five years.

2. This Agreement shall remain in force unless either Contracting Party notifies the other Contracting Party in writing of its termination at least one year before the expiry of the period specified in paragraph 1 of this Article.

3. Subject to the initial five-year period, either Contracting Party may terminate this Agreement at any time by notifying the other Contracting Party in writing of its intentions. Such notification shall take effect twelve months after the date of its receipt by the other Contracting Party.

4. With respect to investments made before the date of termination of this Agreement, the provisions of Articles 1 to 11 shall remain in force for the next fifteen years from the date of termination of this Agreement.

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

Done at Beijing on October 31, 1992, in duplicate, in the Ukrainian and Chinese languages, both texts being equally authentic.

For the Government of Ukraine

(signature)

For the Government of the People 's Republic of China

(signature)