

# **Agreement between the Government of Ukraine and the Government of the Republic of Armenia on Promotion and Mutual Protection of Investments**

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

Desiring to promote, protect and create favorable conditions for investments of investors of one state in the territory of the other Contracting Party,

Relying on the principles of mutual respect for sovereignty, equality and mutual benefit,

With the aim of developing economic cooperation between the two states,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means all types of property and non-property values invested in the territory of a Contracting Party that accepts investments in accordance with its laws, including, in particular:

- a) Movable and immovable property and property rights;
- b) Shares or other forms of participation in enterprises and companies;
- c) Claims in respect of money or any obligations of economic value;
- d) Copyright, industrial property rights, know-how and technology;
- e) The right to engage in economic activities provided in accordance with law or agreements, including, in particular, the right to explore and exploit natural resources.

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

- Individuals having the nationality of either Contracting Party in accordance with its laws;
- enterprises, companies and other economic organizations established in accordance with the legislation in force in the territory of a Contracting Party, provided that an individual, enterprise or company, and other economic organizations have the right, in accordance with the laws of that Contracting Party, to invest in the territory of the other Contracting Party.

3. The term "revenues" means amounts received as a result of an investment and, in particular, but not exclusively, include profits, dividends, interest and royalties.

4. The term "territory" means, in relation to each of the Contracting Parties, the territory under its sovereignty and the sea and underwater areas over which this Contracting Party carries out, in accordance with international law, sovereignty, sovereignty or jurisdiction.

## **Article 2.**

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory in accordance with its laws.

2. Each of the Contracting Parties, in accordance with its laws, will facilitate the receipt by citizens of the other Contracting

Party of visas and work permits in connection with investments carried out in its territory.

### **Article 3.**

1. Each Contracting Party shall, in relation to the investment of the other Contracting Party and the activities associated with such investments, undertake to provide in its territory regime and protection equivalent to the regime and protection afforded to its own investors.

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

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

- Its participation in the free trade area, the customs or economic union, the organization of economic mutual assistance or in an international agreement providing benefits and benefits similar to those provided by the Contracting Parties to the said organizations and those which entered into force before the date of signature of this Agreement;

- International agreements or other arrangements on taxation matters;

- Agreements on border trade issues.

### **Article 4.**

1. If investments by investors of one of the Contracting Parties suffer damage as a result of war, armed conflict, national emergency, coup, insurrection, conspiracy or other similar event in the territory of the other Contracting Party, the latter Contracting Party will be granted a regime in respect of restitution compensation, indemnity or other decision no less favorable than that which the latter Contracting Party will grant to its own investors or investors of any third country.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, during any of the events referred to in this paragraph, suffer losses in the territory of the other Contracting Party which arose as a result of:

- a) The requisitioning of their property by its forces or authorities;

- b) The destruction of their property by its forces and authorities, which was not caused by military actions or was not caused - the necessity of circumstances will be provided fair and adequate compensation for losses that were incurred by investors during the requisition or as a result of the destruction of property.

Compensation shall be paid without undue delay, be convertible and freely transferable from the territory of one Contracting Party to the territory of the other Contracting Party.

### **Article 5.**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "Expropriation") in the territory of the other Contracting Party, except where necessary for public purposes in accordance with with the applicable law of the Contracting Party.

Expropriation will be conducted in accordance with due process, non-discriminatory and accompanied by conditions for the payment of immediate, adequate and effective compensation. Such compensation will be equal to the market value of the investment when about expropriation or threat of expropriation has become publicly known, will include a percentage from the date of expropriation, will be paid in the currency in which the investment was made or with the consent of the investor in any other currency acceptable to the investor, will be that which is effectively implemented and will be carried out without delays.

2. The affected investor will have the right to an immediate review by the courts or other independent authorities of that Contracting Party of his case and assessment of his investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which has acquired the status of a joint-stock company or is established in accordance with the law in force in any part of its territory and on which the investors of the other Contracting Party have invested.

### **Article 6.**

If one of the Contracting Parties or an intermediary appointed by it grants a financial guarantee against non-commercial risks in respect of an investment made by its investor in the territory of the other Contracting Party and pursuant to this guarantee, the other Contracting Party shall, on the basis of subrogation, acknowledge the transfer of the rights of the investor to the first contracting party.

## **Article 7.**

Each Contracting Party, in accordance with its legislation, guarantees to investors of the other Contracting Party, upon execution of all their tax liabilities, the transfer of amounts due to investments. Such transfers will include, but are not limited to:

- a) Income as defined in paragraph 1 of Article 3 of this Agreement;
- b) The amount from the total or partial liquidation of investments;
- c) Payments made in accordance with a loan agreement in connection with investments;
- d) Payments for technical assistance, maintenance and management experience;
- e) Earnings and other remuneration received by citizens of the other Contracting Party for work and services performed in connection with investments made in the territory of the first Contracting Party.

## **Article 8.**

The transfer of amounts in accordance with the provisions of this Agreement shall be effected at the date of the transfer to the official exchange rate of the Contracting Party in whose territory the investment was made.

## **Article 9.**

This Agreement applies to all investments that were made either before or after its entry into force.

## **Article 10.**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.
2. If the dispute can not be resolved through diplomatic channels within six months from the date on which the dispute was dismissed by one of the Contracting Parties, it shall be transmitted to the arbitral tribunal "ad hoc" at the request of either of the Contracting Parties.
3. The arbitral tribunal shall consist of three arbitrators and shall be established as follows: within two months from the date of receipt by the Contracting Party of the notification of the transfer of the dispute to arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within a period of 2 months, elect a third arbitrator of a third State who has diplomatic relations with both Contracting Parties, who, with the consent of the Contracting Parties, will be appointed as the chair of the arbitral tribunal.
4. If the arbitral tribunal is not established within 4 months from the date of receipt of the written notification of the transfer of the dispute to the arbitral tribunal, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the Chairman is a national of either Contracting Party or if other reasons prevent him from fulfilling the specified function, the required appointments will be requested by the next senior member of the International Court of Justice who is not a citizen of either of the Contracting Parties.
5. The arbitral tribunal itself shall establish rules of procedure. The tribunal rules in accordance with the provisions of this Agreement and the generally recognized principles of international law.
6. The arbitral tribunal shall make its decisions by a majority of votes. Such decisions shall be final and binding on both Contracting Parties. At the request of either of the Contracting Parties, 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. The expenses related to the activities of the Chairman and other expenses shall be borne in equal parts by both Contracting Parties.

## **Article 11.**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be the subject of negotiations between the parties to the dispute.
2. If, as a result of the negotiations, the dispute can not be settled amicably within six months from the date of its occurrence, the investor will receive the right to transfer it to the arbitral tribunal.
3. Such an arbitral tribunal shall be established for each individual case as follows: each of the parties to the dispute shall appoint one arbitrator, and these two arbitrators shall elect a citizen of a third State which has diplomatic relations with both Contracting Parties as the head of the arbitrator. The first two arbitrators shall be appointed within 2 months, and the chairman shall be elected within 4 months from the date of the written notification of the transfer of the dispute to the arbitration hearing. If, within the specified time limits, the arbitral tribunal is not established, any of the Contracting Parties to the dispute may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.
4. The arbitral tribunal itself establishes rules of procedure. In this case, the court may, in the course of determining the procedure, be guided by the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.
5. The arbitral tribunal shall rule by a majority of votes. Such a decision will be final and binding on both parties to the dispute.
6. The arbitral tribunal shall decide in accordance with the provisions of this Agreement, the law of the Contracting Party in whose territory the investments are made, including its conflict of laws rules, as well as the generally accepted principles of international law.
7. Each party to the dispute will bear the costs associated with the activities of the arbitrator appointed by it and its government in the arbitration proceedings. The expenses related to the activities of the chairman, and other expenses of the party to the dispute will be borne in equal shares.

## **Article 12.**

If one of the Contracting Parties, in accordance with its laws or an international agreement to which both Contracting Parties are party, grants investment to investors of the other Contracting Party or activities associated with such investments, a more favorable regime than that granted by this Agreement, then apply a more favorable regime.

1. Representatives of both Contracting Parties will, if necessary, meet to:
  - a) Studying the application of this Agreement;
  - b) The exchange of information on legal issues of investment and the possibility of their implementation;
  - c) Resolving disputes arising from investments;
  - d) Studying other issues related to investments;
  - e) Consider proposals for making possible amendments and additions to this Agreement.
2. If either Contracting Party is invited to consult on any of the issues referred to in paragraph 1 of this article, the other Contracting Party shall respond promptly, and consultations shall be held alternately in Kyiv and Yerevan.

## **Article 13.**

1. This Agreement shall enter into force upon expiration of 30 days from the date of written notification to the Contracting Parties of each other of their respective constitutional procedures and shall remain in force for 10 years.
2. This Agreement shall remain in force unless either of the Contracting Parties notifies the other Contracting Party in writing of its intention to terminate its operation at least one year before the expiry of the period specified in paragraph 1 of this article.

3. After the expiry of the initial ten-year period, each of the Contracting Parties may, at any time, terminate this Agreement by giving written notice of its intention to the other Contracting Party.

4. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for a period of 10 years from the date of termination of this Agreement.

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

Done in Kyiv on October 7, 1994, in duplicate, each in the Ukrainian, Armenian and Russian languages, all texts being equally authentic.

For the purposes of interpretation, the text in Russian is predominant.

For the Government of Ukraine

For the Government of the Republic of Armenia