

# **AGREEMENT**

## **Between the Government of Ukraine and the Government of the Republic of Azerbaijan on promotion and reciprocal protection of investments**

**SIGNING DATE: 24/3/97 p.**

**RATIFICATION DATE: 16/10/97 p.**

**Effective Date: 12/9/97 p.**

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

Desiring to strengthen economic cooperation between the two countries,

Desiring to create favorable conditions for investments by investors of one state in another state,

Recognizing that the promotion and reciprocal protection of investments may revive economic initiative and improve the welfare of both peoples,

Agreed as follows:

### **Article 1.**

#### Definition

For the purposes of this Agreement:

1. The term "investment" covers any kind of assets 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:

- a) movable and immovable property and other property rights such as mortgage law and mortgage;
- b) the right to partial participation and other forms of participation in companies, firms, foundations, etc., etc.;
- c) a claim on the cash that was used to create economic value or for services that have economic value;
- d) intellectual property rights, such as, in particular, copyrights, patents, utility models, industrial designs and models, trademarks, trade names, industrial and commercial secrets, technology and "know-how" and "goodwill";
- e) public legal concessions, including concessions for exploration and extraction of natural resources.

3mina form in which assets are invested shall not affect their properties as investments, provided that such change is made according to the law of the Contracting Party which accepts investment.

2. The term "returns" means the amounts received from the investment over a certain period, such as the share of profits, dividends or other rewards.

3. The term "investor" means:

- a) a natural person who is a national of a Contracting Party or permanent residence in the territory of a Contracting Party in accordance with applicable law;
- b) legal person, including a corporation, commercial enterprise, organization or association incorporated or in any other way constituted under the law of the Contracting Parties to the amount specified.

4. The term "territory" means:

- a) in relation to Ukraine - land and territorial waters of Ukraine and the exclusive economic zone and continental shelf over which Ukraine exercises or may exercise jurisdiction and sovereign rights for the purpose of exploitation, research, or conservation of natural resources in accordance with international law;
- b) with respect to the Republic of Azerbaijan - the territory of the Republic of Azerbaijan, specified in the Constitution of the Republic of Azerbaijan, including the marine space, within which may be made sovereign rights of the Republic of Azerbaijan regarding the seabed and subsoil and their natural resources and any territory specified can be defined in the future in accordance with international law and legislation of Azerbaijan Republic.

## **Article 2. Promotion and Admission**

1. Each Contracting Party shall facilitate investment opportunities for investors of the other Contracting Party and allow such investments in accordance with its laws.
2. Neither Contracting Party in its territory does not prevent the adoption by arbitrary or discriminatory measures the management or disposal of investments of investors of the other Contracting Party, and their application and use.

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

1. Each Contracting Party shall ensure in its territory in respect of investments of investors of the other Contracting Party treatment no less favorable than in respect of investments of its own investors or investments of investors of third countries.
2. This option does not apply to advantages that either Contracting Party shall accord to investors of third countries in connection with their participation in the customs or economic union, common market or the Free Trade or because of their association with them.
3. The regulations issued in accordance with this Article shall not apply to privileges which either Contracting Party shall accord to investors of third countries on the basis of an agreement to avoid double taxation or other agreements with tax issues.

## **Article 4. Expropriation**

1. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") except for a public purpose in accordance with current legislation on a non-discriminatory basis and be accompanied by payment of prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value and expropriated investment immediately before the expropriation or before the measures concerning expropriation became public, depending on what happened before. Compensation paid without delay, be effectively realized and be freely transferable.
3. Compensation shall include interest at a normal commercial rate defined on a market basis for the assessment of exchange on the date of expropriation until the date of payment.
4. The investor will have the right under the law of the Contracting Party which made the expropriation, to prompt review by a judicial or other competent and independent authority of that Contracting Party of its case and determine whether such expropriation and valuation of its investment principles set out in this Article.

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

1. In the case of investments by investors of either Contracting Party suffer losses owing to war, armed conflict, national emergency, revolt, insurrection, rebellion or due to other similar actions on the territory of the other Contracting Party, they shall be the latter Contracting Party treatment regarding restitution, indemnification, compensation or other decision no

less favorable than that which the latter Contracting Party to its own investors or investors of any third state.

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

- a) requisitioning 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 was not required necessity of the situation,

Will be given fair and adequate compensation for the losses suffered during the requisitioning or as a result of destruction of property.

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

1. Each Contracting Party shall guarantee to investors of the other Contracting Party after taxes, fees and other mandatory payments free transfer of funds in connection with investments, including:

- a) capital and additional amounts to maintain or increase investments;
- b) the amounts paid in repayment of loans related to investment activities;
- c) revenue arising due to total or partial liquidation or sale of investments;
- d) compensation provided for in Article 5 of the Agreement.

2. All transfers payments under this Agreement shall be made immediately at the market rate of exchange which at the date of transfer, in accordance with the applicable law of the Contracting Party and send your hard currency.

## **Article 7. Subrogation**

If one of the Contracting Parties shall pay the amounts to its investors under guarantee investments in the territory of the other Contracting Party, the other Contracting Party shall not prejudice the rights of the first Contracting Party under Article 10 of this Agreement will recognize by law or contract transferring the first Contracting Party of Rights or the requirements of investors. In addition, a Contracting Party recognizes the introduction of the first Contracting Party to all those rights or claims (rights, requirements that were passed) that the first Contracting Party shall be entitled to the same extent as its predecessor in law.

## **Article 8. Application of other Rules**

1. If the legislation of one Contracting Party or international legal agreements that exist between the Contracting Parties, along with this Agreement or stacked them in the future, contain general or special provision, under which investments by investors of the other Contracting Party more favorable treatment than under the this Agreement, such provisions shall prevail over the provisions of this Agreement, in the part that is more favorable.

2. Each Contracting Party shall observe any other obligation that it has assumed regarding investments by investors of the other Contracting Party in the territory.

## **Article 9. Scope**

This agreement also applies in respect of investments that have been made by investors of either Contracting Party under the laws of the other Contracting Party in its territory prior to the entry into force of this Agreement.

## **Article 10. Settlement of Disputes between an Investor of One Contracting Party and the other Contracting Party**

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in respect of an investment in the territory of the other Contracting Party shall be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within six months, the investor will be entitled to submit the dispute to:

(A) the International Centre for Settlement of Investment Disputes (ICSID), referring to the relevant provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington, DC March 18, 1965, when both Contracting Parties have become a party to this Convention, or

(B) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. The arbitration shall be final and binding on both parties to the dispute.

## **Article 11. Disputes between the Contracting Parties**

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

2. If the dispute can not thus be settled within six months, it can be transferred at the request of either Contracting Party to an Arbitral Tribunal under the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each case as follows: within two months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the Court. These two members shall then select a national of a third State who on approval by the Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article, the appointments have been made, will be visiting President of the International Court of Justice to make the appointments. If it turns out that he is a citizen of either Contracting Party or if he is otherwise prevented to perform said function shall be invited to the Vice President to make the appointments. 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 citizen of either Contracting Party shall be invited to make the appointments.

5. The tribunal makes its decisions by majority vote. Such decisions will be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; cost of the Chairman and the costs are, both Contracting Parties shall be borne in equal parts. The tribunal may determine its own procedure.

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

1. This Agreement shall enter into force on the date written notice of the Contracting Parties of all internal procedures necessary for the entry into force of this Agreement.

2. This Agreement shall remain in force for ten years. If either Contracting Party notifies in writing the denunciation of this Agreement six months before the expiry of its term, the Agreement shall continue in force indefinitely. After expiry of initially ten years this Agreement may be terminated at any time subject to denunciation string of twelve months.

3. In respect of investments made prior to the proclamation of this Agreement, the provisions of Articles 1 - 11 will survive the next ten years from the date of termination.

Signed in the city. Kyiv on 24 March 1997 in two originals, each in Ukrainian, Azerbaijani and Russian languages, all texts being equally authentic. In the event of any dispute regarding the Azerbaijani and Ukrainian text shall prevail text in Russian.

For the Government

Ukraine

For the Government

Azerbaijan Republic