

# **Agreement between the Government of Ukraine and the Government of the Kingdom of Saudi Arabia on the promotion and mutual protection of investments**

The Government of Ukraine and the Government of the Kingdom of Saudi Arabia (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation between the two States, intending to create favorable conditions for the investment of investors of one State in the territory of another State, Recognizing that mutual promotion and protection of investments are capable of stimulating a private business initiative and improving the well-being of both nations, have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means any type of assets owned or controlled by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with their laws and includes, but are not limited to:

(A) movable and immovable property, as well as any other proprietary rights such as mortgages, employment contracts, rights of retention, lending, usufruct and similar rights;

(B) shares, bonds and debt obligations of companies and any other form of participation in a company, as well as securities issued by a Contracting Party or by any of its investors;

(C) Claims for money, such as a loan or any performance obligation, having an economic value associated with an investment;

(D) intellectual property rights, including copyrights, patents, industrial designs, know-how, trademarks, trade secrets and trade names, goodwill;

(E) any right granted by law or by contract, or any licenses, permissions or concessions issued in accordance with the law;

Any change in the form in which the assets are invested or reinvested will not affect their character as investment, ensuring that such a change does not conflict with the legislation of the Contracting Party in whose territory the investments were made.

2. The term "proceeds" means amounts received as a result of an investment and, in particular, but not exclusively, include profits, dividends, royalties, capital gains or any other remuneration or payment.

3. The term "investor" means

A) in relation to the Kingdom of Saudi Arabia

i) a natural person possessing the citizenship (citizenship) of the Kingdom of Saudi Arabia in accordance with the legislation of the Kingdom of Saudi Arabia;

(ii) any entity having or not having legal personality established in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as a corporation, enterprise, cooperative, company, partnership, offices, organization, fund, Institution, business associations and other similar entities with full or limited liability.

(iii) The Government of the Kingdom of Saudi Arabia and its financial institutions and institutions such as the Saudi Monetary Agency, the State Fund and other government agencies existing in Saudi Arabia.

B) in relation to Ukraine

i) any natural person having the citizenship of Ukraine in accordance with its legislation;

ii) any legal entity that invests in the territory of the other Contracting Party established in accordance with the legislation of Ukraine, including companies, associations, partnerships, corporations and others.

4. The term "territory" means the territory within the land boundaries, the sea and sub-sea areas, the airspace and the territory of the exclusive economic zone and the continental shelf over which the Contracting Parties exercise sovereign rights and jurisdiction in accordance with international law.

## **Article 2.**

1. Each Contracting Party shall encourage, on its territory, as far as possible investments by investors of the other Contracting Party and recognize such investments in accordance with its legislation. In any case, it applies equal and fair treatment to such investments.

2. Investments of investors of either Contracting Party shall enjoy full protection and security in the territory of the State of the other Contracting Party. No Contracting Party shall in any way apply arbitrary and discriminatory measures in respect of the management, maintenance, use, maintenance, and placement of investments in its territory to investors of the other Contracting Party.

## **Article 3.**

1. Each Contracting Party shall grant to recognized investments and investment income of investors of the other Contracting Party a treatment that is no less favorable than that accorded to investments and returns on investments of investors of any third state.

2. In accordance with its legislation, each Contracting Party shall grant recognized investments and income from investments of investors of the other Contracting Party a treatment that is no less favorable than that accorded to recognized investments and returns on the investments of its own investors.

3. Each Contracting Party shall provide investors of the other Contracting Party with respect to the management, maintenance, use, maintenance and placement of investments or for the purpose of securing their rights regarding such transfer and compensation investments or for any other related activity On its territory, a regime which is no less favorable than the regime accorded to its investors or investors of a third state, whichever is the more favorable.

4. The provisions of paragraphs 1, 2 and 3 of this Article, among other things, do not apply to the privileges granted by any Contracting Party to investors of a third State in connection with their membership or association in a customs union, an economic union, a common market or a free trade area.

5. The provisions of this Article do not apply to tax matters.

## **Article 4.**

1. Investments of investors of any Contracting Party are not nationalized, expropriated and subjected to any other measures having an effect equivalent to nationalization or

Expropriation by another Contracting Party, except for the public purposes of this Contracting Party, and shall be accompanied prompt, adequate and effective compensation, ensuring that such measures are not discriminatory and enforced in accordance with the law.

Such compensation will be equivalent to the cost of expropriated investments just prior to the date on which expropriation or the threat of expropriation, nationalization or similar measures became known.

Compensation is paid without undue delay and includes a percentage determined on the basis of a prevailing commercial rate (eg LIBOR) before the payment date, and is such that it is effectively realized and freely transferable.

The provision must be made appropriately at the time or prior to the expropriation, nationalization or similar measures for the determination and payment of such compensation. The legality of any expropriation, nationalization or similar measures and amounts of compensation will be subject to review in accordance with due process of law.

2. Investors of any of the Contracting Parties whose investments suffer loss due to an armed conflict in the territory of the

other Contracting Party due to a war or other armed conflict, revolution, a state of emergency, a coup will be granted by the last Contracting Party no less favorable than that accorded by the last Contracting Party to its own investors. Such payments will be freely transferable.

3. Investors of any Contracting Party shall enjoy the most-favored-nation treatment in the territory of the other Contracting Party in respect of matters governed by this Article.

## **Article 5.**

1. If a Contracting Party or its designated institution, makes payments to its own investors under the guarantee that it has provided in connection with an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any right or claim of the investor or its related intermediary to the previous Party or its designated Institution

2. Obtained as a result of the subrogation of rights or claims will not go beyond the original rights and requirements of the investor.

## **Article 6.**

Each Contracting Party guarantees investors of the other Contracting Party free of charge, transfers of payments relating to investments and returns on investments received in the territory of the other Contracting Party after the fulfillment of all tax obligations by the investor, namely:

1. Basic and additional amounts to support or increase investment;
2. income;
3. funds for payment of loans;
4. proceeds from the liquidation or sale of investments in whole or in part;
5. royalties or fees for services;
6. earnings of individuals in accordance with the law of the Contracting Party in which the investment was made;
7. Compensation granted in accordance with Article 4.

## **Article 7.**

1. Transfers pursuant to Articles 4, 5 and 6 shall be made without delay and under the existing exchange rate applicable on the date on which the investor declares his willingness to effect the respective transfer.

2. This exchange rate will be in the absence of a market exchange rate, correspond to a cross rate - obtained at the rates applied by the International Monetary Fund for the exchange of currencies in special drawing rights.

## **Article 8.**

If the laws of any Contracting Party or existing or future international legal obligations taken by the Contracting Parties in addition to this Agreement provide for general or specific rules that grant investment to investors of the other Contracting Party more favorable than that provided for by this Agreement. By agreement, such rules, to the extent that they are more favorable, will prevail over the provisions of this Agreement.

## **Article 9.**

This Agreement shall apply to investments made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party and in accordance with the laws of the latter.

## **Article 10.**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be resolved by the Parties by negotiation through diplomatic channels.

2. If a dispute cannot be resolved by such means within six months, at the request of either Contracting Party, be submitted to the arbitral tribunal.

3. An arbitral tribunal is created for each individual case as follows:

Each Contracting Party will appoint one arbitrator, and these two arbitrators will accept a third-country national as Chairperson to be appointed by the two Contracting Parties. These arbitrators shall be appointed within two months, the Chairman, within three months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to the arbitral tribunal.

4. If, during any of the periods specified in paragraph 3 of this Article, the necessary appointments have not been made, any Contracting Party may, if it is not agreed otherwise, invite the President of the International Court of Justice to make the necessary appointments. If he is a national of a State of either Contracting Party or if other reasons prevent him from fulfilling the specified function, the Vice President will be invited to make the necessary appointments. If the Vice-President is also a national of a State of either Contracting Party or can not perform this function, a member of the International Court of Justice, following a seniority who is not a national of a State of any Party, shall make the necessary appointments.

5. The Arbitral Tribunal will make its decisions by a majority of votes. Such decisions will be final and binding. Each Contracting Party shall bear the costs of its arbitrator and of its representation in the arbitration proceedings. Expenditure relating to the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may change the rules regarding costs. In other matters, the arbitral tribunal will determine their own procedure.

## **Article 11.**

1. Disputes concerning investments between one Contracting Party and an investor of the other Contracting Party in connection with an investment in the territory of the last Contracting Party shall be settled amicably if possible.

2. If the dispute can not be resolved in the manner provided for in paragraph 1 of this Article within six months from the date of filing the request for resolution, it will be transmitted upon request of the investor to the competent court of the Contracting Party in whose territory the investments were made, as well as the investor Receives the right to refer the case to either:

(A) the International Center for the Settlement of Investment Disputes (ICSID), referring to the relevant provisions of the Convention on Settlement of Investment Disputes between States and Foreign Nationals, opened for signature in Washington, DC, on March 18, 1965, in the case where both The Contracting Parties have become parties to this Convention, or

B) an arbitrator or international arbitration tribunal established pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree to change these Rules in writing.

3. If the dispute is transferred in accordance with paragraph 2 to the competent court of the Contracting Party, the investor may not at the same time apply to the international court. If the dispute has been referred to the court, his decision will be final for both parties and will not be subject to any appeal or review that is not covered by the conventions in question. The decision will be made in accordance with national law.

## **Article 12.**

This Agreement will continue to operate regardless of the existence of diplomatic or consular relations between the Contracting Parties.

## **Article 13.**

1. This Agreement shall enter into force on the thirtieth day after the date on which the Contracting Parties have notified each other in writing through diplomatic channels of the fulfillment of all relevant domestic procedures. It will remain in force for an initial period of ten years and will then continue to operate. Upon the end of the initial period of ten years, this Agreement may be denounced at any time by the Contracting Party by submitting a written notice within 12 months before the denunciation.

2. With respect to investments made prior to the termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for the next 10 years from the date of termination of this Agreement.

Done in Riyadh, April 9, 2008, in the GK, which corresponds to 3/4/1429, the Giji, in duplicate, in the Ukrainian, Arabic, and English languages, all texts being equally authentic.

In case of discrepancies in interpretation, the English text will prevail.

FOR THE GOVERNMENT OF UKRAINE

FOR GOVERNMENT

KINGDOM OF SAUDI ARABIA

(signature)

Yuriy Kostenko

First Deputy Minister for Foreign Affairs

(signature)

Dr Awad S. Al-Avvad

Deputy Head of General Investment Administration